

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 416

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC COMPANY)	APPLICATION FOR RECONSIDERATION OF ORDER ADOPTING THE FOURTH PARTIAL STIPULATION OF SMALL BUSINESS UTILITY ADVOCATES
Request for a General Rate Revision And Power Cost Update)	
_____)	

I. INTRODUCTION

Comes now Small Business Utility Advocates (“SBUA”), by and through counsel, pursuant to ORS 756.561 and OAR 860-001-0720, to submit this Application for Reconsideration of the Order adopting the Fourth Partial Stipulation (“Application”) and to ask the Oregon Public Utility Commission (“Commission”) to modify Order 23-386, Order Adopting the First, Second, Third, Fourth, and Sixth Partial Stipulations in this docket. Specifically, SBUA urges the Commission modify Order 23-386 by reforming the Fourth Partial Stipulation to re-establish the current distribution rate structures in Schedule 32 and 532 and thereby avoiding rate shock on businesses.

This Application challenges a single issue: the elimination of the block distribution rate of Schedule 32 consumers in provision 19 of the Fourth Partial Stipulation. The “flattening” of the distribution rate by eliminating the blocking is not fair and reasonable to a significant percentage of small commercial customers. New evidence supports this Application demonstrating that the Company and SBUA had not met minds in the Fourth Partial Stipulation

(“Fourth Partial Stipulation” or “Stipulation”). SBUA is mindful of the Chief Administrative Law Judge (“ALJ”) October 27, 2023 Ruling¹ and seeks here on behalf of ratepayers to utilize the proper vehicle to ask the Commission to reconsider the adopted Stipulation and reform the provision language.

This Application is filed well within 60 days from the date of service of the Order 23-386. OAR 860-001-0720(1).

This Application is supported by Exhibit 1: Declaration of Danny Kermode (“Kermode”), including Exhibits A: Public comment filed May 3, 2023, Exhibit B: SBUA Data request 005 to Company and Company response, Exhibit C: SBUA Data request 006 to Company and Company response, and Exhibit 2: Declaration of Diane Henkels.

II. BACKGROUND

Portland General Electric Company (“Company”) filed its Advice No. 23-03, UE 416 Request for General Rate Revision on February 15, 2023. Parties in this rate case have participated in multiple settlement discussions and resolved the rate case in a series of seven partial stipulations.² The Fourth Partial Stipulation focuses on rate spread and rate design and stipulating parties included Portland General Electric Company (“Company”), Staff of the Public Utility Commission of Oregon, the Oregon Citizens' Utility Board, the Alliance of Western Energy Consumers, Fred Meyer Stores and Quality Food Centers, Division of The Kroger Co.,

¹ Chief ALJ October 27, 2023 Ruling denying SBUA requests and noting that per the OAR written objections or requests for a hearing are due within 15 days of the filing of a stipulation. OAR 860-001-0350(8). Per the rule and the Chief ALJ Ruling, any request for further process on the fourth partial stipulation was due by 10/23/23. In this case, given the October 30, 2023 Commission Order 23-386 adopting the Stipulation, it is most appropriate to seek reconsideration of the Order 23-386 which most directly impacts the Schedule 32 customer class SBUA represents.

² Order No. 23-386, adopting the First, Second, Third, Fourth, and Sixth Partial Stipulations filed 10/30/23, Order 23-424 adopting the Seventh Partial Stipulation regarding the power cost update was filed 11/6/23. The ALJ Memorandum Establishing the Schedule for the Fifth Partial Stipulation was filed on 10/31/23.

Walmart, Inc., and Small Business Utility Advocates – Oregon (jointly, the “Stipulating Parties”).³ SBUA, represents the Schedule 32 customers, small nonresidential customers and the Company’s second most numerous class of customers.⁴ SBUA prioritized rate spread and rate design in this rate case, had through its expert identified early on a rate issue in the distribution rates to customers using over 5000 kWh of power.⁵ Through the means of written public comment SBUA’s concern was shared on May 3, 2023, Kermode, Exhibit A, and this written public comment was later incorporated into Staff’s Opening Testimony (Staff/413 Muldoon/193-197), and subsequently the record.⁶ Settlement negotiation calendaring with regard to rate spread and rate design began in August 2023, and negotiation meetings began August 29, 2023.⁷

On September 15, 2023, pursuant to ALJ September 5, 2023 Ruling, SBUA filed, along with other parties, its issues and position statement setting out again SBUA’s focused position regarding the distribution rate for >5000 small nonresidential customers.

³ UE 416 Fourth and Fifth Partial Stipulations and Joint Testimony, filed 10/6/23.

⁴ A Small Nonresidential Customer is a Customer that has not exceeded 30 kW more than once within the preceding 13 months, or with seven months or less of service has not exceeded 30 kW. UE 416 / PGE / 1301 Macfarlane-Pleasant / 68; Schedule 7 residential customers number approximately 827,000, Schedule 32 small nonresidential customers number 97,000; Schedule 83 next larger nonresidential customer number approximately 12,000, UE 416 / PGE / 1303 Macfarlane-Pleasant /1-10, 3, 4, 6.

⁵ Public comment of Danny Kermode CPA-retired filed 5/3/23, UE 416 Issue and Position Statement of SBUA, filed 9/15/23, p1; UE 416 Petition for Case Certification of SBUA, filed 9/25/23, p 5 (Noting SBUA’s focusing docket work on rate spread rate design, distribution, transmission and future information.)

⁶ ALJ October 24, 2023 Ruling: Disposition: Stipulation, Testimony and Exhibits Admitted, p1, Internal Operating Guidelines, approved by Order 20-065, Appendix A, p 18, cited in Chief ALJ October 27, 2023 Ruling p2.

