

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

In the Matter of  PORTLAND GENERAL ELECTRIC COMPANY  Request for a General Rate Revision; and <u>2024 Annual Power Cost Update.</u>	UE 416	ORDER
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DISPOSITION: MOTION FOR RECONSIDERATION GRANTED IN PART

**I. SUMMARY**

This order addresses the Small Business Utility Advocates' (SBUA) request for reconsideration of Order No. 23-386, issued on October 30, 2023, as it relates to the adoption of the fourth partial stipulation.<sup>1</sup> 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 issued on November 6, 2023.<sup>2</sup> We address the fifth partial stipulation, regarding Schedule 118, cost recovery for the income-qualified bill discount program, in a separate order issued December 18, 2023.

In this order, we grant SBUA's request for reconsideration in part, as addressed below. We modify Order No. 23-386 to adopt the fourth partial stipulation, subject to the removal of provision 19. New information about the impact of provision 19 on the distribution of rate impacts among small business customers, and the availability of a simple fix that does not affect other signatories to the stipulation, leads us to favor protecting customers. We choose to grant SBUA's request in part despite the infirmities of SBUA's application for reconsideration and responsibility for creating this issue, solely to prevent negative impacts to small business customers.

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<sup>1</sup> Order No. 23-386 (Oct. 30, 2023).

<sup>2</sup> Order No. 23-424 (Nov. 6, 2023).

## 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), 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 (NWEC), SBUA, and Walmart Inc. participated as parties to this proceeding. During 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. The fourth partial stipulation also addresses the uncollectible rate, Bigelow blade liberation issue, and a change to the company's annual power cost update tariff regarding modeling changes in non-general rate case years. 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, issued on October 30, 2023. On November 8, 2023, SBUA filed its request for reconsideration.<sup>3</sup> On November 22, 2023, PGE filed a response. PGE responded to a bench request on November 30, 2023. SBUA filed a reply to PGE's response to the bench request on December 6, 2023.

## 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.

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<sup>3</sup> We take official notice under OAR 860-001-0460(d) of the declaration of Danny P. Kermode, appended Exhibits B and C, and the declaration of Diane Henkels filed with SBUA's application for reconsideration and SBUA's reply to PGE bench request 7-1. SBUA also appended as Exhibit A to the declaration of Danny P. Kermode a copy of its comments, previously admitted in the record within Staff/413.

#### IV. POSITIONS OF THE PARTIES

##### A. SBUA

SBUA requests that the Commission reconsider the order adopting the fourth partial stipulation and modify the 19th provision of the fourth partial stipulation to re-establish the current rate structures in Schedules 32 and 532. SBUA argues that new evidence demonstrates that the company and SBUA did not have a meeting of the minds with regard to the effect of this provision and that the result would be that are not fair or reasonable for a significant percentage of small commercial customers.

According to SBUA, it issued a data request on September 19, 2023, to confirm understanding of the impact on ratepayers of proposed settlement language. SBUA states that “[u]pon reviewing correspondence only regarding the [f]ourth [p]artial [s]tipulation, SBUA expert shared his opinion agreeing to the [s]tipulation and SBUA counsel signed on for SBUA.”<sup>4</sup> SBUA explains that its counsel signed the fourth partial stipulation on or about October 6, 2023. SBUA explains that its understanding was that the settlement language was consistent with SBUA’s position regarding maintaining fair and reasonable distribution rate for Schedule 32 and 532 ratepayers.

SBUA states that “[u]pon subsequent technical review of the [s]tipulation, SBUA expert perceived the [s]tipulation language was inconsistent with its understanding of the basis of SBUA’s agreement to the [s]tipulation.”<sup>5</sup> SBUA states that this was due to a misinterpretation of the wording of the stipulation by SBUA, noting that the wording was provided by the company. SBUA reports that it engaged in meetings with the company regarding this issue and issued another data request on October 16, 2023.

