— Pepple Moser PC —

September 18, 2026

Via Electronic Filing

Staff of the Public Utility Commission of Oregon
Attn: Michelle Scala
Oregon Public Utility Commission
michelle.m.scala@puc.oregon.gov

Re: In the Matter of OREGON PUBLIC UTILITY COMMISSION,
Rulemaking to Establish Multi-Year Rate Plan Framework (HB 3179 & SB 688 Implementation).
Docket No. AR 676

Dear Michelle Scala,

The Alliance of Western Energy Consumers ("AWEC") appreciates the opportunity to provide the following comments regarding Staff's Electric and Gas O&M Concept v1, filed September 4, 2026. As requested by Staff, the following comments address where AWEC continues to have concerns with O&M cost treatment.

1. Going-in Rates

Generally, AWEC agrees with Staff's general concept for how O&M costs will operate under the multi-year rate plan ("MRP") wherein "the bulk of O&M costs are managed as intended within an indexed plan."[1] AWEC does not, however, support Staff's recommendation to "maintain Oregon's current approach to establishing base rates in a general rate case, which uses a forward-looking test year informed by historical actuals, escalated and inclusive of known and measurable costs."[2] Rather, AWEC continues to recommend that the revenue requirement in the first year of an MRP be established through use of a historic test year with known and measurable adjustments. The need to ensure that going-in rates are as accurate as possible in Rate Year One is heightened by the Commission's adoption of Staff's recommendation of a five-year MRP term. Any under- or over-projection of revenue in rate year one will compound exponentially in years two through five of a MRP. Ensuring, therefore, that the first-year O&M revenue requirement is based on known and measurable costs supported by historical

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1 Staff's Electric and Gas O&M Concept v1, at 1 (Sep. 4, 2026).
2 *Id.* at 4.

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expenditures, not solely utility forecasts of future O&M expenses, is crucial to establishing fair and reasonable rates over the full term of a MRP.

Further, the use of a future test year has recently created significant controversy and criticism, most notably in PGE's 2024 general rate case where the Commission rejected PGE's use of budgets to establish certain costs such as labor expense.[3] Indeed, in that order, the Commission noted that its "decision denies nearly all of PGE's requests for expense growth beyond its last full year of actual, demonstrated expenses, plus inflation" and concluded that PGE's use of budgets to establish rates "is an untenable approach to achieving true regulatory discipline on utility spending."[4]

2. Alternative Pathways

Staff proposes its primary approach for recurring and predictable O&M costs wherein going-in rates are set in accordance with Oregon's current practice, annual adjustments are made, and rebasing occurs to reestablish costs for a future test period. As set forth above, AWEC maintains that a historic test period should be applied rather than a future test period. For recurring and volatile, future and predictable, and future and volatile O&M costs, Staff proposes a variety of pathways "if justified." Depending on the cost characteristics, these potential pathways include but are not limited to reopeners, special Commission-determined exclusions, mid-cycle step adjustments, and/or the inclusion in the Supplemental Capital Funding Mechanism ("SCFM") with eligible capital.

As a general principle AWEC cautions against the use of alternative pathways and posits that over-application of alternative pathways is contrary to the objectives of MRPs. As Staff stated in its June 18th Report, "to maintain cost control, regulatory certainty, and other objectives of the MRP structure," the exceptions process, reopeners, and offramps are tools that are "typically for rate circumstances when ratepayer or utility health is at substantial risk."[5] AWEC agrees. Accordingly, AWEC recommends reopeners, which "provide the utility an opportunity to seek re-evaluation of a particular cost category when events and unrealized assumptions result in material deviations from cost recovery,"[6] be removed as an option for an alternative pathway. Such reopeners, as AWEC understands them, isolate particular cost categories for review and potential revision in a utility's favor, rather than attending to the utility's earnings overall. This proposal has all upside to the utilities to the detriment of customers. Accordingly, reopeners are akin to single-issue ratemaking, which the Commission has disfavored.

