

February 21, 2025

House Committee on Commerce and Consumer Protection  
Via Written Testimony Submission Form HB 3179

Greetings Chair Sosa, Vice-chairs Chaichi and Osborne and committee members,

I write to urge you to pass HB 3179. I am a public interest attorney who has had the privilege of representing environmental justice organizations in cases before the Public Utility Commission (PUC), including 3 rate cases over the last 2 years. These comments are my own and should not be attributed to any of those organizations. I am supporting and addressing the -1 bill.

In those rate case proceedings, I have witnessed CUB fiercely litigate for customers and advocate to move the commission to center ratepayers in the process. CUB has correctly identified the problem: affordability is not currently a component of the ratemaking process. With the passage of HB 2475 in 2021, the PUC's authority to specifically consider affordability - impacts on energy burdened low-income ratepayers - was expressly stated but structural problems remain. This legislation sponsored by CUB will provides procedural requirements to ensure the consideration of affordability in the ratemaking process.

Here is an example of a structural problem. The Commission's ratemaking directive in ORS 756.040 is to "protect such customers, and the public generally, from unjust and unreasonable extractions **and practices**" and to "obtain ... adequate service, at fair and reasonable rates." (Emphasis added). Yet, invariably, and despite HB 2475 and the affordability crisis manifested by the 50% increase in rates since 2021, the Commission continues to define its ratemaking function as it has for decades:

"In a rate case, the Commission's function involves two primary steps. First, we must determine how much revenue the company may have the opportunity to collect. A utility's revenue requirement is determined on the basis of the utility's costs to provide service. Second, we must allocate the revenue requirement among the utility's customer classes."

The consumers' interests in affordability and adequate service are not to be found in that statement of the Commission's ratemaking function. And those interests are also missing from the Commission's further description of how it determines the revenue requirement and, for the most part, in the allocation to customer classes.<sup>1</sup>

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<sup>1</sup> The Commission's statement law on revenue requirement is: "In establishing a revenue requirement, we must determine: (1) the gross utility revenues; (2) the utility's operating expenses to provide utility service; (3) the rate base on which a return may be earned; and (4) the rate of return to

CUB and others have argued (mostly unsuccessfully) that it is time to add the consumer in ratemaking by way of excluding unjust practices, creating more reasonable practices that protect the consumer and by otherwise defining “adequate service” as a focal point for balancing consumer interests against shareholder interests.<sup>2</sup>

This bill addresses the problem and will establish some of those more reasonable practices.

First and foremost, Section 2 of the bill will require the utility and the commission to analyze and ostensibly publish key data (which is often obscured from the view of the general public for various reasons) to determine the economic impact of the rate request. This not only provides procedural equity by providing the data necessary to make the decision making process inclusive, transparent and accessible to all, it also fills the public and administrative record with the key information and the utility’s explanation of it, subjecting the explanation to public scrutiny.

In Section 2(2), the bill specifically directs the commission to consider impacts to consumers as part of the function of setting fair and reasonable rates. And in Section 3 the legislation specifically recognizes the commission’s existing (albeit obscured through statutory structure and practice) broad authority to set the lowest rates even in the context of considering the return to the shareholders.<sup>3</sup>

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be applied to the rate base to establish the return on investment the stockholders of the utility may reasonably earn.” For the most part, allocation of the revenue requirement follows the cost causation principle, meaning that costs should be allocated to the customer classes that cause those costs.

<sup>2</sup> In some cases the utility committed to adopting or amending its Income Qualified Bill Discount program (IQBD). These programs provide various percentage discounts to those within various levels of State Median Income brackets from 0 - 60, generally. Every time a utility increases rates without recalibrating the percentage of the discount levels, the previously adopted discount levels no longer provide the same modicum of relief. Energy justice organizations intervene in the rate cases to argue for discount programs that reduce residential customer energy burdens - trying to reduce the percentage of income that goes toward paying for electricity or gas service for households in those income levels. The discount programs are not the long term solution. Portland General Electric’s (PGE) 2023 and 2024 rate cases reveal the inadequacy of the discount programs and are arguably a reason the bill proposes new practices - limiting the timing and frequency of rate increases - that will help mitigate the burden of increases. Not more than a few months after PGE adopted a negotiated restatement of its discount levels in its 2023 rate case, it filed its 2024 rate case and refused to re-calibrate its discount levels. Thus, the 2023 negotiated levels lost their benefits within a year’s application.

<sup>3</sup> The federal constitutional limitation on the commissions’ broad powers and authorities is no greater than that expressed in the relevant statutes - “the fixing of ‘just and reasonable’ rates,

So, Section 2 is key to solving the problem because it moves the rate making function from its current explicit focus on the company's revenue requirement and shareholder return by directing consideration of the economic impacts to customers. And it provides sufficient flexibility because it merely calls for it to be considered as just one component of the determination of the "fair, just and reasonable" rates test.

Other sections of the bill provide for some of the more reasonable practices the parties sought to mitigate residential customer impacts - limiting the timing and frequency of rate increases; and providing a new procedure to exercise discretion to fairly suspend rates.

Finally, and while I am far from having any expertise in finance, common sense tells me that the securitization amendment is the second most important part of this bill.

The utilities invariably argue that their shareholders are entitled to the increased return it requests in order to maintain its ability to raise capital and incur debt - maintain its creditworthiness. The argument is usually informed by an example of or fear that the ratings assessments of Standard and Poor's and Moody's, including ratings related to secured long term and unsecured debt, have been or may be adversely affected. In PGE's most recent rate case, it argued that an increase in its cost of capital returns was needed, in part, because of a ratings downgrade due to a "deterioration in the credit supportiveness of the Oregon regulatory environment" this was evidenced, in part, by diminished support for carbon transition investments, according to Moody's. Whether greater access to low cost securitization for capital investments because of affordability impacts to residential rates (which ostensibly could include revenue requirements related to carbon transition investments) will provide a response to this rating concern, I can not say. But common sense suggests that it might and otherwise, that providing access to lower cost debt should only help the utilities with their ability to finance and thereby their credit ratings.

HB 3179 is necessary to make it clear that the Commission must consider the affordability of residential rates in its rate making function. Please move it forward for adoption by the full legislature. Thank you for considering these points and comments.

Best Wishes,

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involves a balancing of the investor and the consumer interests. *Federal Power Com. v. Hope Natural Gas Co.*, 320 U.S. 591, 603; ORS 756.040(1) ("The commission shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates.").