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November 18, 2021

**VIA ELECTRONIC FILING**

Attention: Filing Center  
Public Utility Commission of Oregon  
P.O. Box 1088  
Salem, Oregon 97308-108

**Re: UE 394 - *In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Request for a General Rate Revision.***

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Request for Certification, Response to Joint Request for Certification, and in the alternative, Motion for Extension of Time, expedited treatment requested.

Please contact this office with any questions.

Sincerely,

Katherine McDowell

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 394**

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Request for a General Rate Revision.

**PORTLAND GENERAL ELECTRIC  
COMPANY’S REQUEST FOR  
CERTIFICATION, RESPONSE TO  
JOINT REQUEST FOR  
CERTIFICATION, AND IN THE  
ALTERNATIVE, MOTION FOR  
EXTENSION OF TIME  
(Expedited Treatment Requested)**

1           On November 9, 2021, the Alliance of Western Energy Consumers (AWEC), the Oregon  
2 Citizens’ Utility Board (CUB), and Public Utility Commission of Oregon Staff (Staff)  
3 (collectively, Joint Parties) filed a joint request for certification of the Administrative Law Judge’s  
4 (ALJ) ruling denying AWEC’s and CUB’s motion to consolidate this rate case with docket UM  
5 2119, their request to defer costs associated with the closure of the Boardman plant.<sup>1</sup> On  
6 November 10, the ALJ denied Portland General Electric Company’s (PGE) motion to strike the  
7 Joint Parties’ testimony related to the Boardman deferral and two PGE deferrals in the rate case,  
8 finding that the parties are allowed to develop a record on the deferral issues without formal  
9 consolidation. The ruling did not provide clear direction on when, how and where the Commission  
10 will address the legal and factual issues associated with these deferrals, opening the door for  
11 concurrent litigation in multiple dockets.<sup>2</sup>

12           Developing a full record in this case regarding several significant deferrals, with or without

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<sup>1</sup> *In re Portland General Electric Company Request for a General Rate Revision*, Docket UE 394, and *In re Alliance of Western Energy Consumers and Oregon Citizens’ Utility Board, Application for an Accounting Order Requiring Portland General Electric Company to Defer Expenses and Capital Costs Associated with the Boardman Power Plant*, Docket UM 2119, Joint Request of the Oregon Citizens’ Utility Board, Alliance of Western Energy Consumers, and Staff of the Public Utility Commission of Oregon for Certification of Memorandum Denying Consolidation (Nov. 9, 2021) (“Joint Request for Certification”).

<sup>2</sup> Docket UE 394, Ruling Denying Motion to Strike at 3-4 (Nov. 10, 2021).

1 formal consolidation, will constrain and potentially delay the schedule. It will also unduly  
2 prejudice PGE to litigate the deferrals under the current schedule, which requires all issues to be  
3 submitted to the Commission well in advance of the May 9, 2022 rate-effective date. The schedule  
4 is not designed around the multi-stage inquiry the Commission applies in deferral cases, nor is  
5 there adequate time to fully address the novel legal and factual issues around the Boardman  
6 deferral, especially given the multitude of other issues pending in the rate case. Further, the  
7 Boardman deferral is designed to retroactively capture plant in PGE’s *current* rates and cannot be  
8 considered in establishing just and reasonable rates on a going-forward basis. For these reasons,  
9 the ALJ’s ruling denying the motion to strike should be certified to the Commission for review.

10 PGE respectfully requests that the Commission clarify that the Boardman deferral and  
11 other pending deferrals will be addressed outside the rate case by (1) upholding the ALJ’s ruling  
12 denying consolidation and (2) reversing the ALJ’s ruling denying PGE’s motion to strike. If the  
13 Commission decides that the deferral issues should be resolved in the rate case, PGE moves for an  
14 extension of time to file its reply testimony regarding these deferrals and for an extension of the  
15 deadlines for briefing and oral argument on deferral issues. Because PGE’s reply testimony is due  
16 in two weeks, PGE requests that the Commission consider PGE’s certification and related requests  
17 on an expedited basis.

