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September 27, 2018

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PORTLAND GENERAL ELECTRIC CO.
2018 Request for a General Rate Revision
Docket No. UE 335

Dear Filing Center:

Please find enclosed a revised version of the Objections of the Alliance of Western Energy Consumers ("AWEC") to the Partial Stipulation Regarding Direct Access Issues, originally filed on September 4, 2018, in the above-referenced docket.

This filing corrects a numbering error in AWEC witness Bradley G. Mullins' direct access testimony and exhibits, to which AWEC cites in its Objections. Specifically, Mr. Mullins' direct access testimony and exhibits were incorrectly labeled AWEC/400-407 in AWEC's original testimony filing, and were therefore incorrectly referenced in AWEC's original Objections.

Accordingly, AWEC is resubmitting its Objections to the Partial Stipulation Regarding Direct Access Issues to reflect the correct labeling of its testimony and exhibits as AWEC/500-507, with changes shown in redline. AWEC's Objections are otherwise unchanged. In addition, AWEC is concurrently filing revised versions of Mr. Mullins' direct access testimony and exhibits.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

(REVISED 9.27.18)

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 335

In the Matter of	)	
	)	OBJECTIONS OF THE ALLIANCE OF
PORTLAND GENERAL ELECTRIC	)	WESTERN ENERGY CONSUMERS TO
COMPANY	)	THE PARTIAL STIPULATION
	)	REGARDING DIRECT ACCESS
Request for a General Rate Revision.	)	ISSUES
	)	

I. INTRODUCTION

Pursuant to OAR 860-001-0350(8) and the Administrative Law Judge's August 14, 2018 Ruling, the Alliance of Western Energy Consumers ("AWEC") files these objections to the Partial Stipulation Regarding Direct Access Issues ("Partial Stipulation"), filed on August 20, 2018, in the above-referenced docket. Paragraph 4 of the Partial Stipulation establishes an effective cap of 64 average megawatts ("aMW") on Portland General Electric Company's ("PGE" or "Company") long-term opt-out program. This cap is unlawful in that it unduly prejudices customers whose loads exceed this arbitrarily determined amount and violates the direct access law by imposing unwarranted barriers to the development of a competitive market. AWEC therefore requests that the Oregon Public Utility Commission ("Commission") modify the Partial Stipulation by either (1) eliminating the cap on the long-term opt-out program entirely; or (2) raising the cap by 250 aMW (for a total cap of 550 aMW) so that all eligible customers may participate.

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II. OBJECTIONS

AWEC objects to the Partial Stipulation on the merits.[1/] To be clear, AWEC does not object to every aspect of the Partial Stipulation. In fact, AWEC affirmatively supports the Stipulating Parties' determination to maintain five years of transition charges for departing long-term opt-out customers.[2/] In testimony, AWEC also supported including a credit for capacity in the transition adjustment calculation when PGE was in a capacity-deficient situation.[3/] While AWEC continues to believe such a credit would be appropriate, it has chosen not to pursue that issue at this time. Note, however, that if the Commission were to modify the Partial Stipulation to extend the current transition period, such a capacity credit would be essential to prevent unwarranted cost-shifting to direct access customers, as the accompanying testimony of Bradley G. Mullins demonstrates.[4/]

As currently formulated, though, AWEC's objections are limited to the Partial Stipulation's maintenance of the existing participation limit of 300 aMW, memorialized in Paragraph 4. Because approximately 236 aMW of load has migrated to long-term direct access, that participation limit prohibits any customer with a load greater than 64 aMW from opting out, despite otherwise meeting all eligibility criteria for the program.[5/] Because, as a Stipulating Party, PGE necessarily concedes that the current five years of transition adjustments do not result in unwarranted cost-shifting, there is no economic justification for excluding customers merely because of an arbitrarily sized participation cap. Such an exclusion, therefore, is not only unduly

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1/ OAR 860-001-0350(8).
2/ Partial Stipulation ¶ 2.
3/ AWEC/200, Mullins/47-48.
4/ AWEC/~~400~~500.
5/ AWEC/~~402~~502.

