

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 416

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC COMPANY)	OBJECTIONS OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS TO FIFTH PARTIAL STIPULATION
)	
Request for a General Rate Revision.)	
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I. INTRODUCTION

Pursuant to OAR 860-001-0350(8), the Alliance of Western Energy Consumers (“AWEC”) files these objections to the Fifth Partial Stipulation (“Partial Stipulation”), filed by Portland General Electric Company (“PGE”), Staff of the Public Utility Commission of Oregon (“Staff”), the Oregon Citizens’ Utility Board (“CUB”), Fred Meyer Stores and Quality Food Centers, Division of The Kroger Co. (“Kroger”), Walmart, Inc. (“Walmart”), Community Action Partnership of Oregon (“CAPO”), and Small Business Utility Advocates – Oregon (“SBUA-Oregon”) (collectively, “Stipulating Parties”) on October 6, 2023, in the above-referenced docket. The Partial Stipulation addresses PGE Schedule 118, the cost recovery mechanism for the Income Qualified Bill Discount Program (“IQBD program”) in Schedule 118. Specifically, the Stipulating Parties agreed to increase the existing cap on Schedule 118 recoveries from \$1,000 per month per site to a 20 million kWh cap per month per site.

As further demonstrated in the Testimony of Dr. Lance Kaufman supporting this Objection, attached hereto, the revised cap will unfairly burden PGE’s large customers by requiring them to pay a disproportionate amount of the program costs – a program which is only

available to Schedule 7 customers. AWEC therefore requests that the Oregon Public Utility Commission (“Commission”) reject the Fifth Partial Stipulation and instead apply a cap of 877,193 kWh, which will allow the existing cap to grow with the overall size of the IQBD program. If, however, the Commission decides to adopt the 20 million kWh cap in the Fifth Partial Stipulation, it should apply this cap to the single customer on Schedule 90 in the aggregate, rather than to each site owned by the customer.

II. OBJECTIONS

AWEC objects to the Partial Stipulation on the merits.¹ The Partial Stipulation unfairly burdens PGE’s large customers in violation of traditional ratemaking principles adhered to by the Commission, including the cost causation principle. The Partial Stipulation will result in rate shock to a class of customers that are unable to participate in the IQBD program and provide a substantial economic contribution to PGE’s service territory. AWEC recommends that the Commission instead adopt the recommendation put forth in AWEC’s rebuttal testimony and increase the IQBD program cap by the percentage increase in the overall costs of the program. Increasing the cap in concert with the overall costs of the program resolves concerns regarding the distribution and recovery of program costs and does not unfairly burden a single customer class as compared to others.

A. Background on PGE’s Income Qualified Bill Discount Program

Schedule 118 recovers costs associated with PGE’s IQBD program, which is a program offered to eligible residential customers and is designed to increase bill affordability. “This discount is enabled by House Bill 2475...which calls for differentiated rates for ‘low-income

¹ OAR 860-001-0350(8).

customers and other economic, social equity or environmental justice factors that affect affordability for certain classes of utility customers.”² Schedule 118 costs are currently recovered through a flat rate to residential customers and per kWh charge to non-residential customers, with charges capped at \$1,000 per month per site. Therefore, the maximum a customer pays per site is \$12,000 per year. However, some customers have multiple sites, meaning they pay substantially more in the aggregate. Under the current mechanism, there is no cap on the amount a customer pays in the aggregate.

In testimony, CUB, Staff, and CEP-CAPO all put forth revisions regarding Schedule 118. Although CUB recommended that the Commission remove the cap completely,³ PGE disagreed, arguing that the cap should not be removed “because some of PGE's most electricity intensive industry customers could experience bill impacts that are not indicative of their size.”⁴

In opening testimony Staff recommended that the cap “be revisited at such a time that enrollment, costs, or other relevant metrics or design elements of the IQBD have changed to warrant an adjustment to this feature.”⁵ However, in rebuttal testimony Staff revised its recommendation, asserting that “the increased costs of the IQBD necessitate changes to the current cost recovery mechanism.”⁶ As such, Staff recommended that the cap be removed “and instead apply a percentage of bill cap... set at two percent of monthly billed amounts per site on all non-residential customers.”⁷ According to Staff, an inferior approach would be a combination of a flat

² Portland General Electric Company, Schedule 118, First Revision of Sheet No. 118-1.