18 **I. BACKGROUND**

19 On October 8, 2020, AWEC and CUB filed an application to defer revenue impacts  
20 associated with the retirement of Boardman, which was docketed as UM 2119.<sup>3</sup> On July 9, 2021,  
21 PGE filed this rate case in docket UE 394 with a rate effective date of May 9, 2022.<sup>4</sup>

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<sup>3</sup> Docket UM 2119, Joint Application for Deferred Accounting of the Alliance of Western Energy Consumers and Oregon Citizens Utility Board (Oct. 8, 2020).

<sup>4</sup> Docket UE 394, Order No. 21-219 (July 12, 2021) (suspending tariffs for nine months from August 9, 2021).

1           On September 1, 2021, the ALJ issued a Bench Request asking PGE to provide information  
2   on its pending deferrals, including the deferrals PGE proposed to amortize in this case.<sup>5</sup> In its  
3   September 21, 2021 response, PGE identified four small deferrals for which it had filed  
4   amortization schedules in the case.<sup>6</sup> As to its three largest pending deferrals, PGE indicated that  
5   it planned to file in 2022 for amortization beginning in 2023, and would propose a multi-year  
6   schedule to reduce rate impacts.<sup>7</sup> These deferrals are: (1) the 2020 Wildfire Emergency deferral,  
7   which was filed in docket UM 2115 and approved in Order No. 20-389 on October 27, 2020. PGE  
8   sought reauthorization of this deferral on September 14, 2021, noting that it had not yet achieved  
9   full restoration; (2) the Ice Storm deferral, filed on February 15, 2021 in docket UM 2156 and still  
10   pending authorization; and (3) the COVID 19 costs deferral, filed in docket UM 2064 and approved  
11   in Order No. 20-376 on October 27, 2020. PGE sought reauthorization of this deferral on March  
12   23, 2021, and PGE expects to accrue costs to this deferral through approximately November 30,  
13   2022. The bench request allowed other parties to file a reply, but no party did so.<sup>8</sup>

14           On October 7, 2021, AWEC and CUB moved to consolidate dockets UM 2119 and UE  
15   394,<sup>9</sup> which PGE opposed.<sup>10</sup> The ALJ denied the motion to consolidate on October 25, 2021,  
16   finding that consolidation would constrain the rate case schedule.<sup>11</sup> AWEC, CUB, and Staff  
17   requested certification of the ALJ's ruling on November 9, 2021.<sup>12</sup>

18           On the same day that the ALJ denied the motion to consolidate, AWEC, CUB, and Staff

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<sup>5</sup> Docket UE 394, Bench Request (Sept. 1, 2021).

<sup>6</sup> Docket UE 394, PGE Revised Response to Bench Request at 2, 5 (Sept. 21, 2021) (referencing Schedule 138 (Microgrid Storage and Residential Battery Storage deferrals) and Schedule 150 (EV Charging Station and Transportation Electrification Pilot deferrals)).

<sup>7</sup> *Id.* at 5.

<sup>8</sup> Docket UE 394, Bench Request (Sept. 1, 2021).

<sup>9</sup> Dockets UE 394 and UM 2119, Joint Motion to Consolidate Dockets UE 394 and UM 2119 (Oct. 7, 2021).

<sup>10</sup> Dockets UE 394 and UM 2119, PGE's Response in Opposition to Motion to Consolidate (Oct. 15, 2021).

<sup>11</sup> Dockets UE 394 and UM 2119, ALJ Ruling Denying Motion to Consolidate at 2-3 (Oct. 25, 2021).

<sup>12</sup> Joint Request for Certification.

1 filed testimony in the rate case addressing the Boardman deferral. Staff explained why the  
2 Boardman deferral should be authorized,<sup>13</sup> and in joint testimony, AWEC and CUB recommended  
3 amortization of the Boardman deferral in the rate case.<sup>14</sup> AWEC also filed separate testimony in  
4 which it recommended that the Commission amortize and offset the Boardman deferral and PGE’s  
5 Wildfire Emergency and Ice Storm deferrals.<sup>15</sup>

6 On October 28, 2021, PGE moved to strike the Joint Parties’ deferral testimony, arguing  
7 that it was outside the scope of the rate case and that its inclusion would cause confusion and delay  
8 in the rate case, prejudicing PGE.<sup>16</sup> On November 10, the ALJ denied the motion to strike.<sup>17</sup> PGE  
9 requests certification and reversal of this ruling.