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prejudicial, it violates the mandates of Oregon's direct access law. AWEC, therefore, requests that the Commission modify Paragraph 4 of the Partial Stipulation either to eliminate the cap on the long-term opt-out program or, alternatively, increase the cap by 250 aMW to allow all eligible customers to participate.

A. Background on PGE's Long-Term Opt-Out Program

PGE's Long-Term Opt-Out program, in which certain customers may leave the Company's cost-of-service pricing for their energy commodity on a permanent basis, has been in place since 2003.[6/] Since that time, the requirements of the program have remained largely unchanged, including the 1 aMW threshold size, the requirement to pay transition adjustment charges over a 5-year period, and the 300 aMW cap on participation.[7/] Currently, as shown in Exhibit AWEC/~~402~~502, approximately 236 aMW of load has migrated to the long-term opt-out program, meaning that an average of 15.5 aMW has left annually since the program began. It also means that, despite being in place for 16 years, the participation cap has never been reached – no mass exodus of customers to direct access has occurred.

In its rebuttal testimony, PGE states that it offered the long-term opt-out program "in response to a proposal made by the Industrial Customers of Northwest Utilities (ICNU) …."[8/] While unclear, this statement may be intended to suggest that ICNU was the party ultimately responsible for the design of the long-term opt-out program. In fact, PGE developed the parameters of the program itself. The ICNU proposal PGE refers to was originally discussed in Docket AR 441, and was for a one-time permanent opt-out option in which eligible customers

6/ PGE Advice No. 02-17.
7/ Id.
8/ PGE/2500 at 17:18-20.

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would pay no transition charges and receive no transition credits. This proposal was never adopted. Instead, AR 441 was eventually recessed into a series of workshops. It was in these workshops that PGE proposed what would become the existing long-term opt-out program. Exhibit AWEC/~~403~~ 503 is a handout PGE provided in these workshops. It shows that the Company's original proposal included both the five-year transition period and the 300 aMW cap. PGE memorialized the program in Schedule 483, which was approved as Advice No. 02-17 on November 1, 2002. Contrary to PGE's statement that this program was intended to be a one-time option in response to ICNU's original proposal, nothing in the handout PGE provided in the AR 441 workshops or in the record for Advice No. 02-17 indicates such an intention.[9/]

B. Legal Standard for Review of a Stipulation

When reviewing the terms of a proposed settlement, the Commission applies the same statutory criteria as it does when deciding a fully litigated case.[10/] That is, in all utility rate cases conducted pursuant to ORS 757.210(1), "the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable."[11/] "There are two aspects to the burden of proof: the burden of persuasion and the burden of production."[12/] "[I]f PGE makes a proposed change that is disputed by another party, PGE still has the burden to show, by a preponderance of evidence, that the change is just and reasonable. If it fails to meet that burden, either because the opposing party presented compelling evidence in opposition to the proposal, *or because PGE failed to present compelling*

9/ AWEC/~~404~~504.

10/ In Re PacifiCorp, DBA Pac. Power, Transition Adjustment, Five-Year Cost of Serv. Opt-Out., Docket No. UE 267, Order No. 15-060 at 4 (Feb. 24, 2015).

11/ ORS 757.210(1)(a).

12/ In Re Portland General Electric Co., Application to Amortize the Boardman Deferral, Docket No. UE 196, Order No. 09-046 at 7 (Feb. 5, 2009).

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information in the first place, then PGE does not prevail."[13/] Further, as the applicant, PGE "never relinquishes its burden of proof," even if it is a party to a proposed settlement.[14/] Of course, in addition to a stipulation being just and reasonable, it must also be lawful.[15/]

"A stipulation is not binding on the Commission."[16/] The Commission has stated that it "do[es] not defer to, and [is] not bound by the terms of *any* stipulation."[17/] In reviewing a settlement, the Commission "may adopt or reject a stipulation in its entirety, or adopt it with modifications to its terms."[18/] The Commission's order must rely exclusively on facts in the record to justify the Commission's decision.[19/] All aspects of the Commission's eventual order must be supported by evidence in the record.[20/]

C. The 300 aMW Participation Cap in the Partial Stipulation is Unduly Prejudicial.

1. All Stipulating Parties agree – and the evidence confirms – that no cost-shifting is occurring from the current long-term opt-out program.