⁷ The first settlement conference date regarding rate spread and rate design took place on August 29, 2023. Fourth & Fifth Stipulation of Portland General Electric Company, State of the Public Utility Commission of Oregon, the Oregon Citizens’ Utility Board, the Alliance of Western Energy Consumers, Fred Meyer Stores and Quality Food Centers, Division of The Kroger Co., Walmart, Inc., and Small Business Utility Advocates, filed October 6, 2023, p1 (“Stipulation”). The UE 416 September 15, 2023 Issues and Position Statement filed by SBUA counsel describes a lack of notice of SBUA of the first settlement conference regarding rate spread and rate design that took place August 29, 2023.

SBUA counsel signed the Stipulation on or about October 6, 2023. Declaration of Diane Henkels. The Stipulating Parties sought to obtain Commission approval of this Stipulation no later than December 18, 2020. Stipulation, p7. In October SBUA perceived a mistake or misunderstanding regarding the Stipulation language as it pertained explicitly to the focused concern of SBUA regarding distribution rates for Schedule 32 customers, and endeavored to clarify and resolve the issue with the Company. Kermode, Declaration of Diane Henkels. These efforts to resolve were not successful by the time the Commission issued its Order 23-386 on October 30, 2023.

a) Stipulation and testimony:

i. The term of the executed Stipulation reads as follows:

“19. Schedules 32 and 532, Small Non-Residential Service

a. Parties agree to remove the distribution blocking differential for distribution charges for Schedules 32 and 532.”⁸

ii. The full and complete testimony with regard to this issue is as follows:

“Q. How did the Parties to the Fourth Stipulation resolve the Schedules 32 and 532, Small Non-Residential Service Issue?

A. Parties to the Fourth Stipulation agreed to remove the distribution blocking differential for distribution charges for Schedules 32 and 532.”⁹

⁸ Stipulation, Provision 19, p6.

⁹ UE 416 Joint Testimony in Support of Fourth and Fifth Partial Stipulations, Direct Testimony of Matthew Muldoon, OPUC Staff, Bob Jenks, CUB, Lance Kaufman, AWEC, Justin Bieber, Kroger, Steve Chriss, Walmart, Benedikt Springer, CAPO, Danny Kermode, SBUA-Oregon, Robert Macfarlane, PGE in support of Fourth and Fifth Partial Stipulations, signed October 6, 2023 (“Joint Testimony”).

iii. The Stipulation provides as follows:¹⁰

“If the Commission rejects all or any material part of this Stipulation, or adds any material condition to any final order that is not consistent with this Stipulation, each Stipulating Party reserves its right: (i) pursuant to OAR 860-001-0350(9), to present evidence and argument on the record in support of the Stipulation, including the right to cross-examine witnesses, introduce evidence as deemed appropriate to respond fully to issues presented, and raise issues that are incorporated in the settlements embodied in this Stipulation; and (ii) pursuant to ORS 756.561 and OAR 860-001-0720, to seek rehearing or reconsideration, or pursuant to ORS 756.610 to appeal the Commission’s final order. Stipulating Parties agree that in the event the Commission rejects all or any material part of this Stipulation or adds any material condition to any final order that is not consistent with this Stipulation, Stipulating Parties will meet in good faith within ten days and discuss next steps. A Stipulating Party may withdraw from the Stipulation after this meeting by providing written notice to the Commission and other Stipulating Parties. (Emphasis added.)”

b) Attempts to resolve the problem:

SBUA filed on September 19, 2023 a data request to confirm understanding of the impact on ratepayers of proposed settlement language. Kermode, Exhibit B. Upon reviewing correspondence only regarding the Fourth Partial Stipulation, SBUA expert shared his opinion agreeing to the Stipulation and SBUA counsel signed on for SBUA. SBUA understood that the settlement language was consistent with SBUA’s position regarding maintaining fair and reasonable distribution rate for Schedule 32 ratepayers and counsel signed for SBUA. Kermode. The Company filed the UE 416 Fourth Partial Stipulation on October 6, 2023 (hereinafter “Stipulation”). Upon subsequent technical review of the Stipulation, SBUA expert perceived the Stipulation language was inconsistent with its understanding of the basis of SBUA’s agreement to the Stipulation. However, due to a misinterpretation of the wording of the stipulation by SBUA, the wording which was provided by the Company, the provision did not produce the rate design change consistent with SBUA position, and instead inserted language creating an unjust

¹⁰ Stipulation, p8.

burden for a significant share of the Schedule 32 rate payers. Kermode. Kermode, SBUA expert, immediately contacted counsel to indicating a need to withdraw support of the stipulation since there was an obvious misunderstanding between parties as to its result. SBUA and Company engaged in meetings and conversation regarding the provision 19. SBUA filed a new data request to the Company on October 16, 2023. Kermode Exhibit C.

As a party in good faith to the Stipulation SBUA counsel did not file to object to the Stipulation by October 23, 2023. SBUA's October 26, 2023 Response to the ALJ October 24, 2023 Ruling that parties file to correct identification of testimony and exhibits signaled a problem. Declaration of Diane Henkels.

To clarify the meaning of the provision SBUA reached out and engaged the Company, which was responsive, in communications and meetings. SBUA communications included data requests during the period during and following Stipulation negotiations. Kermode, Exhibit B Data Request 005 SBUA to Company dated September 19, 2023 and Company Response October 24, 2023, and Exhibit C Data Request 006 SBUA to Company dated October 16, 2023 and Company Response October 24, 2023. Upon receipt of the responses to the data requests October 24, 2023 it appeared clearly that SBUA and the Company had not met minds on the provision and SBUA communicated this to the Company on 10/24/23. Kermode, pp 2-3. While SBUA and the Company did seek to continue discussion, no resolution was reached prior to the October 30, 2023 Commission's Order 23-386 approving the Fourth Partial Stipulation. Id.

III. STANDARD OF REVIEW

The Commission may grant rehearing or reconsideration of any order "if sufficient reason

therefor is made to appear.” ORS 756.561(1). The Commission’s administrative rules provide that the Commission may grant an application for rehearing or reconsideration if the applicant shows that there is, *inter alia*, “(a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order” or “[g]ood cause for further examination of an issue essential to the decision.” OAR 860-001-0720(3).