10 **II. LEGAL STANDARD**

11 An ALJ must certify a ruling to the Commission if the ALJ finds that good cause exists for  
12 certification or that the ruling “may result in substantial detriment to the public interest or undue  
13 prejudice to a party[.]”<sup>18</sup> To avoid delay, the Commission may consider a request to certify  
14 concurrently with the merits of the ruling that is the subject of certification.<sup>19</sup>

15 **III. PGE’S REQUEST FOR CERTIFICATION OF RULING DENYING MOTION**  
16 **TO STRIKE**

17 **A. Addressing the Boardman, Wildfire Emergency, and Ice Storm deferrals in this rate**  
18 **case will constrain the schedule and unduly prejudice PGE.**

19 In denying consolidation of docket UM 2119 with this rate case, the ALJ found that

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<sup>13</sup> Docket UE 394, Staff/1800, Storm/1 (Oct. 25, 2021).  
<sup>14</sup> Docket UE 394, AWEC-CUB/100, Mullins-Gehrke/1 (Oct. 25, 2021).  
<sup>15</sup> Docket UE 394, AWEC/100, Mullins/49.  
<sup>16</sup> Docket UE 394, PGE’s Motion to Strike (Oct. 28, 2021).  
<sup>17</sup> Docket UE 394, Ruling Denying Motion to Strike.  
<sup>18</sup> OAR 860-001-0110(2).  
<sup>19</sup> See *In re Application of Portland General Electric Company for an Investigation into Least Cost Plan Plant Retirement*, Docket DR 10, *Revised Tariffs Schedules for Electric Service in Oregon Filed by Portland General Electric Company*, Docket UE 88, and *Portland General Electric Company’s Application for an Accounting Order and for Order Approving Tariff Sheets Implementing Rate Reduction*, Docket UM 989, Order 04-597 at 4 (Oct. 18, 2004).

1 consolidating these dockets would constrain the rate case schedule by “in effect requiring  
2 resolution of a second docket within the statutory period for the rate case.”<sup>20</sup> Despite this finding,  
3 the ALJ denied PGE’s motion to strike, ruling that the parties could develop a full record on the  
4 deferral issues without formal consolidation. These two rulings cannot be reconciled.  
5 Consolidation would constrain the schedule *because* it would require parties to develop a record  
6 on the deferral issues. Allowing the parties to develop a record without formal consolidation has  
7 the same effect, while also increasing the likelihood of confusion and judicial inefficiency. There  
8 is good cause to grant certification to resolve this discrepancy.

9 Denial of the motion to strike effectively adds *three* new dockets (dockets UM 2119  
10 (Boardman), UM 2115 (Wildfire Emergency) and UM 2156 (Ice Storm)) to the rate case. Adding  
11 these significant deferrals to the case at this late stage will unfairly prejudice PGE—and potentially  
12 delay the rate case—by significantly expanding the issues that must be addressed within the  
13 current, already-compressed schedule.<sup>21</sup> The Commission considers the particular circumstances  
14 of each deferral request on a case-by-case basis.<sup>22</sup> If the Joint Parties’ deferral testimony remains  
15 in the record, the parties to the rate case will be required to file detailed testimony and briefing  
16 regarding up to three separate deferrals.

17 The Boardman deferral seeks to defer the costs of the now-retired Boardman plant, without  
18 offsetting PGE’s much larger new capital investments subject to regulatory lag during the same  
19 period. The Commission has made clear that any capital deferral request “will be analyzed closely  
20 under our well-established deferral policy,”<sup>23</sup> which “emphasize[s] that deferred accounting

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<sup>20</sup> Docket UE 394, Ruling Denying Motion to Strike at 4.