PGE is the only Stipulating Party – and the only party in this case – that objected in testimony to increasing the participation cap on the long-term opt-out program. The Company's entire rationale for its objection was provided in two sentences in its rebuttal testimony: "We oppose modifications [to the cap] because the limitations are specifically

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13/ Re Portland General Electric Co., Proposal to Restructure and Reprice its Services in Accordance with the Provisions of SB 1149, Docket No. UE 115, Order No. 01-777 at 6 (Aug. 31, 2001) (emphasis added).

14/ Re Long Butte Water System, Inc., Docket No. UW 110, Order No. 06-027 at 9 (Jan. 23, 2006); see also, Re Portland General Electric, 2012 Annual Power Cost Update Tariff, Docket No. UE 228, Order No. 11-432 at 3 (Nov. 2, 2011).

15/ ORS 183.482(8).

16/ OAR 860-001-0350(9).

17/ Docket No. UE 267, Order No. 15-060 at 4 (emphasis in original).

18/ Id.; OAR 860-001-0350(9).

19/ ORS 756.558(2); American Can Co. v. Davis, 28 Or. App. 207, 216-17 (1977) (quoting Valley & Siletz R. Co. v. Flagg, 195 Or. 683, 711-12 (1952)).

20/ See ORS 183.482(8)(c); Cascade Nat. Gas Corp. v. Davis, 28 Or. App. 621, 629 (1977).

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designed to restrict the cost shifting of existing generation resources. Increasing these limits would only serve to exacerbate potential cost shifts."[21/] Consequently, PGE's objection to increasing the participation limit is premised upon its original litigation position that the long-term opt-out program, as currently designed with five years of transition adjustments, causes unwarranted cost-shifting from direct access customers to cost-of-service customers. If no cost-shifting is occurring, therefore, the only rationale in the record for maintaining the existing cap falls away.

Crucially, by agreeing to the Partial Stipulation, PGE has now conceded that the current long-term opt-out program does not cause unwarranted cost-shifting. The Partial Stipulation specifically provides that the "Stipulating Parties agree that this Stipulation is in the public interest, and will contribute to rates that are fair, just and reasonable, consistent with the standard in ORS 756.040."[22/] Further, the direct access law specifically forbids "the unwarranted shifting of costs to other retail electricity consumers."[23/] And, as noted above, stipulations must be lawful. In other words, PGE could not have agreed to this Partial Stipulation had it not determined that its prior testimony was at least overstated, if not mistaken.

PGE is correct to have abandoned this position, as it failed to place any evidence in the record to support its original assertion that five years of transition charges has resulted in unwarranted cost-shifting. AWEC, Staff, Calpine Solutions, and the Northwest and Intermountain Power Producers Coalition ("NIPPC") all convincingly showed that PGE's "evidence" of cost-shifting in its opening testimony was no evidence at all, and AWEC will not

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[21/] PGE/2500 at 16:18-20.
[22/] Partial Stipulation ¶ 12.
[23/] ORS 757.607(1).

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repeat those arguments here.[24/] In rebuttal, PGE first inappropriately attempted to shift the burden of proof to other parties by stating that they had "provided no evidence that five years of transition adjustments are better than ten."[25/] It was, of course, PGE's burden to show that five years of transition adjustments are insufficient to prevent unwarranted cost-shifting.[26/] In satisfying this burden, the Company did not perform any analyses that could be used to demonstrate that cost-of-service customer rates are higher than they otherwise would have been absent the long-term opt-out program. Staff's testimony even offered a blueprint for PGE to follow to satisfy its burden of proof and persuasion.[27/] That PGE chose not to follow this blueprint or anything similar should be taken as affirmative evidence against cost-shifting.