The Commission may not authorize a rate or schedule of rates that is not fair, just and reasonable. ORS 757.210(1)(a). And there must be substantial evidence supporting an order approving rate changes. ORS 183.482(8).

Commission rules require the Application for reconsideration specify certain information. “The application for reconsideration must specify: (a) the portion of the challenged order that the applicant contends is erroneous or incomplete; (b) the portion of the record, laws, rules, or policy relied upon to support the application; (c) the change in the order that the Commission is requested to make; (d) how the applicant's requested change in the order will alter the outcome; (e) one or more of the grounds for rehearing or reconsideration in section (3) of this rule.” OAR 860-001-0720(2).

IV. ARGUMENT

SBUA asks the Commission to modify the Order 23-386, reforming the Fourth Partial Stipulation by re-establishing the current distribution rate structures in Schedule 32 and 532 without adopting the increase in rates that the Company proposed in its Petition for General Rate Revision. As new evidence shows, the Stipulation adopted the Order 23-386 will result in rates that are not fair and reasonable for Schedule 32 customers.

A. The Application meets the requirements for reconsideration and ordering a correction in the rate design in the Stipulation for distribution for Schedule 32 customers.

An application for reconsideration must specify (a) [t]he portion of the challenged order that the applicant contends is erroneous or incomplete; (b) [t]he portion of the record, laws, rules, or policy relied upon to support the application; (c) [t]he change in the order that the Commission is requested to make; (d) [h]ow the applicant's requested change in the order will alter the outcome; and (e) [o]ne or more of the grounds for rehearing or reconsideration in section (3) of this rule. OAR 860-001-0720(2).

The Application is complete, the newly discovered evidence demonstrates the rate design result is not that agreed to by SBUA, and the resulting rates are not fair and reasonable rates for Schedule 32 customers.

(a) The portion of challenged Order 23-386 that is erroneous is the portion that approves the Fourth Partial Stipulation provision 19 flattening the distribution rate for Schedule 32 small nonresidential customers.

The paragraph 19 reads as follows:

“19: Schedules 32 and 532, Small Non-Residential Service

- a. Parties agree to remove the distribution blocking differential for distribution charges for Schedules 32 and 532.”¹¹

(b) SBUA relies on the portion of the record, laws, rules, and policies to support this application as follows:

The Order violates the legal requirement that rates be fair and reasonable, ORS 757.210, and orders in contested cases must be supported by substantial evidence. ORS 183.482(8). The evidence supporting the elimination of distribution rate blocking in the Stipulation and Joint

¹¹ Stipulation, provision 19, p6.

Testimony regarding provision 19 is for Schedule 32 customers is almost nonexistent and the newly acquired evidence demonstrates a lack of meeting of the minds required for the settlement.

(c) The change in the order that the Commission is requested to make is to modify the Order re-establishing the current distribution rate structures in Schedule 32 and 532 without adopting the increase in rates that the Company proposed in its Petition for General Rate Revision.

SBUA urges the Commission to find that the Fourth Partial Stipulation provision 19 does not result in rates that are fair and reasonable to Schedule 32 small commercial customers, and to order reformation of the Stipulation by inserting a block distribution rate in the Schedule 32 customers consuming over 5000 kWh, consistent with the rates in effect currently.

The provision would be revised to read, with proposed deleted language lined out and proposed added language in italics:

“19: Schedules 32 and 532, Small Non-Residential Service

- b. Parties agree ~~to remove~~ *that* the distribution blocking differential for distribution charges for Schedules 32 and 532 *remain unchanged from rates existing at the time the Stipulation is adopted.*”

(d) The applicant's requested change in the order will alter the outcome by resulting in a fair and reasonable distribution rate for Schedule 32 small commercial customers.

For example, a company with 15,000 kWh would go from \$403 to \$804 a month, whereas if the current blocks are maintained with the settlement rates for Schedule 32 would be increased \$403 to \$584. Kermode, 3. It is still a substantial increase, but not the doubling reflected in the removal of the two-block rate structure. Id.

B. New evidence demonstrates there was not a meeting of the minds regarding a material term in the Stipulation and there is good cause to review and order reformation of the Stipulation to ensure fair and reasonable distribution rates for Schedule 32 customers.

The Commission may grant an application for rehearing or reconsideration 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; (d) good cause for further examination of an issue essential to the decision.¹²

(a) There is new evidence indicating there was no meeting of the minds when the Company inserted a provision 19 in the Fourth Partial Stipulation.

The responses to data requests and subsequent inability to resolve positions constituted new evidence confirming there was a mistaken understanding that the SBUA and Company had the same resolution in mind in the Stipulation provision 19. OAR 860-001-0720(3)(a). In addition to findings of fact, the Commission's orders in a contested case must be supported by substantial evidence rationally supporting the findings and decision. ORS 183.482(8). As the Oregon Court of Appeals has explained, "[s]ubstantial evidence supports the PUC's findings 'when the record, viewed as a whole, would permit a reasonable person to make that finding.'"¹³

The attached Declaration by Danny Kermod and exhibits provide ample evidence that a reasonable person would not find the provision 19 was based on substantial evidence. The data

¹² OAR 860-001-0720(3).

¹³ *Calpine Energy Solutions, LLC v. PUC*, 298 Or App 143, 159 (2019); quoting ORS 183.482(8)(c).

requests demonstrate concern by SBUA if the distribution blocking is removed.¹⁴ Kermode, Where SBUA expert relied on SBUA's interpretation of the language in the stipulation, he provided general testimony supporting it.¹⁵ However, SBUA's expert, after reviewing the stipulation wording, expressed concern that the language did not clearly describe the position of SBUA as provided in SBUA's expert's public comment. To clarify the matter, SBUA asked for clarification of the Company provided language by submitting to the Company Data Request ("DR") 005 and DR 006, herein attached as Exhibits B and C to the Kermode. Data Request 005 was filed in Huddle September 19, 2023; Data Request 006 was filed in Huddle October 16, 2023; and the Company responded to both data requests on October 24, 2023. Kermode, Exhibits B and C. Meetings preceded the data request and the Company response from the Company received on October 24, 2023, after the objection period had passed, revealed that there had not been a meeting of the minds between the parties in fact and had produced results that are not reasonable, fair or just. Kermode, Also, SBUA and Company's experts were unable to further discuss the matter until after the Commission issued its Order 23-386.