SBUA states that its counsel did not file an objection to the stipulation by the applicable deadline, as a party in good faith to the stipulation. Instead, SBUA states that it submitted a filing on October 26, 2023, in response to the October 24 ruling admitting evidence to indicate the existence of a problem.<sup>6</sup> SBUA states that it received responses to the data requests on October 24, 2023, which indicated that SBUA and the company did not agree regarding the meaning of the 19th provision. SBUA states that it promptly communicated this to PGE on October 24, 2023, and continued to engage in discussions. SBUA reports

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<sup>4</sup> SBUA Application for Reconsideration at 5 (Nov. 8, 2023).

<sup>5</sup> SBUA Application for Reconsideration at 5.

<sup>6</sup> On October 27, 2023, SBUA filed a response to the October 24 ruling admitting evidence into the record, which had set a deadline of October 26 for corrections to the identification of testimony or exhibits. In its filing, SBUA made a number of requests, which were addressed in a ruling issued on October 27, 2023. CALJ Ruling Denying Small Business Utility Advocates Requests (Oct. 27, 2023).

that they did not reach any resolution prior to the order adopting the fourth partial stipulation.

SBUA argues that Order No. 23-386, adopting the fourth partial stipulation, violates the legal requirement that rates be fair and reasonable, and is not supported by substantial evidence. SBUA contends that there is virtually no evidence supporting the elimination of distribution rate blocking in the fourth partial stipulation or supporting testimony. SBUA maintains that new evidence, in the form of responses to data requests subsequent to the stipulation, demonstrates a lack of meeting of the minds required for the settlement.

SBUA requests that the Commission modify the fourth partial stipulation to maintain a block distribution rate in Schedules 32 and 532 for customers consuming over 5000 kilowatt-hours (kWh), consistent with the rates in effect currently. SBUA proposes the 19th provision be revised to read as follows: “Parties agree that the distribution blocking differential for distribution charges for Schedules 32 and 532 remain unchanged from rates existing at the time the [s]tipulation is adopted.”<sup>7</sup>

SBUA argues that none of the evidence submitted to date demonstrates that the changed rate design is fair, just, and reasonable, but rather shows that removing the block rate structure will create rate shock and hardship on these customers, potentially resulting in businesses becoming no longer viable. SBUA argues that the effect of removing the block differential under the fourth partial stipulation would result in the bill for a customer using 15,000 kWh to increase from \$403 to \$804 a month.<sup>8</sup> SBUA explains that if the existing rate structure is instead maintained, the same customer would experience an increase to \$584.<sup>9</sup> SBUA explains that it had understood the fourth stipulation to include SBUA’s original position to maintain the block and either keep it at its existing level or reduce it rather than increasing it. SBUA argues that resolution of this mistake is revenue neutral and correction would not impact other parts of the stipulation or prejudice PGE.

SBUA additionally argues that Oregon contract law allows for reformation of a contract for mistakes and characterizes the misunderstanding regarding the Schedule 32 block differential as a material mistake that was either unilateral on the part of SBUA or mutual by SBUA and PGE. SBUA notes that PGE may have mistaken a flattened distribution rate as the rate those customers preferred. SBUA asserts that if PGE seeks to flatten rate schedules, it should propose to do so in its next general rate case.

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<sup>7</sup> SBUA Application for Reconsideration at 9.

<sup>8</sup> SBUA Application for Reconsideration at 9.

<sup>9</sup> SBUA Application for Reconsideration at 9.

**B. PGE**

PGE opposes SBUA's request for reconsideration and contends that SBUA has failed to establish a valid basis for reconsideration under OAR 860-001-0720(3)(a). PGE also argues that SBUA's request to revise the fourth partial stipulation is untimely, procedurally improper, and a violation of the stipulation's terms. PGE further asserts that SBUA's requested revision is vague and that there is inadequate time for further discussion with the stipulating parties and implementation prior to the rate-effective date of this case. PGE represents that it conferred with the other parties to the fourth partial stipulation, and the CUB and the AWEC join PGE's request that the Commission deny reconsideration.