<sup>21</sup> See OAR 860-001-0450(1)(c) (evidence may be excluded if the probative value is substantially outweighed by the danger of unfair prejudice or undue delay).

<sup>22</sup> *In re Public Utility Commission of Oregon, Investigation of the Scope of the Commission's Authority to Defer Capital Costs*, Docket UM 1909, Order No. 20-147 at 13 (Apr. 30, 2020).

<sup>23</sup> Docket UM 1909, Order No. 20-147 at 1.

1 treatment is appropriate only for costs or revenues that are truly *exceptional* in some way, whether  
2 due to unpredictability or magnitude, or a combination of both factors.”<sup>24</sup> There is nothing  
3 exceptional or unpredictable about the Boardman plant retiring as scheduled and remaining in rate  
4 base until new rates are set—this is standard ratemaking practice.

5 In docket UM 2119, PGE filed a timely response in opposition to the Boardman deferral  
6 application, and PGE intends to request that the Commission reject authorization of the deferral.  
7 AWEC and CUB have the burden of proof with respect to the Boardman deferral but have not  
8 sought authorization of the deferral in docket UM 2119, and Staff has made no filings in docket  
9 UM 2119 at all. In this case, Staff filed testimony supporting authorization of the Boardman  
10 deferral, but AWEC and CUB have not addressed this predicate issue in any meaningful way.  
11 PGE was not on notice that the Boardman deferral might be litigated in this rate case until very  
12 recently, and did not anticipate this development because the deferral is unauthorized, still accruing  
13 funds, and is unrelated to the issues in this case. PGE will be prejudiced if it is required to address  
14 the legal and factual issues associated with the Boardman deferral, alongside numerous other rate  
15 case issues, within the current rate case schedule and timeline.

16 If the deferral testimony is not stricken, the Commission will need to consider AWEC’s  
17 request for amortization of the three deferrals in the rate case. Unless all parties are willing to  
18 waive the statutory requirements, the Commission’s review would have to include whether the  
19 deferred costs were prudently incurred and an earnings review.<sup>25</sup> Although the ALJ found that the  
20 Commission could consider authorization and amortization simultaneously,<sup>26</sup> the Commission’s  
21 rules envision that it will authorize amortization of amounts “only for utility expenses or revenues

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<sup>24</sup> *In re Utility Reform Project and Ken Lewis Application for Deferred Accounting*, Docket UM 1224, Order No. 09-316 at 14 (Aug. 18, 2009).

<sup>25</sup> ORS 757.259(5).

<sup>26</sup> Docket UE 394, Ruling Denying Motion to Strike at 4.

1 for which the Commission *previously* has authorized deferred accounting.”<sup>27</sup> Even if the  
2 Commission wanted to consider amortization simultaneously and had sufficient time in the rate  
3 case schedule to undertake the necessary evaluations, PGE’s results of operations for the 2021  
4 deferral period will not be available for use in the earnings review until approximately May 2022—  
5 well after the record will close in this case.<sup>28</sup>

6 PGE also notes that addressing amortization of the approved 2020 Wildfire Emergency  
7 deferral is complicated by the fact that the Commission adopted Staff’s recommendation in docket  
8 UM 2115 and authorized a regulatory asset to track the undepreciated balance of destroyed plant  
9 removed from rate base with a shorter amortization period.<sup>29</sup> Staff recommended that the parties  
10 work collaboratively to bring a joint proposal to the Commission when amortization is  
11 considered,<sup>30</sup> but no party has yet filed testimony addressing this aspect of the 2020 Wildfire  
12 Emergency deferral. The ALJ’s ruling that the deferral testimony will not result in undue delay  
13 fails to account for all the issues associated with the three deferrals that the Commission would  
14 need to address in this rate case.

15 The ruling also fails to account for the compressed nature of the current schedule. The  
16 Joint Parties claim that PGE will have sufficient opportunity to brief the deferral issues under the  
17 existing rate case schedule,<sup>31</sup> but this is incorrect because the current schedule provides just 12  
18 days (7 business days) for opening briefs and 8 days (6 business days) for closing briefs. PGE  
19 would not have agreed to this extremely compressed briefing schedule had it known that several

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<sup>27</sup> OAR 860-027-0300(9) (emphasis added); *see also* Docket UM 1224, Order No. 09-316 at 14 (“When accruals to the deferred account are complete, a utility may request amortization of the amount in the deferred account.”).