The new evidence of the responses to data requests in this rate case is essential to the Commission's decision¹⁶ to adopt the Stipulation. The data requests confirm there was not a meeting of the minds of the intended impact of provision 19 that the Company drafted. Also, this

¹⁴ Kermode, 3-4.

¹⁵ UE 416 / Stipulating Parties / 300 Muldoon – Jenks – Kaufman – Bieber – Chriss – Springer – Kermode – Macfarlane / 10.

¹⁶Public Utility Commission of Oregon Order 10-358, p3 (Contrasting example of no new evidence and evidence that is not essential to decision).

rate case was combined with the Company's annual power update¹⁷ The result of the Stipulation is rates that are unreasonable and unfair resulting in a Stipulation that does not meet the required standard.

SBUA reasonably relies on its expert's opinion in a highly technical contested case proceeding like this general rate case.¹⁸ When an expert withdraws support for a position based on newly acquired information, the party basing its support on the expert's opinion cannot continue to support the Partial Stipulation. If SBUA's expert will not and cannot testify that the terms of a stipulation will produce results that are fair, just, and reasonable¹⁹ then SBUA cannot continue to support those terms.

Oregon contract law allows reformation of a contract for mistakes. *Edwards Farms, Inc. v. Smith Canning & Freezing Co.*, 197 Or. 57 (Or. 1952). SBUA had understood that its original position to maintain block but to reduce it or keep it at its existing level rather than increase the block was part of the Fourth Stipulation. Kermode. The Company may have mistaken a flattened distribution rate as the rate those customers preferred. Kermode. Data requests and responses support that this is a material term and that failure to retain the block is a material mistake.

Applying other principles of contract law where parties seek reformation of a written contract, the parties must establish by appropriate proof 1) that there was an antecedent

¹⁷ UE 416 ALJ March 13, 2023 Prehearing Conference Memorandum identifying the calendar date November 15, 2023 for the "MONET". Final rates cannot be known until at least the results of the annual power costs update are obtained later in the rate case.

¹⁸ "Contested Case proceedings determine the rights of individual parties and frequently involve highly technical and legally complex issues. As a result, they often require the exchange of evidence through discovery, submission of expert witness testimony, cross-examination hearings to test the veracity of witness testimony, and legal briefing when legal disputes arise." Public Utility Commission of Oregon report to the Legislature, "SB 978 Actively Adapting to the Changing Electricity Sector, September 2018", available at <https://www.oregon.gov/puc/utilities/Documents/SB978LegislativeReport-2018.pdf>.

¹⁹ Kermode.

agreement to which the contract can be reformed, 2) that there was a mutual mistake or a unilateral mistake on the part of the party seeking reformation and inequitable conduct on the part of the other party, and 3) that the party seeking reformation was not guilty of gross negligence. *Jensen v. Miller*, 280 Or 225, 229 (1977). Here there is an initial established distribution rate as illustrated in the rate comparison set out in the Kermode. These include the current existing rates and then the Company's proposed rates. The existing distribution rates create an antecedent agreement.²⁰ There is ample evidence that there was a mistake unilateral by SBUA or mutual by SBUA and the Company. Even if it is SBUA's mistake, the Company is not prejudiced by it where the resolution of the mistake is revenue neutral and SBUA is entitled to equitable relief of reforming the agreement. SBUA intention was clearly on having Schedule 32 ratepayers in a better rates rather than worse and did not mention removal of blocking. The Company provided the language to the settlement. Evidence presented demonstrates diligence on the part of SBUA. SBUA sought to participate in rate spread rate design on this issue prior to terms and was unnoticed for the first meeting. SBUA conducted discovery prior to signing the Stipulation, sought clarification in further discovery afterwards, and continued attempts to review and clarify up until the date the Commission adopted the Stipulation.

(b) There is good cause for further examination of the evidence supporting a reformation of the Stipulation and finding the weight of the evidence supports reforming the Stipulation to obtain just and reasonable rates as required by law.

Good cause supports the Commission examining this issue and ordering a reformation of the Stipulation. OAR 860-001-0720(3)(c). Granting this Application for Reconsideration would

²⁰ UE 394 SBUA was party to the directly previous Portland General Electric Company General Rate Case.

render substantial justice to Schedule 32 small nonresidential customers.²¹ Neither testimony in the record per the October 24, 2023 Ruling, including the Joint Testimony in Support of the Fourth and Fifth Partial Stipulations nor the Company's responses to the SBUA data requests 005 and 006, separately or combined, meet the Company's burden of proof to show by a preponderance of the evidence that the changed rate design is fair, just and reasonable. ORS 757.210(1)(a). Even if there is a settlement, the Company still carries that burden.²² The Company bears the burden of persuasion and must show by a preponderance of the evidence that the change to the rate is just and reasonable.²³

The Company does not meet its burden here to show that removing the blocking in the distribution rates is just and reasonable. The large weight of the evidence is against flattening the distribution and supporting blocking for >5000 kWh customers. SBUA presents compelling evidence to show that removing the blocking will create rate shock and hardship on Schedule 32 ratepayers. Kermode. Kermode's Declaration and Data Responses 005 and 006 show the impact on the small percentage of customers is great with removal of the block. SBUA had advocated that the distribution charge not increase. Kermode. "A misunderstanding occurred where the draft Fourth Stipulation was to reflect what I understood SBUA had advocated, that is that the rate of distribution should not increase. Further, that allocation among the Schedule 32 ratepayers is revenue neutral and would not impact other ratepayer classes." Kermode p1. "Left unreformed, this change will be significant for larger usage customers. For example, a Company

²¹ ORS 756.062(2)

²² UE 228 Order No. 11-432, at 3 (11/2/11).

