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February 27, 2019

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

Re: Docket UE 335 – In the Matter of Portland General Electric Company, Request for a General Rate Revision.

Attention Filing Center:

Attached for filing in the above-referenced docket is Portland General Electric Company's Response to the Alliance of Western Energy Consumers' Application for Reconsideration and Rehearing.

Please contact me with any questions

Sincerely,

A handwritten signature in blue ink that reads "Alisha Till".

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 335

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Request for a General Rate Revision.

**PORTLAND GENERAL ELECTRIC
COMPANY’S RESPONSE TO THE
ALLIANCE OF WESTERN ENERGY
CONSUMERS’ APPLICATION FOR
RECONSIDERATION AND REHEARING**

I. INTRODUCTION

1 On February 12, 2019, the Alliance of Western Energy Consumers (“AWEC”) filed an
2 Application for Reconsideration or Rehearing¹ of Order No. 18-464.² AWEC challenges the
3 Commission’s approval of a stipulation resolving direct access issues in this case (“Direct Access
4 Stipulation”) among all five parties. AWEC and the Citizens’ Utility Board (“CUB”) objected to
5 the Direct Access Stipulation on different grounds, and only AWEC now seeks reconsideration.

6 The Direct Access Stipulation leaves Portland General Electric Company’s (“PGE”) long-
7 term direct access program materially unchanged for the next two years, allowing an opportunity
8 for further review and potential resolution of the contested direct access issues raised in this case.
9 AWEC objected to the Direct Access Stipulation solely because it continues the long-term direct
10 access program’s current 300 average megawatt (“MWa”) participation limit. AWEC seeks to
11 eliminate or increase this limit. The Commission approved the Direct Access Stipulation over
12 AWEC’s objection, concluding that the stipulation reasonably resolved the contested issues among
13 the parties—including the participation limit.

14 In its Application for Reconsideration, AWEC claims that the Commission committed
15 errors of law in approving the Direct Access Stipulation. But AWEC’s so-called errors of law do
16 not directly challenge the legality of continuing the 300 MWa participation limit. Instead, AWEC

¹ The Alliance of Western Energy Consumers’ Application for Reconsideration and Rehearing, Docket UE 335 (Feb. 12, 2019) (“Application for Reconsideration”).

² *In the Matter of Portland General Electric Co. Request for a General Rate Revision*, Docket UE 335, Order No. 18-464 (Dec. 14, 2018).

1 raises only technical challenges to Order No. 18-464. As outlined below, none of AWEC’s claims
2 warrant reconsideration. Tellingly, AWEC does not contest the Commission’s finding that the
3 Direct Access Stipulation, as a whole, produces a reasonable outcome in continuing PGE’s long-
4 term direct access program for two years. Indeed, AWEC’s ultimate support for continuation of
5 PGE’s long-term direct access program is demonstrated by AWEC’s singular focus on expanding
6 access to the program.

II. BACKGROUND

7 PGE introduced its long-term direct access program in 2002.³ Since that time, the key
8 provisions of the program have not changed, including the calculation of the transition adjustment
9 and the 300 MWA participation limit.⁴

10 PGE sought to modify the calculation of the transition adjustment in this case.⁵ Other
11 parties responded in opposition, some proposing their own modifications to the long-term direct
12 access program.⁶ On August 20, 2018, PGE filed a five-party stipulation, resolving these contested
13 issues through an agreement to extend PGE’s long-term direct access program (with minor
14 modifications) for two years.⁷ In addition to PGE, the stipulating parties represent a range of
15 different interests—Staff, direct access customers, and an energy service supplier.⁸

16 AWEC and CUB filed objections to the Direct Access Stipulation.⁹ AWEC opposed only
17 one aspect of the Direct Access Stipulation—the participation limit—and sought elimination of

³ Docket UE 335, PGE/1300, Macfarlane – Goodspeed/36.

⁴ See *id.* at 36-38; Docket UE 335, Stipulating Parties/500, Joint Witnesses/7-8.