Instead, PGE relied on a blanket statement that the "notion associated with five years of transition adjustments is that load growth provides an offset to the COS lost sales from customers choosing the long-term opt-out program," and that PGE's load has declined since 2001, rather than grown.[28/] That is, at best, an incomplete statement. First, when the Company initially proposed the program, at no point that AWEC can discover did PGE justify a 5-year transition period because of load growth. In fact, the Company identified the transition adjustment charges as akin to a fixed price resource that would offset market purchases.[29/] Thus, five years would allow the Company sufficient time to reshuffle its resources by reducing market transactions. This would also hold remaining customers harmless, regardless of load growth. As

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24/ AWEC/200, Mullins/44:6-14; Staff/800, Kaufman/40:4-12; Calpine Solutions/100, Higgins/14:5-15:14; NIPPC/100, Fitch-Fleischmann/10:20-11:5.
25/ PGE/2500, Macfarlane-Goodspeed/5:1.
26/ Supra at 4-5.
27/ Staff/800, Kaufman/40:13-41:2.
28/ PGE/2500, Macfarlane-Goodspeed/6:4-10.
29/ AWEC/~~404~~ 504 at 2 (PGE Adv. No. 02-17).

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Mr. Mullins' testimony shows, that is, in fact, precisely how PGE's transition charge is structured.[30/] In other words, five years allows the Company "to plan for the exit of the opt-out customer."[31/] This is demonstrably true as PGE's same long-term opt-out program requires only three years' notice for a customer to return from direct access to cost-of-service. Thus, the connection between load growth and the development of a 5-year period for collecting transition charges has not be established in this case.

Second, the Company's own testimony elsewhere in its application undercuts its position. PGE's declining load is, of course, due primarily to energy efficiency, not direct access.[32/] The Company's executive team touts the *reduction* to residential bills over time as a consequence of this energy efficiency,[33/] even as its pricing team appears to complain of higher costs to these same customers because of the long-term opt-out program, even though both have identical impacts on PGE's load growth. In fact, PGE specifically states that the "average inflation-adjusted residential bills were roughly the same in 2007 and 2017."[34/] That does not sound like evidence of cost-shifting.

Third, even if PGE were correct that the 5-year transition charge period was developed because of an assumed amount of load growth over an assumed amount of time, the fact that reality has diverged from projections is an indictment not of direct access but of the

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30/ AWEC/~~400~~500, Mullins/8 ("The existing transition adjustment calculation is equivalent to valuing the departing load using a very short-term perspective, based on the short-term marginal cost of energy. The "market-minus" approach that PGE uses to calculate transition adjustments effectively takes the cost of production and subtracts the forecast market prices of electricity to determine the departing customer's share of remaining fixed costs").

31/ Calpine Solutions/100, Higgins/15:19-21.

32/ AWEC/~~405~~505 at 1 (PGE Resp. to Staff DR 324) (PGE estimates cumulative energy efficiency since 2002 of 452.8 aMW, nearly twice as much as the 236 aMW of load that has migrated to long-term direct access).

33/ PGE/100, Pope-Lobdell/8:2-9.

34/ Id. at 8:6-7.

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Company's resource planning and load forecasting process. As the Company states, it has added nearly two gigawatts of generation since 2007.[35/] These additions have been partially to meet load growth PGE has repeatedly forecasted to occur and has apparently never materialized. In its 2007 Integrated Resource Plan ("IRP"), PGE projected long-term load growth of 2.2%.[36/] It projected the same level of load growth in its 2009 IRP.[37/] In 2013, it projected 1.3%;[38/] in 2016, it projected 1.2%.[39/] All of this occurred at a time when the Company's load was going in the opposite direction. And yet, PGE relied on its projections to add over $1.3 billion to its rate base.[40/] In the Company's most recent IRP, AWEC disputed PGE's projected resource needs, identifying a 243 MW capacity shortfall in 2021 after the Boardman Generating Station retires and proposing to fill this need with market purchases and treating direct access as a resource option.[41/] This was in contrast to an 819 MW capacity shortfall the Company identified.[42/] PGE largely ignored AWEC's analysis and pursued a number contracts for capacity to fill a need that, based on historical precedent, may never materialize.[43/] That is not the fault of direct access, and any costs customers bear because of the Company's decisions will also not be because of direct access.

35/ PGE/2500, Macfarlane-Goodspeed/5:14-15.

36/ Docket No. LC 43, PGE 2007 IRP at 1 (June 29, 2007).