²³ ORS 757.210 cited and explained in Order 23-386, p5.

with 15,000 kWh would go from \$403 to \$804 a month, (Id., Schedule Exhibit A). Id. Whereas if the current blocks are maintained with the settlement rates for Schedule 32 would increase only \$403 to \$584.” Id.

Further, this change requested is revenue neutral and may be rectified without impacting other parts of the Stipulation. Declaration of Kermode, paragraph 14.

For these reasons, SBUA urges the Commission examine this matter and modify its order and reform the Fourth Partial Stipulation to re-establish the current rate structures in Schedule 32 and 532 and thereby avoiding rate shock on businesses, potentially having the effect of businesses becoming no longer viable.

If the Company wants to propose flattening these rate schedules it should do so in its next case, supported by testimony and not use the Stipulation and SBUA as a vehicle to make such a drastic change. Kermode, p4. SBUA supports the current rate structures for both Schedules 32 and 532 at the Company’s settlement rates proposed in its revised cost study and believe that the result of that change would be fair, just and reasonable.

(c) The Commission should order a reformation of the Stipulation to correct the terminology and meaning of the Provision 19, wherein the parties would meet within 10 days to discuss next steps.

The Commission may reform the Stipulation adding the term of reinserting the block to the Schedule 32 distribution rate. The Stipulation sets out the process following such order if this change is considered a material condition. Stipulating Parties would meet in good faith within ten days and discuss next steps.²⁴

²⁴ A Stipulating Party may withdraw from the Stipulation after this meeting by providing written notice to the Commission and other Stipulating Parties.

V. CONCLUSION

For the foregoing reasons the Commission should grant this Application and modify its Order 23-386 reforming the Fourth Partial Stipulation as provided herein, with specific suggested language identified *supra* p9. From that order per the Stipulation the parties may take actions to definitely resolve the problem.

RESPECTFULLY November 7, 2023.

s/ Diane Henkels

Diane Henkels
Attorney, Small Business Utility Advocates
www.utilityadvocates.org

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 416

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC)	DECLARATION OF
COMPANY)	DANNY P. KERMODE
)	
Request for a General Rate Revision)	
)	
_____)	

I, Danny Kermode, state the following, under penalty of perjury in the State of Oregon:

1. I am a licensed certified public accountant (retired), in the State of Washington and consultant for Small Business Utility Advocates in Oregon (“SBUA”).
2. I am the same Danny P. Kermode who submitted Public Comment May 3, 2023, in this matter on behalf of SBUA attached herein as Exhibit A. On behalf of SBUA I co-sponsored Joint Testimony in support of the Fourth, Fifth and Sixth Partial Stipulations submitted in the above-captioned docket, pre-filed as Stipulating Parties / 300 and Stipulating Parties / 400 and Exhibit Nos. 301 and 401-403.
3. Through this Declaration, I request my testimony in support of the Fourth Partial Stipulation be withdrawn. I cannot support the Stipulation as it relates to the removal of the two-block structure in Schedule 32 and 532 insofar as the proposal is contrary to my public comment, has a serious detrimental impact of the larger users, and results in in rates that are not fair, just or reasonable for Schedule 32 rate payers.

4. My public comment focused exclusively on what I saw as rate spread and rate design issues associated with the allocation of distribution charges spread among the Schedule 32 rate payers. Noting that the allocation of the costs among the Schedule 32 ratepayers is revenue neutral and does not impact other ratepayer classes.

5. I filed supporting testimony for the Stipulation based on my understanding that the provided wording provided in the Stipulation would resolve SBUA's concerns regarding the distribution charge's rate design. Where, in fact, due to a misunderstanding of the wording in the stipulation by SBUA, the wording did not produce the rate design change advocated by SBUA, instead the language creates a serious unjust burden for a significant number of Schedule 32 customers.

6. In addition, as I later found out, the Stipulation's language was not even provided by SBUA, but instead the wording was actually crafted and provided by the company.

7. At the time that I provided supporting testimony, I felt that greater clarity in the wording would be beneficial, I relied on SBUA's interpretation of what the impact of the provided language in the stipulation would have on rates. However later, in reviewing the wording I became more concerned with the clarity of the meaning of the provided language. I immediately expressed concern to counsel that I felt the language did not clearly describe the position of SBUA as provided in my public comment and, for the record, we should request clarification.

8. I crafted SBUA Data Requests to Company 005 and 006 to confirm SBUA's understanding of the wording provided in the Stipulation. While the response to Data Request 005, attached herein as Exhibit B, was less clear, the response to Data Request 006, attached herein as Exhibit C, from the company revealed that there had not been a meeting of the minds

between the parties and SBUA, and that there was a misunderstanding of the result of the Stipulation's wording.

9. Instead of addressing the concerns of SBUA, the provided wording produces serious harm to a large number of the company's ratepayers. Simply put, the results are the text-book example of rate shock and are not reasonable, fair or just. Upon seeing the serious impact of the company's language, I immediately contacted counsel that I was withdrawing my support of the stipulation since it was obvious there was a misunderstanding between parties.

10. Where it was my understanding that the proposed language was SBUA prepared and proposed, with the draft Fourth Stipulation reflecting what I understood SBUA had advocated, that is, that the distribution rate would not increase.

11. The data requests seeking to clarify with the Company our understanding are attached Exhibits B and C. Since that time, we have undertaken contact in good faith with the Company to resolve this, and those efforts were ongoing until the date the Commission approved the Fourth Partial Stipulation.

12. It is important that the two-block rate design for distribution charges be reinstated since there was never the understanding of SBUA that they would be removed or "flattened." The commission needs to become aware of and understand the severe impact this change will have on *all* the large-usage customers. For example, a company with 15,000 kWh the distribution charge would go from \$403 to \$804 a month, (see schedule below). Whereas if the current two blocks are maintained, with the settlement rates for Schedule 32, the same company would see an increase from \$403 to \$584. Still substantial, but not the doubling reflected in the removal of the two-block rate structure. It's worthwhile here to highlight what PGEs own witnesses,

Macfarlane-Keene, said about dramatic changes in rates “It is important to maintain relative consistency with prior cost studies and temper the amount of change introduced....” See UE 416, Macfarlane-Keene at 4:2-4.