⁵ Docket UE 335, PGE/1300, Macfarlane – Goodspeed/39-40.

⁶ Docket UE 335, Calpine/100, Higgins/4-5; Docket UE 335, NIPPC/100, Fitch-Fleischmann/1-2; Docket UE 335, Staff/800, Kaufman/39; Docket UE 335, AWEC/200, Mullins/42; Docket UE 335, Albertsons/100, Waidelich/4.

⁷ Partial Stipulation Regarding Direct Access Issues, Docket UE 335, at 1-2 (Aug. 10, 2018).

⁸ *Id.* at 1.

⁹ Objections of the Alliance of Western Energy Consumers to the Partial Stipulation Regarding Direct Access Issues, Docket UE 335, at 2-3 (Sept. 14, 2018) (“AWEC Objections”); Objections of the Oregon Citizens’ Utility Board, Docket UE 335, at 2-4 (Sept. 4, 2018).

1 the 300 MWA participation limit or an increase to 550 MWA.¹⁰ AWEC’s primary objection was
2 that, by joining the stipulation, PGE implicitly conceded that its current long-term direct access
3 program did not cause unwarranted cost shifting which, in turn, eliminated PGE’s only stated
4 justification for continuation of the participation limit.¹¹ AWEC also claimed that, because PGE
5 could not justify the participation limit, the Direct Access Stipulation impermissibly discriminated
6 against customers with loads that exceeded the remaining capacity of the program, and violated
7 ORS 757.646(1)’s provisions on competitive market development.¹²

8 The Commission set a schedule to consider AWEC’s and CUB’s objections. The schedule
9 included testimony, a hearing (which all parties, including AWEC, waived), briefs, and oral
10 argument. The stipulating parties filed opening testimony generally supporting the Direct Access
11 Stipulation, and response testimony rebutting AWEC’s and CUB’s objections.¹³

12 In Order No. 18-464, the Commission adopted the Direct Access Stipulation, based on the
13 finding that it was “a reasonable resolution of the issues presented.”¹⁴ To support this finding, the
14 Commission expressly relied on the stipulating parties’ joint testimony, “which discusse[d] the
15 reasonableness of the ultimate compromise between parties.”¹⁵

16 The Commission specifically rejected AWEC’s argument that the Direct Access
17 Stipulation reflected an implicit finding that PGE’s long-term direct access program does not result
18 in cost-shifting.¹⁶ The Commission also found that AWEC’s argument, if accepted, could
19 discourage reasonable stipulations by creating fear that the existence of a stipulation could be used
20 against a party.¹⁷

¹⁰ AWEC Objections at 1-2.

¹¹ AWEC Objections at 3, 6, 14; Opening Brief of the Alliance of Western Energy Consumers on Direct Access Issues, Docket UE 335, at 15 (Oct. 19, 2018) (“AWEC Opening Brief”).

¹² AWEC Objections at 13-16; AWEC Opening Brief at 6-17.

¹³ Docket UE 335, Stipulating Parties/500, Joint Witnesses/3-4, 6-9; Docket UE 335, Stipulating Parties/600, Joint Witnesses/4-11.

¹⁴ Order No. 18-464 at 18.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

III. ARGUMENT

1 Under ORS 756.561(1), the Commission may grant reconsideration if there is “sufficient
2 reason” to do so. This requires a party to do more than “merely reiterate[] its prior arguments and
3 its disagreement with [a] decision and its underlying reasoning.”¹⁸ AWEC’s Application for
4 Reconsideration fails this standard.

