



identify and discuss any potential proposed changes to the Plan, and if the Company believes no changes or alterations are likely appropriate, explain why.

5. **[BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL]**.

## **DISCUSSION:**

### Issue

Whether the Commission should: (1) recognize PGE's compliance with Condition 4 of Order 17-350; and, (2) authorize PGE to issue 3,576,405 shares of common stock for the Company's Stock Incentive Plan, comprised of 2,076,405 shares that remain unissued under prior authority granted in 2017, and an additional 1,500,000 shares, subject to certain Conditions recommended by Staff.

### Applicable Law

Under ORS 757.405, a utility must obtain Commission approval prior to issuing stocks and bonds, notes, and other evidence of indebtedness. The Commission may authorize an issuance if it is for one of the permissible purposes listed in ORS 757.415(1), satisfies the criteria of ORS 757.415(2)(b), and its purpose is not reasonably chargeable to operating expenses or income. (ORS 757.415(2)(c)). Permissible purposes for an issuance under ORS 757.415(1) include the acquisition of property, the construction, completion, extension or improvement of its facilities, the improvement or maintenance of its service, the discharge or lawful refunding of its obligations, and the compliance with terms and conditions of options granted to its employees to purchase its stock if the Commission finds the terms and conditions are reasonable and in the public interest.

The Commission may authorize an application for the issuance of stock if in the opinion of the Commission, the money to be paid by such issuance is reasonably required for the purposes specified and compatible with the public interest, which is appropriate for or consistent with the proper performance of the utility and will not impair its ability to perform that service. ORS 757.415(2)(b).

ORS 757.410 provides that any issuance of stocks and bonds, notes, or other evidence of indebtedness, and any security, shall be void when issued without authorization by the Commission or if issued inconsistently with the Commission's authorization.

OAR 860-027-0030 requires utilities to provide certain information when seeking authority to make an issuance under ORS 757.405-415.

In Order No. 17-350 issued in Docket No. UF 4226(2), the Commission authorized PGE to issue 3,327,146 shares of Common Stock for its employee incentive plan. The authorization was subject to the following condition (Condition 4):

4. Timely Preparations for Plan Restatement:

- A. The Company will, on or before March 31, 2022, undertake such review, research, and internal decisions as necessary to petition the Commission for review of a fully restated Stock Incentive Plan so as to allow that plan to reasonably take effect on March 31, 2024.
- B. PGE will file a fully reviewed Stock Incentive Plan with the Commission no later than January 5, 2024, requesting review at a public meeting in February of 2024.
- C. Attached to the filing must be PGE's research, findings, summary of deliberations and decisions, and citations of materials relied on in constructing the restated plan. Therein shall be the Company's reasoning for why that plan can be expected to be cost competitive and effective, as well as consistent with prevailing theory and practice.

Analysis

*PGE's Application*

PGE's filing is divided into two sections. In the first, the Company provides information on its revised Stock Incentive Plan to comply with Condition 4 of Commission Order No. 17-350. Condition 4 of Commission Order No. 17-350 directed PGE to file a fully reviewed Stock Incentive Plan and supporting materials no later than January 5, 2024.

In the second part of its Application, PGE seeks authority to issue up to 3,576,405 shares of common stock under its revised Stock Incentive Plan (Plan). PGE has 2,076,405 Shares remaining in its current Plan, including those that have been assigned but have not yet met vesting requirements. PGE's application under Docket No. UF 4226 (3) would add an additional 1,500,000 Shares for the total 3,576,405 Shares authority requested.

The Company's Board of Directors is expected to authorize the refreshment of PGE's Plan consistent with the Company's Application. PGE's revised Stock Incentive Plan will be submitted to shareholders in March 2023 for their approval.

#### **Compliance with Order No. 17-350, Condition 4**

##### *Conceptual Backbone of Plan*

PGE's 2023 amended and restated Plan is provided in the Company's Application as Confidential Attachment 3. To facilitate review, PGE also provided a redline version of its 2023 Plan as Confidential Attachment 4 to its Application.

As required by Condition 4.C. in Order No. 17-350, PGE included materials to show why it selected the Plan and its reasons as to why it believes the Plan is cost effective and competitive. PGE states that the Company's overall compensation policy is designed to attract and retain highly qualified employees and to provide them with incentives that align employees with the interests of key stakeholders.<sup>1</sup>

PGE states that each year, PGE's Chief Executive Officer, Chief Financial Officer, and Vice President of Human Resources proposes the performance metrics to be used under the Plan for the next three years.<sup>2</sup> PGE engages Willis Towers Watson US LLC (WTW or Consultant) to review its plan concepts and provisions. PGE asserts that WTW conducted extensive research looking at 14 PGE industry peers as well as conducted the Consultant's own analysis to support WTW's determination that PGE's Plan requires the flexibility under current conditions to meet the provisions of competitors' plans. PGE states that WTW specifically reviewed elements of the Plan that Staff identified as concerning in its 2017 Staff Report, which were stock options and cash settlement of awards. Ultimately, WTW recommended that PGE retain flexibility in its stock incentive plan for granting options and utilizing cash settlements.<sup>3</sup> PGE's Board of Directors also relies on the advice of compensation consultant FW Cook.<sup>4</sup>

PGE introduces its compensation philosophy in Confidential Attachment 6 to the Company's application. In Confidential Attachment 7 to the Company's application, PGE identifies performance metrics.<sup>5</sup> PGE Application Confidential Attachment 8 provides an overview of the process and timing for award decision-making.