37/ Docket No. LC 48, PGE 2009 IRP at 31 (Nov. 5, 2009).

38/ Docket No. LC 56, PGE 2013 IRP at 2 (Mar. 27, 2014).

39/ Docket No. LC 66, PGE 2016 IRP at 27 (Nov. 15, 2016).

40/ Docket No. UE 287, Order No. 14-422 at 8 (Dec. 4, 2014) (approving gross plant amounts for Port Westward 2 and Tucannon River Wind Farm of $323.227 million and $524.617 million, respectively); Docket No. UE 294, Order No. 15-356 at 5 (Nov. 3, 2015) (approving gross plant amount for Carty Generating Station of $514 million).

41/ Docket No. LC 66, Initial Comments of Bradley G. Mullins on Behalf of ICNU at 5-6 (Jan. 24, 2017)

42/ Docket No. LC 66, PGE 2016 IRP at 343.

43/ Docket No. UM 1892, PGE Application for Waiver of Competitive Bidding Guidelines (Aug. 25, 2017). Due to various updates during the IRP process, PGE eventually reduced its projected capacity need to 561 MW. An updated load forecast contributed to this reduction, but only for 71 MW of the 258 MW reduction. Docket No. LC 66, PGE Reply Comments at 22 (June 23, 2017).

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Finally, PGE cites the Public Utility Regulatory Policies Act ("PURPA"), arguing that direct access customers avoid the costs associated with the Company's must-purchase obligation from qualifying facilities ("QFs").[44/] For one, avoiding a cost is not the same thing as shifting a cost to another customer. Direct access customers who selected the long-term opt-out program in 2004 avoided the costs (and benefits) of PGE's Carty Generating Station (built in 2016), but no one would argue that these direct access customers "shifted" costs associated with this resource to cost-of-service customers.[45/] Moreover, customers are, as a matter of law, held harmless from PGE's contracts with QFs because the rates for purchase from QFs cannot exceed the Company's "incremental cost" (also known as the "avoided cost").[46/] In other words, customers would have assumed these costs anyway in the absence of a QF contract.[47/] To be clear, AWEC has supported PGE recently in arguing that its avoided costs used to establish rates for purchases from QFs are too high.[48/] But the Commission has made final determinations on the appropriate avoided costs for the Company.[49/] PGE did not seek judicial review of any of those orders. Arguing that direct access customers avoid PURPA costs that will harm remaining cost-of-service customers is tantamount to arguing that the Commission has violated Federal law in establishing the Company's avoided costs.[50/]

44/ PGE/2500, Macfarlane-Goodspeed/6:19-7:16.

45/ Pursuant to Commission Order 07-002, PGE has not planned for departed long-term opt-out load since 2007.

46/ 16 U.S.C. § 824a-3(b)(2).

47/ Id. § 824a-3(d).

48/ See, e.g., Docket No. UM 1728, ICNU Comments (May 9, 2017).

49/ Docket No. UM 1728, Order Nos. 17-347 (Sept. 14, 2017) & 18-189 (May 23, 2018).

50/ 16 U.S.C. § 824a-3(d); Am. Paper Inst. v. Am. Elec. Power Corp., 461 U.S. 402, 417, 103 S. Ct. 1921, 76 L. Ed. 2d 22 (1983).

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In fact, while it is not AWEC's burden, Mr. Mullins' testimony in support of AWEC's objections to the Partial Stipulation provides affirmative evidence that the long-term opt-out program with a five-year transition period has not resulted in cost-shifting from direct access customers to cost-of-service customers. Rather, the evidence shows that the opposite has occurred – cost-of-service customers are better off because of the long-term opt-out program.[51/] Therefore, contrary to PGE's unsupported claim that the cap helps prevent unwarranted cost-shifting, the cap actually harms remaining cost-of-service customers by limiting participation in the long-term opt-out program, which will help to avoid or defer future capacity additions that would otherwise be paid for by cost-of-service customers.

2. Because no cost-shifting to cost-of-service customers is occurring, there is no justification for excluding otherwise eligible customers from the long-term opt-out program.