A. **The Commission Made Sufficient Findings in Order No. 18-464.**

5 The Commission may approve a stipulation if it constitutes “a reasonable resolution of the
6 issues,”¹⁹ in “accord with the public interest.”²⁰ The Commission’s review is focused on whether
7 the stipulation as a whole produces a fair and reasonable outcome, not on the individual decisions
8 reflected.²¹ In Order No. 18-464, the Commission expressly found that the Direct Access
9 Stipulation was a reasonable resolution of the issues presented.²² This finding was based on the
10 joint testimony of the stipulating parties, which rebutted AWEC’s challenge to retention of the 300
11 MWa participation limit.²³

12 In addition, the premise of all of AWEC’s objections was its argument that, by virtue of
13 the Direct Access Stipulation, PGE implicitly agreed that its long-term direct access program did
14 not create unreasonable cost-shifting.²⁴ The Commission addressed and rejected this premise,
15 finding that the Direct Access Stipulation reflected a compromise of disputed issues, not an implied
16 concession by the stipulating parties.²⁵ The Commission bolstered this conclusion on public

¹⁸ *In the Matter of the Application of Portland General Electric Company for Authorization to Defer Costs Related to Implementing Senate Bill 1149*, Docket UM 954; *In the Matter of the Application of PacifiCorp for Authorization to Defer Costs Related to Implementing Senate Bill 1149*, Docket UM 958, Order No. 00-308 (June 9, 2000).

¹⁹ *In the Matter of PacifiCorp dba Pacific Power Request for General Rate Revision*, Docket UE 210, Order No. 10-022 at 6 (Jan. 26, 2010).

²⁰ *In the Matter of PacifiCorp dba Pacific Power Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket UE 267, Order No. 15-060 at 4 (Feb. 24, 2015).

²¹ Order No. 10-022 at 6.

²² Order No. 18-464 at 18.

²³ Docket UE 335, Stipulating Parties/600, Joint Witnesses/4-8.

²⁴ AWEC Objections at 6, 14; AWEC Opening Brief at 15.

²⁵ Order No. 18-464 at 18.

1 interest grounds, concluding that AWEC’s argument could have a chilling effect on future
2 settlements if adopted here.²⁶

3 To support its claim that Order No. 18-464 is insufficient to satisfy ORS 756.558, AWEC
4 ignores this part of the order, and complains that the Commission did not specifically address
5 AWEC’s secondary arguments that the participation limit violates ORS 757.325 and ORS
6 757.646.²⁷ Both of these arguments relied, however, on AWEC’s underlying theory that the Direct
7 Access Stipulation precluded the stipulating parties from asserting cost-shifting as a justification
8 for the participation limit. By rejecting this theory, the Commission rejected the basis of all of
9 AWEC’s claims.²⁸ As AWEC concedes in its Application for Reconsideration, the Commission
10 “is not required to discuss every reason, issue or bit of evidence” in its orders when the “plain
11 inference” from the lack of discussion in the order is that the Commission “did not regard this
12 theory and evidence as significant” in its decision.²⁹

B. The Commission Properly Rejected AWEC’s Claim that the Participation Limit Violates ORS 757.325.

13 Contrary to AWEC’s Application for Reconsideration, continuation of the 300 MWa
14 participation limit does not violate Oregon’s anti-discrimination statute, ORS 757.325. First, the
15 participation limit is not discriminatory because it applies equally to all customers eligible for
16 PGE’s long-term direct access program. ORS 757.325 does not prevent the Commission from
17 adopting classifications or eligibility criteria for utility service; the law simply requires their
18 uniform application.³⁰

²⁶ *Id.*

²⁷ Application for Reconsideration at 2, 4, 6-7, 10-12, 17.

²⁸ Order No. 18-464 at 18.

²⁹ Application for Reconsideration at 7, *citing Publishers Paper Co. v. Davis*, 28 Or App 189, 199-200 (1977).

³⁰ ORS § 757.230(1) (“The Public Utility Commission shall provide for a comprehensive classification of service for each public utility, and such classification may take into account the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the *conditions of service* and *any other reasonable consideration*. Based on such considerations the commission may authorize classifications or schedules of rates applicable to individual customers or groups of customers.”) (emphases added). *See also Re Portland General Electric Company*,

1 For the last sixteen years, all eligible PGE customers have had the choice to elect long-
2 term direct access, subject to the 300 MWa participation limit.³¹ This includes the option for
3 AWEC members to elect the program on an individual account basis, allowing enrollment of
4 partial loads when an entire load would exceed the participation limit.³² AWEC acknowledges
5 that the historical participation rate in the program has been approximately 15 MWa per year.³³
6 Given the fact that the program is currently 64 MWa under the limit, continuation of the 300 MWa
7 participation limit for the next two years accommodates more than double the historical, annual
8 enrollment rate. AWEC does not dispute any of these facts, undermining its claim that the
9 participation limit is discriminatory.