PGE contends that SBUA has not demonstrated the existence of "new evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order."<sup>10</sup> PGE explains that SBUA's mistaken understanding of the fourth partial stipulation is not new evidence because the language of the stipulation was readily available to SBUA before SBUA signed the stipulation and before issuance of Order No. 23-386. PGE notes that SBUA's witness had a concern when SBUA signed the stipulation about the clarity of the language and had issued data requests in an effort to understand the effect of provision 19. PGE also contends that SBUA has not demonstrated that SBUA's mistaken understanding regarding provision 19 is evidence essential to the Commission's decision. PGE argues that because the fourth partial stipulation involved seven parties and addressed numerous issues, it is not clear whether SBUA's support was essential to the Commission's adoption of the stipulation.

PGE also responds to SBUA's arguments general principles of contract law and argues that SBUA has not met the requirements for reformation of a contract.

PGE argues that the change SBUA seeks is not clear from its request for reconsideration. PGE also argues that there is insufficient time to engage in the discussions and process that would be necessary to determine whether the parties can agree upon changes to the stipulation regarding Schedule 32 and seek Commission approval before the rate effective date. PGE states that the company remains willing to continue engaging with SBUA in future proceedings, including potentially restoring the blocking approach to Schedule 32 in a future proceeding.

PGE explains that in its filing, the company proposed to continue its current practice of blocked pricing for Schedule 32—with the first 5,000 kWh per month at a higher price and any kWhs over 5,000 per month at a lower price. PGE contends that if SBUA is

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<sup>10</sup> PGE Response to SBUA Application for Reconsideration at 5-6 (Nov. 27, 2023), quoting OAR 860-001-0720(3)(a).

seeking no change to Schedule 32, as proposed in PGE's initial filing, then the stipulation need not address Schedule 32 at all, or it could simply state that PGE's proposed Schedule 32 rate design is adopted.

PGE asserts that the appropriate time for SBUA to have raised its concern was before signing the stipulation. PGE argues that if SBUA did not understand the stipulation or sought to oppose it, SBUA should not have signed it. PGE argues that SBUA failed to raise its concerns until October 26 and then failed to do so in accordance with the Commission's procedures. PGE argues that requesting to revise the stipulation through a request for reconsideration is inconsistent with both the Commission's rules and the terms of the stipulation. PGE explains that by signing the stipulation, SBUA agreed to support the agreement throughout this proceeding, to provide witness support for the stipulation, and to recommend that the Commission adopt the stipulation's terms. PGE argues that by now arguing that PGE failed to meet its burden of proof to show that the stipulation provision results in fair, just, and reasonable rates, SBUA has failed to uphold its obligations under the stipulation.

## V. RESOLUTION

We find good cause for further examination of the rate impacts to all small business customers under the stipulation.

Under the fourth partial stipulation, customers with usage of 10,000 kWh and above would experience bill impacts of approximately 30-43 percent for the overall rate changes to be effective January 1, 2024.<sup>11</sup> By retaining the existing block structure, the bill impacts will instead range from 22-27 percent from the general rate revision and power cost changes in this docket.<sup>12</sup> PGE notes that the majority of Schedule 32 customers (who use less than 5,000 kWh per month) would experience a higher rate increase if the existing block structure is retained relative to what they would pay under the fourth partial stipulation. However, the highest projected rate increase for these customers, retaining the block structures, is under 14.8 percent.<sup>13</sup>

This disparity in rate impact within the small commercial customer class is caused solely by provision 19 of the fourth partial stipulation and can be remedied simply by removing provision 19 and reverting to PGE's original position in this case. In response to bench

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<sup>11</sup> PGE's response to bench request 6-2, Att. B (excel) (bill impacts based on the final general rate revision revenue requirement from all stipulations adopted, the final power cost update, and other rate adjustments effective January 1, 2024) (Dec. 1, 2023). The cumulative effect of the other rate adjustments effective January 1, 2024, is a decrease of 0.27 percent. PGE's response to bench request 6-1, Att. 6-1-B (Dec. 1, 2023).