By maintaining the same 300 aMW cap that has been in place since 2003, despite 236 aMW of load having left since that time, it is critical to understand that the Stipulation is effectively claiming that a 64 aMW cap for 2019 and beyond is lawful and in the public interest. This despite the indisputable evidence that the cap will categorically exclude certain otherwise eligible customers from participating.[52/] In fact, at 64 aMW, the cap will exclude precisely one customer from participating.[53/] Thus, to be lawful, there must be evidence in the record that justifies treating eligible customers that are larger than the cap differently from other eligible customers whose load is less than the cap.

51/ AWEC/~~400~~500, Mullins/10-13.
52/ AWEC/~~406~~506 at 3 (PGE Response to AWEC DR 151).
53/ Id. at 1-2 (PGE Response to AWEC DR 148) (both identified accounts belong to the same customer).

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ORS 757.325(1) prohibits utilities from giving "undue or unreasonable preference or advantage to any particular person or … subject[ing] any particular person … to any undue or unreasonable prejudice or disadvantage in any respect." This statute does not, of course, prohibit *any* preferences for or prejudices against customers, only "undue or unreasonable" preferences and prejudices. Thus, the Commission may create separate customer classes for similarly situated customers and allow different rates for these classes.[54/] But rate schedules can only distinguish between customers if there are economic justifications for doing so,[55/] and may not "discriminate between customers with substantially similar service characteristics."[56/]

With respect to eligibility for the long-term opt-out program for customers other than lighting customers, PGE has established, and the Commission has approved, a uniform classification. A customer must have a load that aggregates at least to 1 aMW, each delivery point must have a capacity rating of at least 250 kW, and the customer is subject to five years of transition adjustments.[57/] Other than the 300 aMW aggregate cap, none of PGE's long-term opt-out schedules identify a maximum size limit for a single customer to participate.

The Commission has developed different long-term opt-out schedules (e.g., 485, 489, and 490) to reflect different transmission and distribution charges that coincide with the different *costs* to serve the customers eligible for these different schedules, but the *eligibility* for the long-term opt-out program itself is identical across these schedules. There is no difference between customers in terms of their ability to participate in the program.

54/ ORS 757.230; Portland General Electric Company, Dockets UE 101/DR 20, Order 97-408, 1997 WL 913205 at *5-*6 (Oct. 17, 1997).

55/ Order 97-408, 1997 WL 913205 at *5-*6

56/ Pac. Power & Light, UE 170, Order 06-172, 11 (Apr. 12, 2006); Order 97-408, 1997 WL 913205 at *5-*6.

57/ PGE Schedules 485, 489, 490.

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The Commission's discrimination and undue preference statutes require "equality of treatment among all customers," unless some distinguishing characteristics justify different treatment.[58/] As noted above, the only justification for a participation cap on the long-term opt-out program – that it minimizes cost-shifting – is not supported by the record (and is affirmatively refuted by Mr. Mullins' testimony). Thus, there is not a shred of evidence that identifies distinguishing characteristics of customers larger than 64 aMW that would support excluding them from participation in the long-term opt-out program.

Notably, this is in contrast to the restrictions on customers who are too small to meet the long-term opt-out program's eligibility criteria. While PGE argued that expanding the program to these customers would also exacerbate cost-shifting, it identified the increased administrative burdens such a change would create as well:

> With respect to load forecasting, pricing, and billing, it is currently challenging to separately track the large number of accounts with their myriad of vintages and unique transition adjustments. The proposal to increase the potential pool of participants significantly, while continuing to provide annual opportunities to leave COS pricing, would create an unmanageable administrative requirement on PGE. It would also likely lead to confusion among external parties trying to associate each relevant account with its specific vintage transition adjustment and how the flow of the revenues for each specific transition adjustment impacted nonparticipants in the ratemaking process. Additionally, issues related to successors and landlords become increasingly more complicated when the potential pool includes over 14,000 accounts.[59/]

PGE's testimony provides rational justifications for excluding customers under 1 aMW from the long-term opt-out program. No similar justifications exist in the record for customers over 64

[58/] Northwest Natural Gas Co., Docket DR 11, Order 93-1273, 1993 WL 417547 at *5 (Sept. 7, 1993); American Can v. Davis, 28 Or. App. 207, 226 (1977).

