

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 UE 394

4 In the Matter of  
5 PORTLAND GENERAL ELECTRIC  
6 COMPANY,  
7 Request for a General Rate Revision.

**STAFF RESPONSE TO PGE'S  
MOTION FOR CLARIFICATION**

8 Portland General Electric Company (PGE) seeks an order clarifying the Commission's  
9 decision in Order No. 22-129 regarding the parameters of the ORS 757.259(5) earnings review  
10 applied to amounts PGE deferred in 2020, 2021, and 2022. PGE seeks an order clarifying that  
11 the Commission's decision "does not establish precedent for future deferrals, and does not  
12 establish precedent on the procedures for evaluating deferral authorizations or deferral  
13 amortizations."<sup>1</sup> PGE asserts these clarifications "are consistent with the Commission's  
14 established practice of dealing with deferrals on a case-specific basis and addressing earnings  
15 issues concurrently with a prudence review."<sup>2</sup>

16 Staff is puzzled by the nature of PGE's request. It appears PGE is not seeking an order  
17 clarifying the meaning of the Commission's order but an order disavowing its precedential  
18 effect. Essentially, PGE seeks an opinion from the Commission regarding rate-making treatment  
19 of future deferrals, i.e., assurance that the Commission will not apply the same ratemaking  
20 treatment to future deferrals. Such a ruling is inappropriate because the Commission is not able  
21 to bind future Commissions to a particular rate treatment of future deferrals.<sup>3</sup>

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24 <sup>1</sup> PGE's Motion for Clarification, p. 1.

25 <sup>2</sup> PGE's Motion for Clarification, p. 2.

26 <sup>3</sup> Cf. *In re Northwest Natural Gas Company* (Docket Nos. UM 125 and UP 38), Order No. 87-1044 (October 5, 1987) ("The Commission does not believe that an expression now of the wisdom of the company's proposed action would be binding on this or a future Commission when rate relief is requested after the plant is in service.").

1 In the event PGE is actually asking for an order clarifying the Commission’s policy that  
2 the parameters of an earnings test under ORS 757.259(5) are determined on a case-by-case basis,  
3 Staff believes the relief is unnecessary. The order includes no language that would indicate the  
4 Commission is abandoning its decades-long approach of determining the appropriate application  
5 of the earnings test on a case-by-case basis.<sup>4</sup> Accordingly, it is not necessary for the  
6 Commission to issue an order clarifying that it intends to continue this policy. However, Staff is  
7 not opposed if the Commission chooses to issue this clarification.

8 Notably, Staff questions the nexus between the language in the Commission’s order and  
9 the alleged harm (investor concern) that PGE seeks to address. A review of Commission  
10 precedent reveals no case in which Commission has allowed PGE to pass to ratepayers 100  
11 percent of deferred costs related to an extraordinary event. The Commission did not have the  
12 authority to allow a utility to recover actual costs for an extraordinary event until the Oregon  
13 legislature passed the deferral statute in 1987.<sup>5</sup> Since that time, the Commission has addressed  
14 several requests to defer and amortize costs related to unanticipated events such as the Western  
15 Power Crisis, major plant outages, and major storms. In each of the requests to defer costs  
16 associated with extraordinary events (aka scenario risks) filed by PGE the Commission has  
17 required the utility to absorb a share of the related costs.

18 In 1991 and 1993, the Commission addressed PGE’s requests to defer replacement power  
19 costs incurred after extraordinary outages at PGE’s Trojan Power Plant.<sup>6</sup> The Commission

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20 <sup>4</sup> See e.g., *In re Portland General Electric Company* (UE 82), Order No. 93-257, p. 11 (“In the  
21 future, the Commission intends to tailor earnings tests to fit the type of deferral.”); *In the Matters*  
22 *of Northwest Natural Gas Company Mechanism for Recovery of Environmental Remediation*  
23 *Costs* (UM 1635) and *Request for the Determination of the Prudence of Environmental*  
24 *Remediation Costs for the Calendar Year 2013 and First Quarter of 2014* (UM 1635 Phase II &  
25 UM 1706), Order No. 15-049 (February 15, 2015) (“In authorizing the use of deferred  
26 accounting, the legislature imposed no particular structure for an earnings test, giving us broad  
discretion in the design of an earnings test. In exercising this discretion, we use a flexible, fact-  
specific approach that acknowledges the wide range of circumstances underlying a deferral and  
the decisions made to authorize this extraordinary rate treatment.”).

26 <sup>5</sup> ORS 757.259.

<sup>6</sup> *In re Portland General Electric Company* (UM 529), Order No. 93-309 (March 11, 1993) and  
*In re Portland General Electric Company* (UM 445), 91-1789 (December 20, 1991).

1 accepted Staff’s recommendation to allow PGE to defer only a portion of the replacement power  
2 costs. For the 1991-92 outage, the Commission required PGE to absorb 90 percent of the costs  
3 and required PGE to absorb 80 percent of the approximately \$50 million PGE incurred in  
4 replacement power costs during the 1992-93 outage.<sup>7</sup>

5 In 2001, the Commission adopted a stipulation by PGE and other parties agreeing that  
6 PGE would absorb \$35 million of deferred excess net variable power costs associated with the  
7 Western Power Crisis, which was equal to 250 basis points, and pass along to customers only a  
8 portion of any excess above that benchmark.<sup>8</sup>

9 In 2007, the Commission addressed PGE’s request to defer replacement power costs for  
10 an extraordinary outage at its Boardman Coal plant in 2005-06. The Commission determined the  
11 outage was a scenario event and concluded that “[i]f an event is deemed a scenario risk because  
12 it is outside a range of normal risk, we find that it is appropriate to apply a measure of normal  
13 risk when allocating, for deferral purposes, the costs associated with the event.”<sup>9</sup> In that case, the  
14 Commission did not allow recovery of amounts that were within a deadband of 80 bp around  
15 PGE’s ROE and allowed PGE to amortize costs that exceeded this deadband subject to 90/10  
16 sharing.<sup>10</sup> As a result of this sharing, PGE was allowed to defer \$26.439 million of the \$42.8  
17 million replacement power costs at issue in PGE’s request to defer.