<sup>12</sup> PGE's response to bench request 7-1, Att. A (bill impacts based on the final general rate revision revenue requirement from all stipulations adopted and the final power cost update) (Nov. 30, 2023).

<sup>13</sup> PGE's response to bench request 7-1, Att. A.

request 7-1, PGE indicated that the company had confirmed with SBUA that the remedy SBUA seeks is to retain the existing distribution blocking, consistent with PGE's original request in this case. PGE explains that under this approach, PGE would increase the distribution charges for Schedule 32 and Schedule 532 customers to 3.00 cents per kWh over 5,000 kWh before applying the system usage charge. The first block would then adjust to yield the allocated revenues, resulting in 5.687 cents per kWh for the first 5,000 kWh and 3.000 cents per kWh for usage over 5,000 kWh.

Also in response to bench request 7-1, PGE explained that there would be no impacts to other customer classes if this change was implemented. Essential to our decision to adopt the stipulations in Order No. 23-386 was the understanding that the stipulations had been reached by advocates on behalf of different customer classes, including the small business customer class. PGE correctly argues that stipulations are evaluated on a holistic basis. However, in this narrow circumstance, removing a provision that addresses only small commercial customers allows us to prevent rate shock to a subset of this customer class without otherwise upsetting the balance of the stipulation or affecting any other customer class. Thus, on reconsideration, rather than revising the stipulation with SBUA's proposed language, we will instead revise our order to adopt the fourth partial stipulation, subject to the removal of provision 19.

We take this action because we are charged with considering customers' interests. In light of new information about the impact of provision 19 on the distribution of rate impacts among small business customers, and the availability of a simple fix that does not affect other signatories to the stipulation, we will stretch to find good cause for reconsideration. We choose, in this instance, to grant reconsideration despite the deficiencies of SBUA's application and its accountability for creating the underlying issue.

Signing a stipulation without first understanding the one, and only, provision specific to the small business customer class SBUA intends to represent raises serious concerns about SBUA's advocacy on behalf of small business customers.<sup>14</sup> The circumstances surrounding SBUA's request for reconsideration call into question not only SBUA's effectiveness as an advocate but also demonstrate disregard for the Commission's procedures.<sup>15</sup> In granting reconsideration, we emphasize that SBUA's application for reconsideration was necessitated entirely by SBUA's own failure to conduct effective advocacy on behalf of small business customers and required other parties and the Commission to expend additional resources to resolve a problem of SBUA's own making. SBUA's status as a signatory to the fourth partial stipulation should have represented that the stipulation was in the interest of that class. In particular, SBUA's

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<sup>14</sup> SBUA Application for Reconsideration at 13.

<sup>15</sup> CALJ Ruling Denying Small Business Utility Advocates Requests (Oct. 27, 2023).

signing of the stipulation and the inclusion of a rate design provision specific to that rate class in the agreement should stand as confirmation that the impact of that rate design change on the small business customer class had been thoroughly considered by its advocate. We note that our decision today is not based on most of the arguments presented by SBUA in its application for reconsideration, many of which would create the troubling precedent of allowing a party to sign a stipulation and then fail to fulfill its obligations under that agreement. Instead, it is driven purely by the fact that the stipulation would create significant disparate impacts on small business customers if not addressed.

## **VI. ORDER**

IT IS ORDERED that:

1. The Small Business Utility Advocates' request for reconsideration is granted in part.
2. Order No. 23-386 is modified upon reconsideration to adopt the fourth partial stipulation between Portland General Electric Company, Staff of the Public Utility Commission of Oregon, Oregon Citizens' Utility Board, Community Action Partnership of Oregon, Fred Meyer Stores and Quality Food Centers, Divisions of The Kroger Co., Small Business Utility Advocates (SBUA), and Walmart Inc., filed August 21, 2023, subject to the removal of provision 19.



3. Portland General Electric Company must file revised schedules consistent with this order to be effective January 1, 2024.

Made, entered, and effective Dec 18 2023.

*Megan W. Decker*

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**Megan W. Decker**  
Chair

*Letha Tawney*

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**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.