10 Second, AWEC claims that the 300 MWa limit discriminates against one customer in
11 particular, because only one remaining customer has cumulative accounts exceeding the limit.³⁴
12 As just noted, that customer could elect the program for its individual accounts up to the
13 participation limit. In addition, AWEC's claim turns ORS 757.325 on its head, effectively seeking
14 to preferentially exempt a single customer from the participation cap that has applied to all other
15 customers since the inception of PGE's long-term direct access program. If accepted, AWEC's
16 argument would result in unfair discrimination, not prevent it.

17 Third, AWEC argues that the participation limit is discriminatory because there is
18 insufficient justification for it in the record. This is incorrect; PGE provided testimony that the

Docket UE 102, Order No. 99-033, n. 12, at 191 P.U.R.4th 87 (Jan. 27, 1999) (“ORS 757.230(1) provides [the Commission] with the ability to create whatever customer classes are necessary to achieve [its] statutory goals[.] . . .”); *Re Incentive Rates for Electric Service*, Docket Nos. UG 23 and UE 50, Order No. 87-402, at 82 P.U.R.4th 624 (Mar. 31, 1987) (concluding the Commissioner can establish eligibility for discounts through “permissible classification criteria” and that in grouping customers into classes, the Commissioner must consider “impacts on the general public” and “on the state’s energy policy goals” in addition to considerations such as “cost, value, or conditions of service[.]”).

³¹ Docket UE 335, Stipulating Parties/600, Joint Witnesses/5-6.

³² *Id.* at 5. *See also* Order No. 87-402, 82 P.U.R.4th 624 (noting that the prohibition against rate discrimination in ORS section 757.325 can be overcome by “opening new rate groups to any customer meeting the criteria for the class”).

³³ AWEC Objections at 3; AWEC Opening Brief at 10 n. 31.

³⁴ AWEC Objections at 11, 13-14; AWEC Opening Brief at 2, 3, 17; Application for Reconsideration at 3, 9.

1 participation limit is necessary to balance the interests of all customers and mitigate potential cost-
2 shifting concerns.³⁵ While AWEC claims that the Direct Access Stipulation implicitly negated
3 this testimony, as noted above, the Commission correctly rejected this argument.

4 In addition, as support for continuation of the 300 MWa participation limit, PGE relied on
5 the Commission's recent decision in docket AR 641, Order No. 18-341.³⁶ In that order, the
6 Commission promulgated rules for a new load direct access program, including a participation
7 limit. The Commission explained that the limit was justified in part by:

8 [T]he reality that cost-of-service customers are increasingly relied upon to finance
9 system improvements that impose near-term costs to adapt the system to new utility
10 and customer-sited technology intended to lead to long-term economic and
11 environmental benefits for all customers. Such is the case with demand response,
12 storage initiatives, electric vehicles, and other programing.³⁷

13 This justification applies equally to PGE's long-term direct access program—especially because
14 approximately 120 MWa of additional PGE load is now eligible for long-term direct access under
15 the new load direct access program, which increases the overall risk of cost shifting.³⁸

C. The Commission Did Not Improperly Shift the Burden of Proof.

16 AWEC contends that the Commission improperly shifted the burden of proof to AWEC in
17 approving the Direct Access Stipulation.³⁹ Specifically, AWEC argues that, in rejecting AWEC's
18 claim that the Direct Access Stipulation made implicit concessions around cost-shifting, the
19 Commission applied a presumption of reasonableness to the stipulation, shifting the burden of
20 proof to AWEC to show that the stipulation was unreasonable.

