

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 416

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY

Request for a General Rate Revision; and
2024 Annual Power Cost Update.

RULING

DISPOSITION: SMALL BUSINESS UTILITY ADVOCATES REQUESTS DENIED

On October 27, 2023, the Small Business Utility Advocates (SBUA) filed a response to the October 24 ruling admitting evidence into the record.¹ That ruling set a deadline of October 26 for corrections to the identification of testimony or exhibits. In its filing, SBUA requests clarification about the inclusion of written public comments in the record and seeks additional time to submit testimony regarding the fourth and fifth partial stipulations.

Clarification of Public Comments in Record

SBUA requests clarification of where specifically in the record the written public comments may be found. Alternatively, SBUA requests that the Staff exhibits including the written public comment be included in the record, and particularly those public comments referenced in Staff's Response to SBUA Objection and Motion to Admit Staff Exhibit 413.

The October 24 ruling admitting evidence stated:

“Staff replied to SBUA’s response on October 5, 2023, amending its motion to admit to include one inadvertently omitted pre-filed exhibit *and explaining that this exhibit contained the public comments SBUA believed to have been omitted*. I note that the public comments made at the public comment hearing are included in the official transcript of that proceeding,

¹ SBUA’s request is deemed filed on the 27th, because it was filed after 3pm on the 26th Under ALJ Lackey’s memo of February 21, 2023, establishing filing requirements in this docket, filings submitted after 3:00 p.m. will be considered filed on the following business day. Accordingly, if SBUA’s request were a correction to the record for identification of testimony or exhibits it would be late filed.

which is also a part of the record of this docket and need not be appended to Staff's testimony." (Emphasis added)

As indicated in the October 24 ruling, the exhibit, as filed on June 26, 2023, and referenced in Staff's Response to SBUA Objection and Motion to Admit Staff Exhibit 413 included the public comments that SBUA believed had been omitted. Importantly, the June 26, 2023 docket entry specifically states that it includes public comments and was served on SBUA's counsel. That exhibit, Staff/413, was included in the evidence moved into the record of this proceeding in the October 24 ruling. Additional written public comments, also moved into the record in the ruling can be found in Staff/2909. The exhibits included in the record in that ruling are set forth clearly in chart format, therefore SBUA should understand the written public comments it points to are already part of the record.

Additionally, the inclusion of public comments with Staff's testimony is consistent with the IOGs *as quoted in SBUA's filing*.² Staff's testimony and exhibits include the written comments SBUA references. SBUA's request has been previously and thoroughly addressed both in Staff's response of October 5 and ALJ Lackey's ruling on October 24. It is not clear why SBUA's counsel is not able to find these items in the record, and there is no excuse for failing to do so a third time. To the extent SBUA's request is a motion or a pleading for action by the Commission, it is denied.³

Request to Leave the Record Open

SBUA also asks to leave the record open pending further process regarding the fourth and fifth partial stipulations. SBUA states that it has re-reviewed and is in the process of seeking to correct the fourth partial stipulation "with regard to SBUA specific interest through proper process and the Kermode portion of the corresponding Joint Testimony." SBUA requests that the record remains open for resolution of that matter. SBUA also argues that the fifth partial stipulation "includes potentially significant process yet to be determined" regarding AWEC's objection to that stipulation. Additionally, SBUA

² "The Guidelines as approved by Order 20-065 say: "The summary will be made part of Staff's written testimony, and the comments themselves will be included as exhibits to that testimony." Order 20-065 Appendix A, p 18." SBUA Response at 3.

³ I note that SBUA mischaracterizes ALJ Lackey's ruling of October 24, 2023, which admits the jointly and individually filed stipulations, prefiled testimony, and exhibits. Specifically, SBUA states that "The ALJ states that the public comment is included in the record where it is combined with the Public Comment Hearing transcript. ALJ Ruling p1." ALJ Lackey never states in any ruling, in any way, that "...the public comment is included in the record where it is combined with the Public Comment Hearing transcript." This is an example of the type of false or confused assertion from SBUA that makes understanding and responding to its untimely requests consistently challenging.

acknowledges that it did not submit a declaration of its witness, Danny Kermode, and requests to include the declaration in the record.

As an initial matter, the October 24 ruling admitting evidence acknowledged the need for further process regarding the fifth partial stipulation. The ruling stated, “The record will remain pending further process regarding the fifth partial stipulation.” The word “open” was inadvertently omitted from that sentence; however, the ruling did not close the record and did clearly acknowledge the ongoing nature of that matter. A second ruling issued the same day established a procedural schedule for the process regarding the fifth partial stipulation. Accordingly, SBUA should understand that it does not need to request additional process regarding the fifth partial stipulation, such a request indicates that SBUA's counsel is not reviewing the communications issued in the docket regarding the case process.

Furthermore, SBUA’s request for more process is not a correction to the identification of testimony or an exhibit so it is not responsive to the October 24th ruling. Instead, it seems to be an objection to the fourth partial stipulation, a stipulation that SBUA signed. The fourth partial stipulation was filed on October 6, 2023. Under OAR 860-001-0350(8) any written objections or requests for a hearing are due within 15 days of the filing of a stipulation. Any request for further process on the fourth partial stipulation was due by October 23, 2023.

I characterize SBUA’s request as an objection to the fourth partial stipulation, because the content of the request indicates that SBUA objects to certain elements of that stipulation. SBUA’s request for additional process regarding the fourth partial stipulation was not filed consistent with our rules, was not timely, and did not explain why there was good cause to allow this response out of time. It is denied.

Additionally, a request to hold the proceedings open and file an amended fourth stipulation must be made in the form of a motion consistent with our rules, which includes the requirement to confer with other parties and should address that consultation in the motion. SBUA has not represented that it has conferred with parties or filed a motion to that effect.

Finally, I note that the fact that SBUA is only now reviewing a stipulation, filed 20 days prior, *that SBUA signed*, to be extremely unprofessional. SBUA’s approach to this docket seems to be informal, is concerning and not consistent with effective advocacy on behalf of the small business community.

Declaration of Danny Kermode

The declaration of Danny Kermode, in part, seeks to withdraw support of the fourth partial stipulation. Thus, I characterize that portion of the declaration as support of SBUA's objection to the stipulation. Any objection to the stipulation was due October 23, 2023. That objection is denied above. Alternatively, where the declaration is made in support of the joint testimony, it is denied as out of time. Our administrative staff sent a request for a declaration to SBUA on Wednesday, October 18 after having received declarations from other signatories to the stipulation. Only now, after ALJ Lackey admitted the stipulation, has SBUA supplied its declaration. It is therefore late, despite a reminder, and SBUA does not explain or provide good cause as to why it did not provide the declaration in a timely manner.

The record of this proceeding remains open pending further process regarding the fifth stipulation.

Dated this 27th day of October, 2023, at Salem, Oregon.



Nolan Moser
Chief Administrative Law Judge