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<sup>1</sup> Application, page 2.

<sup>2</sup> Application, page 4.

<sup>3</sup> Application, page 7.

<sup>4</sup> Application, page 8.

<sup>5</sup> Application, page 9.

PGE indicates that it currently awards Shares based on both time and performance. Performance awards are subject to a three-year vesting period and achievement of performance goals as set by company management.<sup>6</sup>

### *Conclusion*

Condition 4 in Order 17-350 required PGE to undertake review and reevaluation of its Stock Incentive Plan no later than March 31, 2022, and to file a fully restated Stock Incentive Plan no later than January 5, 2024, with documentation of its research, materials relied on, and the Company's reasoning for concluding the Plan is cost competitive and effective attached. Staff recommends the Commission find that PGE has satisfied this condition.

### **Authorization of Shares under ORS 757.415(2)**

Before issuing securities, PGE must obtain an order from the Commission stating:

(a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to be applied; [and]

(b) In the opinion of the commission, the money, property or labor to be procured or paid for by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility, and will not impair its ability to perform that service[.] ORS 757.415(2)(a) and (b).

### *Review of Shares Requested*

This is PGE's first request since 2006 to add shares for issuance under its Plan. Staff finds that the addition of 1,500,000 shares is reasonable and does not raise any concerns regarding the Company's ability to perform its duty as an electric utility.

### *Capital Structure*

In general, expensing of shares directly offsets the value of new shares issued creating minimal if any new impact from shares issued within the incentive plan. In practice, the incentive shares have a tendency to move the Company's capital structure toward 50 percent equity, 50 percent debt from a higher debt weighting between common stock flotations.

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<sup>6</sup> Application, page 4.

*Expenses*

There is no compensation to any underwriter, bank, or agent for services in connection with the issuance of the common stock mentioned in PGE's Application, except for a small fee PGE will pay to Merrill Lynch to administrate the transactions. The Company maintains the obligation to ensure that fees associated with the issuance, including for the registrar, transfer agent, general auditing, record keeping, and other costs under the Plan, are reasonable and controlled.

*No Cash Proceeds*

The issuance of stock under the plan brings no cash proceeds to the Company. Rather, the plan is part of the Company's overall compensation package, which is intended to provide incentives to attract, retain and motivate officers, directors, and key employees of the Company.

*Audit Verification of Outstanding Shares*

PGE regularly undertakes external audits, inclusive of opinion and certification of an appropriate accounting firm that PGE's internal controls over financial reporting, including equity plan disclosures, are operating effectively. These findings are issued with PGE's SEC form 10-K.

*Staff Concerns with Stock Options and Cash Awards*

**[BEGIN CONFIDENTIAL]**



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<sup>7</sup> Application, Att A, page 5.  
<sup>8</sup> Application, Att A, page 3.  
<sup>9</sup> Application, Att A, page 4.  
<sup>10</sup> Application, Att A, page 5.  
<sup>11</sup> Application, Att A, page 4.

[REDACTED]  
[REDACTED]  
[REDACTED] [END CONFIDENTIAL].

PGE notes that Staff's concerns are appropriately addressed in a cost recovery proceeding where Staff may assert that customers should not bear such expenses. PGE states that such concerns should not be a determining factor as to whether PGE should be authorized to issue common equity shares as a part of a Stock Incentive Plan.<sup>12</sup>

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL].

Accordingly, Staff recommends the Commission adopt Staff's proposed Condition 4 requiring PGE to no later than December 31, 2033, PGE will submit a filing with the Commission reporting on the status and effectiveness of the Plan. The Company will also identify and discuss any potential proposed changes to the Plan, and if the Company believes no changes or alterations are likely appropriate, explain why.

With this and the other conditions proposed by Staff, Staff believes PGE's request for authority to issue shares of common stock satisfies the statutory requirements of ORS 757.415.

### Conclusion

Staff recommends that the Commission approve PGE's request to issue Common Shares, subject to Staff's Conditions.

PGE has reviewed this memo and while it does not necessarily agree with all its findings or recommendations, PGE does agree with Staff's proposed Conditions.

### **PROPOSED COMMISSION MOTION:**

Acknowledge PGE's compliance with Condition 4 of Order 17-350 and authorize the Company to issue up to 3,576,405 shares of common stock for the Company's Stock Incentive Plan subject to Staff's recommended Conditions.

PGE UF 4226 (3) Authorization of Shares in PGE Incentive Plan

Attachment A contains WTW's report to PGE. By including this confidential report in its entirety, the Commission is not asked by WTW to sign a non-disclosure agreement or other documents.

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<sup>12</sup> Application, page 9.

Attachment A is Confidential