³ CUB/500, Gehrke/5:9.

⁴ PGE/2600, Macfarlane – Pleasant/39:2-4.

⁵ Staff/600, Scala/44:9-12.

⁶ Staff//3100, Scala/25:7-9.

⁷ Staff//3100, Scala/26:12-13;20-21.

dollar cap and a percentage cap because such a method “does not align with ‘fair share’ and ‘ability to pay’ arguments.”⁸

Finally, CEP – CAPO recommended that the cap be removed, and no new cap be adopted.⁹ CEP – CAPO reasoned that those with “a high ability to pay” should pay more¹⁰ but then went on to state that “[a]ll customer classes should pay equally for the bill discount program, industrial, commercial, and residential[.]”¹¹ According to CEP – CAPO, its proposal would not unfairly burden industrial users because “only Schedules 89P and 90 would see an increase in their Schedule 118 fee.”¹²

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.¹³ That is, in all utility rate cases conducted pursuant to ORS 757.210(1)(a), “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.”¹⁴ “There are two aspects to the burden of proof: the burden of persuasion and the burden of production.”¹⁵ “[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 information

⁸ Staff//3100, Scala/28:4-8.

⁹ CEP-CAPO/200, Fain – Springer/2:13-14.

¹⁰ CEP-CAPO/200, Fain – Springer/14:10.

¹¹ CEP-CAPO/200, Fain – Springer/14:16-18.

¹² CEP-CAPO/200, Fain – Springer/15:16-17.

¹³ Docket No. UE 267, Order No. 15-060 at 4 (Feb. 24, 2015).

¹⁴ ORS 757.210(1)(a).

¹⁵ Docket No. UE 196, Order No. 09-046, at 7 (Feb. 5, 2009).

in the first place, then PGE does not prevail.”¹⁶ Further, as the applicant, PGE “never relinquishes its burden of proof,” even if it is a party to a proposed settlement.¹⁷

“A stipulation is not binding on the Commission.”¹⁸ The Commission has stated that it “do[es] not defer to, and [is] not bound by the terms of *any* stipulation.”¹⁹ In reviewing a settlement, the Commission “may adopt or reject a stipulation in its entirety, or adopt it with modifications to its terms.”²⁰ The Commission’s order must rely exclusively on facts in the record to justify the Commission’s decision.²¹ All aspects of the Commission’s eventual order must be supported by evidence in the record.²²

C. The 20 million kWh cap in the Fifth Partial Stipulation is unjust and unreasonable because it will disproportionately affect PGE’s largest customers.

1. The Stipulating Parties have failed to demonstrate that a 20 million kWh cap on the IQBD program is just and reasonable and in the public interest.

In support of the Fifth Partial Stipulation, the Stipulating Parties provide two objectives that a 20 million kWh cap allegedly meets. First, they note that “an increase in the cap will shift some of the program cost allocation from residential and smaller non-residential customers to large non-residential customers”²³ Second, they note that moving to a kWh cap from a dollar-based cap “will continue to allocate cost recovery to capped customers when program

¹⁶ Docket No. UE 115, Order No. 01-777, at 6 (Aug. 31, 2001).

¹⁷ Docket No. UW 110, Order No. 06-027 at 9 (Jan. 23, 2006); *see also*, Docket No. UE 228, Order No. 11-432, at 3 (Nov. 2, 2011).

¹⁸ OAR 860-001-0350(9).

¹⁹ Docket No. UE 267, Order No. 15-060, at 4 (emphasis original).

²⁰ *Id.*; OAR 860-001-0350(9).

²¹ 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)).

²² *See* ORS 183.482(8)(c); *Cascade Nat. Gas Corp. v. Davis*, 28 Or. App. 621, 629 (1977).