**Schedule of Impact of Proposed Changes in Distribution Rates
for those Schedule 32 Customers Using Over 5,000 kWh/Mo ***

(a)	(b)	(c)	(d)	(e)	(f)	(g)
<u>kWh</u>	<u>Current Charge</u>	<u>Revised Distribution Charge Two Blocks</u>	<u>Stipulation "flattened"</u>	<u>Impact of Flattening Increase</u>	<u>Percent</u>	<u>Impacted Customers</u>
6,000	\$276.36	\$314.40	\$321.60	\$45.24	16%	6,128
7,000	290.52	\$344.40	\$375.20	84.68	29%	4,579
8,000	304.68	\$374.40	\$428.80	124.12	41%	3,369
9,000	318.84	\$404.40	\$482.40	163.56	51%	2,425
10,000	333.00	\$434.40	\$536.00	203.00	61%	1,750
14,000	389.64	\$554.40	\$750.40	360.76	93%	1,528
15,000	403.80	\$584.40	\$804.00	400.20	99%	178
20,000	474.60	\$734.40	\$1,072.00	597.40	126%	177
21,900	501.50	\$791.40	\$1,173.84	672.34	134%	25
						20,159

13. I strongly urge the commission to re-establish the current rate structures in Schedule 32 and 532 since clearly it will cause severe rate shock which, in the worst-case scenario, may cause some businesses to quickly become no longer viable as going concerns with their future in doubt. In short, if the company wants to propose flattening these rate schedules it should do so in its next case, supported by testimony and not use the Stipulation and SBUA as a vehicle to make such a drastic change.

14. It is important to recognize there is no impact on revenue requirement nor on the allocation of costs. The two-block rate design collect the full allocated costs from those

ratepayers, just as the flatten rate does, the difference is it will do it in a reasonable way and fairly. This is solely a rate design issue.

15. I support the current rate structures for both Schedules 32 and 532 at the Company's settlement rates proposed in its revised cost study and believe that the result of that change would be fair, just, and reasonable. I do not propose any other stipulation changes.

16. My testimony as it applies to Stipulations Five and Six remains unchanged.

17. With regard to my qualifications, the pre-filed Joint Testimony of Stipulating Parties my testimony is true and correct.

18. To the best of my knowledge, the pre-filed testimony Joint Testimony at Stipulating Parties Exhibit Nos. 500 is true and correct.

19. I have timely received communications including stipulations, testimony, and communications in pdf format in this rate case.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

RESPECTFULLY SUBMITTED November 6, 2023.

s/ Danny Kermode

Danny P. Kermode CPA-(Retired)

DANNY KERMODE
Certified Public Accountant – Retired
5326 75th Ct SW
Olympia, WA 98512

Oregon Public Utility Commission
PO Box 1088
Salem, OR 97308-1088

RE: Portland General Electric
UE 416 General Rate Increase

Commissioners,

I would first like to thank the Commission for the opportunity to comment on a proposed rate increase that, if approved, will have a major impact on small businesses served by Portland General Electric (PGE).

I am writing on behalf of the Oregon chapter of the Small Business Utility Advocates or SBUA. I reviewed the recent filing made by Portland General Electric (PGE) where it asks for increased revenues of \$338 million, or a 14.47% increase over current levels.

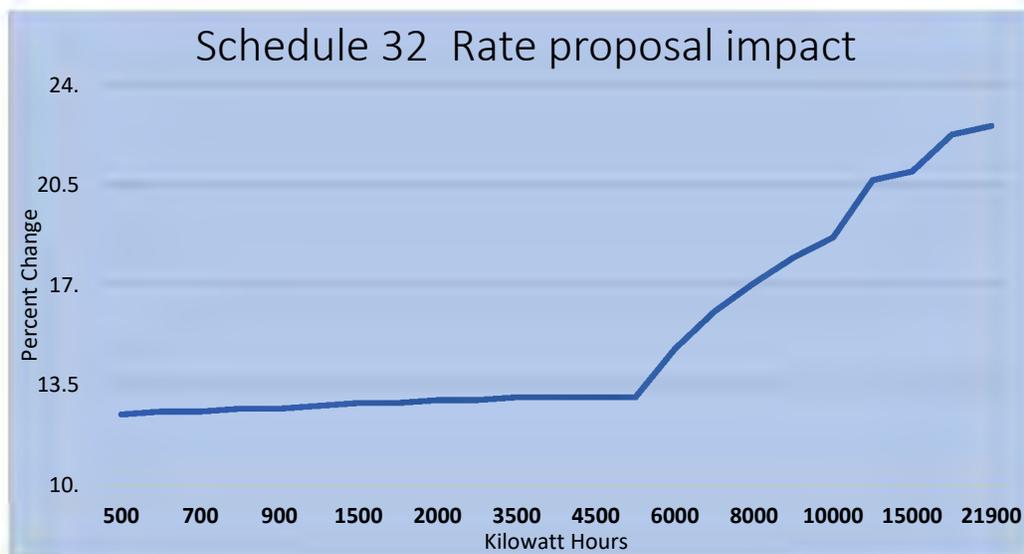
I will address the following:

- The size of the increased cost burden of the rate proposal on small nonresidential customers.
- The extraordinary increase in the cost of distribution charges to small nonresidential customers under both schedule 32 customers and schedule 532, small nonresidential and small nonresidential – Direct Access Service respectively, in excess of 5,000 kWh.
- Small business in Oregon, including those served by PGE, are still recovering from the economic impact of COVID-19.
- Need for a small business workshop to discuss and understand the needs of small businesses being serviced by Oregon’s public utilities.