Rather, material deviations in costs – whether of a single category or several – should be judged based on their impact to the utility's overall earnings, its return on equity. If deviations in

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3 Docket No. UE 435, Order No. 24-454 at 27 (Dec. 20, 2024).
4 *Id.* at 2.
5 Staff Report at 36-37 (June 16, 2026).
6 Staff Concept v1 at 5 (Sep. 4, 2026).

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costs are of such a magnitude that overall rates become unjust and unreasonable, then Staff's conception of an offramp should apply, and new rates should be established. The question of whether rates have become unjust and unreasonable depends on the direction of the deviation. If a utility is underearning relative to its authorized ROE, an offramp should apply only if the utility can establish that its currently authorized rates are confiscatory. Confiscatory rates are an established legal concept going back at least as far as the U.S. Supreme Court's decision in *Federal Power Commission v. Hope Natural Gas Co.*, which required a utility's return to be "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."[7] It therefore provides a more objective measure for when an offramp is appropriate than Staff's formulation of allowing one "if justified."

In circumstances where overall rates generate earnings well in excess of a utility's authorized ROE, AWEC recommends that the Commission establish a basis point threshold in the MRP proceeding above which it will be presumed that the utility's rates are no longer just and reasonable, and an offramp is necessary. This process allows for case-by-case determinations of reasonableness rather than a one-size-fits-all determination and will allow for precedent on this issue to evolve over time as additional MRP decisions are developed.

AWEC does not support other mechanisms to modify individual O&M costs, which AWEC considers to be contrary to the purpose of MRPs. However, if other mechanisms like a Z-factor or deferrals are used, AWEC recommends that their use be limited to substantial and unexpected O&M cost changes within an MRP. It is AWEC's understanding that the Z-factor adjustment can be used to "capture unforeseen costs,"[8] and/or "discrete, material exogenous event[s] outside utility control."[9] As Staff is aware, deferrals may be used for foreseeable and unforeseeable events and must either "minimize the frequency or fluctuations of rate changes or match the costs and benefits received by ratepayers."[10] Notably, AWEC recognizes that the current number of utility deferrals was one of many considerations in moving to an MRP structure. However, given the number of alternative pathways currently being considered, AWEC questions whether the advantages of an MRP – such as reducing administrative burden, predictability in rates, and strategic cost management – will come to fruition if all alternative pathways currently at issue are available to utilities during an MRP.

3. Scope

It is AWEC's understanding that at this juncture, all customer programs are considered in-scope of the MRP revenue cap with the exception of the following: HB 2475 bill discounts, demand response and flex load, Community Solar administration, and Community Based Renewable Energy activities that are justified to occur outside of power cost. It is further

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7 *Federal Power Com. v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (internal citations omitted).

8 Staff Report at 17 (Jun. 16, 2026).

9 Informal Phase 2: Staff's Phase 2 Track 1 Electric and Gas O&M Workshop 1 slide deck at 3 (Aug. 27, 2026).

10 Docket No. UM 1817, Order No. 19-274 at (Aug. 19, 2019).

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AWEC's understanding that these customer programs would not be explicitly excluded as part of the rules but rather their exclusion would be part of Staff's recommendation to the Commission. Generally, while it may be reasonable to exclude certain program costs from the MRP revenue cap, AWEC believes exclusion should be the exception, not the rule, because any exception dilutes the MRP goals of decreasing administrative burden and cost containment. Additionally, AWEC does not believe it is appropriate or necessary at this stage to identify cost categories that may be excluded from the MRP revenue cap. Rather, this decision should be made in the context of the MRP where the Commission can weigh record evidence in favor of exclusion or inclusion.

4. Additional Clarity

In response to Staff's request for comments on where additional clarity on the concept elements is needed, AWEC suggests Staff provide a defined term list that includes, but is not limited to, the potential alternative mechanisms as well as the adjustment factors in the index. AWEC suggests this be a living document such that additional terms may be added to it as this proceeding progresses. AWEC believes that clearly defining relevant terms will ensure that stakeholders have a clear and uniform understanding moving forward.

AWEC appreciates the opportunity to provide these comments and looks forward to continuing to work with Staff and stakeholders to this proceeding.

Dated this 18th day of September, 2026.

Respectfully submitted,

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