²³ Stipulating Parties/300 at 16:16-17.

costs increase in a symmetrical manner.”²⁴ Together, the Stipulating Parties assert that these changes to the current Schedule 118 cap “result[] in a fair cost recovery of Schedule 118 amongst all customer classes.”²⁵

With respect to the Stipulating Parties’ first rationale, it is indisputable that the 20 million kWh cap will shift program costs from small customers to large customers; however, the Stipulating Parties fail to explain why that is just and reasonable. As Dr. Kaufman shows, the magnitude of the cost shift under the Fifth Partial Stipulation is grossly excessive and unjustified.²⁶ It will result in PGE’s largest customers paying some of the highest costs for the IQBD program – more on a percentage basis than residential and small commercial customers²⁷ – despite having no opportunity to benefit from this program and, given the relatively high wages these customers pay their employees, not contributing to the economic issues that gave rise to the program in the first place. The single customer on Schedule 90 will pay over \$3 million per year just for the IQBD program if the Fifth Partial Stipulation is adopted.²⁸ Furthermore, despite the massive increase in the cost of the IQBD program to large customers under the Fifth Partial Stipulation, this increase does very little to mitigate the costs to smaller customers – reducing residential and small commercial customers’ bills by less than a dollar per month, or less than one-half of a percent.²⁹ Consequently, while the Stipulating Parties claim that the proposed cost cap “results in a fair cost recovery,” the facts do not support this statement.

²⁴ *Id.* at 16:21-17:3.

²⁵ *Id.* at 17:5-6.

²⁶ *See* AWEC/900, Kaufman/2-5.

²⁷ AWEC/901 at 5.

²⁸ *Id.* at 4:12-17.

²⁹ *Id.* at 5:21-6:3

With respect to the Stipulating Parties' second rationale, it is also indisputable that moving from a dollar cap to a kWh cap will increase costs to large customers in proportion to the increase in overall program costs. This statement, however, provides no support for the Stipulating Parties' decision to set this kWh cap at 20 million. This cap is so large that it applies only to the four sites on Schedule 90.³⁰ Thus, other very large customers on Schedule 89 will be entirely exposed to the costs of the IQBD program. The result is that these customers will pay more on a percentage basis than any other customer class – in 2024 these customers would see a 3.4% *overall* rate increase just for the costs of this program.³¹ The Stipulating Parties fail to explain how this is just and reasonable.

2. AWEC's recommendation also ensures large customers pay for IQBD program costs in proportion to the total cost of the program.

AWEC continues to recommend, as it did in rebuttal testimony, that the Commission increase the IQBD program cap by the percentage increase in the overall costs of the program, thereby resolving the Stipulating Parties' concerns regarding fairness while simultaneously ensuring no customer class is disproportionately affected. Under this proposal the \$1,000 cap would be modified to an 877,193 kWh monthly cap. The Stipulating Parties recognize that AWEC's proposal would increase IQBD-related costs to large customers by 42%.³² This proposal begins with the level of the cap the Commission originally approved as just and reasonable for the IQBD program and increases it proportionally with the cost of this program.

³⁰ *Id.* at 7:13-16.

³¹ AWEC/901 at 5.

³² Stipulating Parties/300 at 16:3-6.

Given the factual and policy issues Dr. Kaufman presents in his supporting testimony, the public interest supports AWEC's proposal over the cap in the Fifth Partial Stipulation.

3. If the Commission approves a 20 million kWh cap, it should establish it on a per-customer level for the Schedule 90 customer.

As demonstrated above and in Dr. Kaufman's supporting testimony, the Stipulating Parties have failed to carry their burden to demonstrate that the Fifth Partial Stipulation is just and reasonable. Nevertheless, if the Commission determines to adopt a 20 million kWh cap for the IQBD program, AWEC recommends that the cap be applied on a per-customer rather than a per-site basis to Schedule 90. Schedule 90 has four sites, but all of them are owned by only one customer.³³ It is also the only rate schedule large enough for the cap to be binding.³⁴ This means that this customer will be required to pay for the IQBD program up to the cap four times. In addition, even under the 20 million kWh cap, the dollar impacts to Schedule 90 are orders of magnitude larger than any other rate class – nearly five times larger than the next largest impacts. Consequently, if a 20 million kWh cap is adopted, it is reasonable to treat this customer differently from other customers that may have more than one site.

III. CONCLUSION

For the foregoing reasons, AWEC requests the Commission reject the Fifth Partial Stipulation and instead increase the IQBD program cap by the percentage increase in the overall costs of the program so that no customer class is disproportionately impacted.

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³³ Exh. AWEC/901 at 3 (PGE Resp. to AWEC DR 330).

³⁴ Exh. AWEC/900, Kaufman/7:14-16.

Dated this 23rd day of October, 2023.

Respectfully submitted,

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