³⁵ Docket UE 335, PGE/2500, Macfarlane – Goodspeed/17; Docket UE 335, PGE/1300, Macfarlane – Goodspeed/39-41.

³⁶ Reply Brief of Portland General Electric Company Regarding Direct Access Issues, Docket UE 335, at 8 (Oct. 26, 2018), citing *In the Matter of Rulemaking Related to a New Large Load Direct Access Program*, Docket AR 614, Order No. 18-341 (Sept. 14, 2018).

³⁷ Order No. 18-341 at 7-8.

³⁸ Docket UE 335, Stipulating Parties/500, Joint Witnesses/3-4; Docket UE 335, PGE/2500, Macfarlane – Goodspeed/16; Order No. 18-341 at 7.

³⁹ Application for Reconsideration at 12-15.

1 The plain language of the order demonstrates that AWEC’s claim is incorrect. The
2 Commission did not require AWEC to show that the stipulation was unreasonable; rather the
3 Commission relied on the stipulating parties’ supporting testimony to find that the stipulation was
4 a reasonable resolution of the issues.⁴⁰ In addition, the Commission reviewed and rejected
5 AWEC’s objection to the Direct Access Stipulation on the merits, not based on an improper
6 application of the burden of proof.

D. The Commission Approval of the Direct Access Stipulation Does Not Violate ORS 757.607(1).

7 In this case, AWEC did not argue that PGE’s current long-term direct access program
8 results in unwarranted cost shifting to customers remaining on PGE’s system. Nevertheless, in its
9 Application for Reconsideration, AWEC now argues that the Commission violated ORS
10 757.607(1) by failing to ensure that unwarranted cost shifting will not result from the Direct Access
11 Stipulation.⁴¹

12 AWEC appears to be simply recycling its previous argument that the Direct Access
13 Stipulation forced the Commission to make a binary choice on the contested issue of cost-shifting,
14 even though the parties’ compromise was designed in part to delay litigation over this issue
15 pending further investigation and review.⁴² The Commission rejected AWEC’s argument in its
16 order, correctly recognizing the reasonableness of maintaining the status quo to allow further
17 review of the cost shifting issue before its ultimate resolution.⁴³ This fulfilled the Commission’s
18 responsibility to review the stipulation to ensure it “constitutes a reasonable resolution of the
19 issues.”⁴⁴ Having made this determination, the Commission was not required to decide the merits
20 of issues covered by the stipulation, including the issue of cost-shifting.

⁴⁰ Order No. 18-464 at 18.

⁴¹ Application for Reconsideration at 16-17.

⁴² See Docket UE 335, Stipulating Parties/600, Joint Witnesses/4.

⁴³ Order No. 18-464 at 18-19.

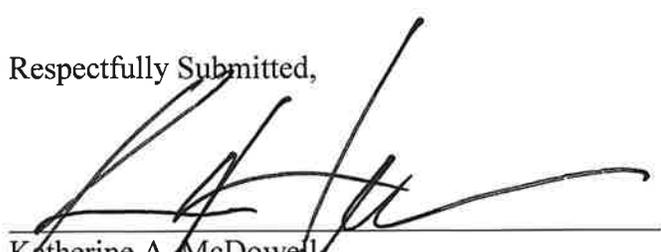
⁴⁴ *In the Matter of PacifiCorp dba Pacific Power Request for a General Rate Revision*, Docket UE 210, Order No. 10-022 at 6 (Jan. 26, 2010).

IV. CONCLUSION

1 The Commission should deny AWEC's Application for Reconsideration. The
2 Commission's order approving the Direct Access Stipulation makes all requisite findings and is
3 clear and well-reasoned. The Commission sufficiently addressed AWEC's objections to the Direct
4 Access Stipulation, which were unfounded in law and logic. Approval of the Direct Access
5 Stipulation is in the public interest, as it maintains the status quo for a limited period of time to
6 allow for further review and potential resolution of the complex, contested direct access issues
7 raised in this case.

Dated February 27, 2019.

Respectfully Submitted,



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