[59/] PGE/2500, Macfarlane-Goodspeed/18:9-18.

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aMW. Indeed, even if some level of a cap could be justified based on the record of this case, nothing identifies 64 aMW as the right amount.

To be clear, AWEC's position is not that any participation cap on a program is *per se* discriminatory and unduly prejudicial. When originally developed, the 300 aMW cap on the long-term opt-out program was likely lawful and in the public interest. For one, it was large enough at that time to allow any customer to participate so long as they met the other eligibility criteria. For another, the cap served a useful purpose in limiting potentially negative impacts from a new and untested program.

In hindsight, though, the cap was unnecessary. In 16 years it was never reached. Yet, now, the Stipulating Parties propose to extend that same cap without any evidence that it continues to serve a useful purpose and in a manner that arbitrarily excludes otherwise eligible customers without any justification for excluding them. This unduly prejudices these customers in violation of ORS 757.325.

D. The stipulation violates ORS 757.646(1).

As noted above, the record in this docket is devoid of any evidence that the existing long-term opt-out program has resulted in cost-shifting to cost-of-service customers and, in fact, demonstrates the opposite. By joining the Partial Stipulation, PGE now necessarily concedes that no unwarranted cost-shifting is occurring. Consequently, maintaining the existing 300 aMW cap imposes an unjustifiable obstacle to the development of a competitive market, in direct violation of ORS 757.646(1). That statute provides that "[t]he duties, functions and powers of the [Commission] *shall include* developing policies to eliminate barriers to the

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development of a competitive retail market structure."[60/] As the language demonstrates, this law is not discretionary – it establishes a mandate on the Commission to discourage actions that inhibit the growth of competition. This mandate is constrained only by the Commission's other statutory obligations, such as the prevention of unwarranted cost-shifting from direct access and ensuring fair and reasonable rates for customers.[61/] Without any evidence that allowing all customers above the 1 aMW threshold would violate these other statutory requirements – indeed, evidence in Mr. Mullins' testimony that eliminating the cap will *benefit* cost-of-service customers – the Commission has a duty to prevent the cap from becoming a "barrier[] to the development of a competitive retail market structure," as would occur under the Partial Stipulation.

Moreover, the statute specifies that the policies the Commission develops "shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies …."[62/] There is no better example of the exercise of market power than the Partial Stipulation's participation cap. This is not merely an instance of PGE using its incumbent position to provide services at rates or terms that its competitors cannot match (likely a violation of this statute but potentially a gray area). Rather, the cap in the Partial Stipulation will allow the Company to establish an outright prohibition on otherwise eligible customers from selecting an alternative supplier. There is no gray area there. Indeed, the Partial Stipulation would render PGE's Schedule 490 a complete nullity because only customers larger than 64 aMW are eligible

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[60/] ORS 757.646(1) (emphasis added).
[61/] ORS 757.607(1); 756.040(1).
[62/] ORS 757.646(1).

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to participate in the long-term opt-out program under this tariff.[63/] By allowing Schedule 490 to go into effect, the Commission necessarily found that it was just and reasonable and in the public interest.[64/] Presumably, that was not because it thought it would be impossible for a customer to use it. Without a justification for prohibiting customers from participating in the long-term opt-out program, supported by an evidentiary record, such a prohibition enhances, rather than mitigates, PGE's vertical and horizontal market power and cannot survive the direct access law's mandates.

III. CONCLUSION

For the foregoing reasons, AWEC requests that the Commission modify Paragraph 4 of the Partial Stipulation to either: (1) eliminate the participation cap on the long-term opt-out program; or (2) increase the cap by at least 250 aMW to ensure that all eligible customers may participate on a nondiscriminatory basis.

Dated this 4th day of September, 2018.

Respectfully submitted,

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63/ PGE Schedule 490, Sheet No. 490-1; AWEC/~~407~~ 507 (PGE Response to AWEC DR 153).

64/ Schedules 90 and 490 were created to comply with the first partial stipulation in PGE's 2013 general rate case, Docket UE 262, and submitted as a compliance filing in that docket on Dec. 13, 2013.