- **The size of the increased cost burden of the rate proposal on small nonresidential customers.**

Under the Company's proposal, small businesses will pay \$34.6 million more for service, a 15.9% increase for service.¹ This sizable increase on to small business is the highest increase over test-year amounts than any other class of service.

For the small nonresidential ratepayers (rate schedule 32) the proposal increases the average small business energy bill by 12.6%.² What is even more concerning is the proposed increase for small business customers using above 5,000 kWh. For these customers the change in proposed rate climbs to an average of 18.1% for usage from 6,000 to 15,000 kWh and continues to climb as usage increases (see chart below).



- **The extraordinary increase in the cost of distribution charges to small nonresidential customers under both schedule 32 customers and schedule 532**

The climbing costs of energy above 5,000 kWh is due to a proposed 140.5% increase in the company's distribution charge above 5,000 kWh for small commercial consumers.

The current charge of 1.416 cents per kWh skyrockets to 3.406 cents per kWh, under the company's proposal, more than doubling! Effectively a two-cent increase.³ Though

¹ Exhibit 1302 page 1

² Using 500 kWh to 5,000 kWh

³ Schedule 532 small nonresidential – Direct Access Service has even a greater impact with the second-tier rate increasing 155%, going from 1.253 per kWh to 3.195.

some of this rate change appears to be associated with higher costs, the company admits that some of the 3.406 cent rate increase is simply to “provide a transition to” the large nonresidential rates schedule (Schedule 83) for customers whose loads exceed 30 kW⁴ at least twice during the preceding 13 months.⁵

It is important that the Commission and Commission Staff be aware of this arbitrary adjustment to the small nonresidential rate schedule. Not only is there no testimony discussing why PGE believes there is a need for a rate that mitigates the impact of moving from one class to another, there is no testimony providing discussion on how often a migration to the large-user class happens and indeed if it is even a problem. In his historic discussion of the criteria of a sound rate structure, James Bonbright discusses the need of fairness in rates, there is no discussion of rates that mitigate any class migration.⁶

The increased rate as proposed which is designed to ease transition to a different customer class, simply results in small commercial customers providing either an intra-class or cross-class subsidy to other customers with no other benefits to the small commercial customers that would be burdened with the 140.5% increase in its distribution charges.

A 140.5% increase is unsupportable and must be rejected if not for any other reason than simply rate shock. For every kWh used above the 5,000-kWh level, many small business owners will have their distribution rates more than double, paying 3.4 cents per kWh for a service that currently costs 1.4 cents per kWh!

A Company witness says it best. “It is important to maintain relative consistency with prior cost studies and temper the amount of change introduced....”⁷ We agree, and we ask the Commission to apply this very principle to this case. Finally, the “ease of migration” reasoning is a solution looking for a problem; a problem that, to our knowledge, has not been raised in prior cases.

⁴ kW – Kilowatt (load measure)

⁵ See PGE 1300, Macfarlane – Pleasant at 19:14-18.

⁶ James C Bonbright, *Principles of Public Utility Rates* (Virginia: Public Utilities Reports, Inc., 1988), 382-84.

⁷ See UE 416, Macfarlane-Keene at 4:2-4.

- **Small business in Oregon, including those served by PGE, are still recovering from the economic impact of COVID-19.**

Although most, if not all, of the health related COVID mandates are no longer required, small business is now addressing COVID's consequences. Not the least and central to small business is rising costs due to high inflation. Add to that the difficulty many small businesses are having in finding employees. In short, this sector remains fragile.

Affordability of utility rates for small business is integral to their survivability. Rising rates can be associated with rising costs. For example, the recent settlement of parties, including SBUA, approved by the Commission spread a share of the deferred costs of COVID to the small business class.⁸ As we have noted in previous dockets, this customer class did not directly benefit from most of the Commission approved COVID-19 programs and had little or no indirect benefit.

With this filing, the small nonresidential class may end up absorbing a 15.9% increase in its total electric bills; the largest change of any of the other rate classes.⁹ We would ask the Commission to recognize the importance of small business to the communities where they are located and to adjust the proposed rates to help them fully recover from the lingering economic impacts of the recent pandemic.

- **Need for a Small Business workshop to discuss and understand the unique needs of small business to allow Oregon's public utilities to better serve them.**

Finally, my involvement with recent rate filings has convinced me of the need to convene a Commission supported small-business workshop. A workshop would provide a forum allowing in-depth discussions with Commission Staff by local small business owners. The workshop would allow parties to better understand what challenges the different parties have, including Staff, and what distinguishes small business from other ratepayer classes, especially from the larger industrial and

⁸ PORTLAND GENERAL ELECTRIC: See Docket No. ADV 1474/Advice No. 22-45 PGE COVID-19 Deferral Amortization; Effective date: April 1, 2023

⁹ Some rate classes such as the large direct access ratepayers are actually seeing total bill reductions. (*See total bill changes for rate schedules 489 and 689*)

commercial ratepayers.¹⁰ Commission Staff mentioned being in support of such a workshop at the Commission's March 21, 2023, public meeting¹¹.

The workshop agenda could include discussion of those rates and rate structures currently provided only to residential ratepayers, which may be appropriate for small businesses. Or the creation of new rate mechanisms to aid small businesses, e.g., an arrearage forgiveness program for those small commercial customers with a high Environmental Justice Indicator.

Also, unique needs of the small commercial could be discussed by business owners which could be innovative and help develop community growth. Finally, there may be benefit in a discussion on how uniform the methods of cost allocation to small business sector and whether it is something that requires Commission review.

In summary, the small business community served by PGE is concerned about the size of the overall increase and more specifically, how those costs related to the small nonresidential customers are recovered in rates.

Again, I would like to thank the Commission for this opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Danny Kermode', written over a light gray circular stamp.

Danny Kermode CPA - retired

¹⁰ Although small businesses have characteristics closer to the residential rate class, they still are businesses and require a special understanding.

¹¹ OPUC 3/21/23 Public Meeting link:

https://oregonpuc.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=1128 (last accessed 5/3/23).