18 In 2019, the Commission addressed PGE’s request to defer \$8 million of costs associated  
19 with four storms that occurred in 2017. The Commission ultimately denied PGE’s request,  
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<sup>7</sup> *Id.*

22 <sup>8</sup> *In the Matter of the Application of the Staff the Public Utility Commission of Oregon for*  
23 *Deferral for a Portion of Portland General Electric’s Excess Net Variable Power Costs (Docket*  
24 *No. UM 1008) and In the Matter of the Application of Portland General Electric Company for an*  
*Order Approving Deferral of a Change in Costs (UM 1009), Order No. 01-231 (March 14,*  
*2001).*

25 <sup>9</sup> *In the Matter of Portland General Electric Company, Application for Deferred Accounting of*  
26 *Excess Power Costs Due to Plant Outage (Docket No. UM 1234), Order No. 07-049 (February*  
*12, 2007).*

<sup>10</sup> *Id.*

1 finding that \$8 million was well within the range of costs that PGE reasonably could be expected  
2 to absorb between rate cases.<sup>11</sup>

3 Staff acknowledges the Commission’s previous disallowances to deferred amounts have  
4 not been accomplished with the earnings review but instead, with imposition of sharing at the  
5 deferral or the amortization stage. However, the ultimate effect of the Commission’s decision is  
6 the same, a monetary disallowance. Given that the Commission has required PGE to absorb at  
7 least a portion of its actual deferred costs for every extraordinary event for which PGE sought a  
8 deferral, it was reasonable for PGE to ensure investors were informed of the possibility of a  
9 disallowance to their deferred costs for wildfire restoration and Covid-19 in its 2021 10-K.

10 In PGE’s 2021 10-K, PGE alerted its investors of the Commission’s discretion to apply an  
11 earnings review that may result in disallowance of some of the costs of its wildfire and Covid  
12 deferrals:

13 PGE continues to assess the damage to its infrastructure and expects regulatory  
14 recovery of prudently incurred restoration costs. Although PGE expects its  
15 2020 regulated ROE, after adjusting for certain energy trading losses, to exceed  
16 its authorized ROE of 9.5%, PGE believes the full amount of the 2020 [wildfire  
17 restoration cost] deferral is probable of recovery as the Company’s prudently  
18 incurred costs were in response to the unique and unprecedented nature of the  
19 wildfire events leading to the deferral. *The OPUC has significant discretion in  
20 making the final determination of recovery and their conclusion of overall  
21 prudence, including an earnings review, could result in a portion, or all, of  
22 PGE’s 2020 deferral being disallowed for recovery. Such disallowance would  
23 be recognized as a charge to earnings.*<sup>12</sup>

19 Amortization of any deferred costs will remain subject to OPUC review prior to  
20 amortization and inclusion in customer prices. Although PGE expects its 2020  
21 regulated ROE, after adjusting for certain energy trading losses, to exceed its  
22 authorized ROE of 9.5%, PGE believes the full amount of the 2020 deferral is  
23 probable of recovery as the Company’s prudently incurred costs were in response  
24 to the unique nature of the COVID-19 pandemic health emergency. *The OPUC  
25 has significant discretion in making the final determination of recovery and their  
26 conclusion of overall prudence, including an earnings review, could result in a*

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25 <sup>11</sup> *In the Matter of Portland General Electric Company, Application for the Deferral of Storm-  
26 Related Restoration Costs (UM 1817), Order No. 19-274, p. 10 (August 19, 2019).*

26 <sup>12</sup> PGE 2021 10-K, p. 39 (emphasis added), [https://investors.portlandgeneral.com/static-  
files/f4715cf8-2b04-4c0f-a70a-f33d7b32449d](https://investors.portlandgeneral.com/static-files/f4715cf8-2b04-4c0f-a70a-f33d7b32449d)

1 *portion, or all, of PGE's 2020 deferral being disallowed for recovery. Such*  
2 *disallowance would be recognized as a charge to earnings.*<sup>13</sup>

3 In summary, Staff recommends that the Commission deny PGE's Request for  
4 Clarification because it would be inappropriate to disavow the relevance of the Commission's  
5 order to any future deferral. Alternatively, to the extent PGE's request for a clarification is  
6 actually a request to clarify the Commission's policy of addressing the earnings test for each  
7 deferral on a case-by-case basis, Staff does not oppose the request.

### 8 **CONCLUSION**

9 Staff respectfully requests that the Commission deny PGE's Motion for Clarification or  
10 alternatively, clarify that the Commission will continue to apply the ORS 757.259(5) earnings test  
11 on a case-by-case basis.

12 DATED this 23<sup>rd</sup> day of May, 2022.

13 Respectfully submitted,

14 ELLEN F. ROSENBLUM  
15 Attorney General

16 */s/ Stephanie S. Andrus*

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21 Commission of Oregon

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26 <sup>13</sup> PGE 2021 10-K, pp. 34-35 (emphasis added), <https://investors.portlandgeneral.com/static-files/f4715cf8-2b04-4c0f-a70a-f33d7b32449d>