October 24, 2023

To: Diane Henkels
Small Business Utility Advocates

From: Jaki Ferchland
Manager, Revenue Requirement

Portland General Electric Company
UE 416
PGE Response to SBUA Data Request 005
Dated September 19, 2023

Request:

Confirm that the following is accurate understanding of the settlement and if not, please explain. If the Company is unable to confirm then identify why it cannot confirm.

		Current	Settlement	Proposed	Change	Settlement	As Filed
Schedule 32							
Small Nonresidential							
Standard Service							
Basic Charge							
Single Phase		20.00	22.00	22.00	2.00	10.0%	
Three Phase		29.00	31.00	31.00	2.00	6.9%	
Transmission & Related Services Charge		0.471	0.564	0.637	0.09	19.7%	35.2%
Distribution Charge							
c per kWh	first 5,000 kWh	5.244	5.993	6.37	0.75	14.3%	21.0%
c per kWh	over 5,000 kWh	1.416	3.00	3.406	1.58	111.9%	140.5%

Response:

In the Table above PGE confirms that the proposed and settlement Basic Charge prices will be the final 2024 price. The transmission and distribution prices for Schedule 32 in the table referenced above will change based on the final MONET Power Cost Update on November 15, 2024. Final pricing is subject to Commission approval.

October 24, 2023

To: Diane Henkels
Small Business Utility Advocates

From: Jaki Ferchland
Manager, Revenue Requirement

Portland General Electric Company
UE 416
PGE Response to SBUA Data Request 006
Dated October 16, 2023

Request:

SBUA believes the wording provided in the Fourth Partial Stipulation (partial stipulation), requires clarification to avoid future misunderstanding of the parties. Please confirm SBUA's understanding of the wording "*...remove the distribution blocking differential for distribution charges for Schedules 32 and 532.*"

Confirm that it is your understanding that the partial stipulation wording means: "Any "blocking differential" associated with the policy goal of providing a glide path from volumetric-based schedule 32 to demand-based schedule 83 would be removed. That is, the final rate set for those users over 5,000 kWh would conform to the results of the marginal cost study and not deviate for the purpose of "gliding" high usage Schedule 32 customer into Schedule 83.

Response:

The partial stipulation removes the blocked pricing for distribution. Currently, the first 5,000 kWhs per month are at a higher price and any kWhs over 5,000 per month are at a lower price. Under the fourth partial stipulation, **all** kWhs are priced the same. Thus, the resulting distribution price for the first 5,000 kWhs is lower and the distribution prices for kWhs in excess of 5,000 per month is higher than under the existing blocked price design. As a result of the fourth partial stipulation, all Schedule 32 customers benefit from the lower distribution price for the first 5,000 kWhs per month. The allocated costs for Schedule 32 distribution is based on marginal cost principles whether the price design is blocked or flat. In other words, the total distribution revenues from Schedule 32 are the same under blocked pricing and flat pricing.

Under flat distribution pricing for Schedule 32, which is consistent with the terms of the fourth partial stipulation, migration between Schedules 32 and 83 is not as smooth as under the current blocked price design because the "gliding" for higher Schedule 32 customers is removed by virtue of the flat Schedule 32 price.

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 416

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC)	DECLARATION OF
COMPANY)	DIANE HENKELS
)	
Request for a General Rate Revision)	
)	
_____)	

I, Diane Henkels, state the following, under penalty of perjury in the State of Oregon:

1. I am legal counsel for National Council of Small Business Utility Advocates that does business in Oregon as NW Small Business Utility Advocates (“SBUA Oregon”).
2. As legal counsel I recognize that I am bound by OAR 860-001-0310(1) requiring that I conform to the standards of ethical conduct required of attorneys appearing before the courts of Oregon. I am an attorney in good standing in Oregon and I am required to be informed of settlements to which the client may be a party, and to inform client of any offers and settlements. I have timely performed this duty in this rate case. I timely read the Fourth Partial Stipulation and was in timely contact with our expert regarding same in this rate case, UE 416.
3. From the first contact regarding settlement conferences I informed parties of SBUA interest in rate spread and rate design conferences and I diligently followed the calendaring of same. I was not noticed on the first settlement conference on rate spread and rate design that took place the morning of August 6, 2023.

4. I have timely reviewed and advised client within the technical bounds of my expertise regarding representation of small commercial customers interests.
5. I timely shared the Fourth Partial Stipulation with SBUA expert before execution.
6. A material focus of SBUA's intervention in this docket is rate spread and rate design including the proposed increase in distribution rates for Schedule 32 customers of > 5000 kWh usage, a topic that was the explicit focus of expert Kermodé's public comment for SBUA submitted May 3, 2023.
7. SBUA submitted data request 005 to the Company on September 19, 2023 with regard to SBUA's understanding of the proposed Fourth Partial Stipulation settlement language as it pertained to Schedule 32 customers. SBUA continued contact regarding data requests and Company filed its responses on October 24, 2023.
8. During October 2023 SBUA determined that the SBUA understanding of the meaning of the Fourth Partial Stipulation differed from the terminology used in the provision 19 regarding distribution rates for Schedule 32 customers. SBUA voiced its concerns to the Company, engaged in meeting with the Company to determine whether there had been a meeting of the minds, and SBUA submitted a further data request, 006, on October 19, 2023. SBUA and Company determined to continue communications after Company responded to the data request. Company responded to the 005 and 006 data requests on October 24, 2023, and SBUA informed the Company that SBUA must withdraw from the settlement if the provision remains as is, that is, without the current distribution block in place. SBUA and Company agreed to meet again but were unable to set a date on or before October 30, 2023.

9. SBUA prepared and filed a Response on October 26, 2023 to the ALJ's October 24, 2023 Ruling with regard to the record, testimony, and to indicate concern for the Stipulation, including possible need to supplement the record.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

RESPECTFULLY, November 6, 2023.

s/Diane Henkels

Diane Henkels, Attorney
Counsel for National Small Business
Utility Council