<sup>28</sup> *See In re Portland General Electric Company’s Results of Operations Report*, Docket RE 119 (Results of Operations reports filed between late April and June).

<sup>29</sup> *In re Portland General Electric Company, Application for Deferral of Wildfire Emergency Costs and Lost Revenues*, Docket UM 2115, Order No. 20-389, App. A at 3 (Oct. 27, 2020).

<sup>30</sup> Docket UM 2115, Order No. 20-389, App. A at 4.

<sup>31</sup> Joint Request for Certification at 4.



1 significant deferrals would be added to the rate case.

2 In addition to providing insufficient time for the Commission and parties to meaningfully  
3 address these three deferrals, the rate case schedule is not designed for efficient resolution of the  
4 deferral issues. The Joint Parties acknowledge that PGE opposes the Boardman deferral on legal  
5 grounds, which should be addressed through briefing.<sup>32</sup> In the rate case, however, the parties  
6 would be required to file three more rounds of testimony before briefing the threshold issue of  
7 whether the deferral is appropriate under the Commission’s laws and policies. If the Commission  
8 were to determine that the Boardman deferral should not be authorized as a matter of law, then the  
9 effort put into testimony will have been wasted.

10 Finally, if the ALJ’s rulings denying the motion to strike and motion to consolidate stand,  
11 the parties will develop a record on three deferrals that have not been consolidated into the rate  
12 case, which will confuse the issues in the rate case by making it unclear what deferrals are actually  
13 at issue.<sup>33</sup> The Commission could face concurrent litigation of the deferrals in the rate case and in  
14 the separate deferral dockets. Developing a full record on the deferral issues in the rate case while  
15 retaining the possibility that the issues will not be resolved in this case (which is highly likely  
16 given the fact that none of the deferrals are ripe for amortization<sup>34</sup> and the information required  
17 for an earnings review is unavailable before the record will close) is an inefficient use of  
18 Commission and party resources, and PGE will be unduly prejudiced if it is required to litigate the  
19 same issues twice.

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<sup>32</sup> Joint Request for Certification at 4.

<sup>33</sup> OAR 860-001-0450(1)(c) (evidence may be excluded if the probative value is substantially outweighed by the danger of confusion of the issues).

<sup>34</sup> Two of the deferrals (Boardman and Ice Storm) have not been authorized. In addition, as noted in PGE’s request for reauthorization, the costs in the deferral that has been authorized (Wildfire Emergency) are not yet final because restoration is not complete. *See* Docket UM 1224, Order No. 09-316 at 14 (“When accruals to the deferred account are complete, a utility may request amortization of the amount in the deferred account.”).

1 **B. The Commission need not resolve the pending deferrals to establish just and**  
2 **reasonable rates in this case.**

3 The ALJ determined that the Commission has flexibility to consider pending deferrals,  
4 amortizations, and carrying costs in establishing just and reasonable rates.<sup>35</sup> Because the Joint  
5 Parties’ deferral testimony contends that amortization of the deferrals is necessary to establish just  
6 and reasonable rates, the ALJ ruled that it is relevant.<sup>36</sup> Specifically, the Joint Parties appear to  
7 argue that the Boardman deferral is relevant because it could offset the rate increase PGE proposes  
8 in this case.<sup>37</sup> These arguments overlook the critical fact that the deferrals and the rate case cover  
9 different time periods and are subject to distinct reviews for reasonableness. Mixing the two by  
10 applying amounts from the backward-looking Boardman deferral to determine just and reasonable  
11 base rates for a future test period would violate the rule against retroactive ratemaking.<sup>38</sup>

12 The Boardman deferral relates to the costs of Boardman in *current* rates—those established  
13 in PGE’s last rate case—and the deferral period ends on the day the new rates set in this case take  
14 effect.<sup>39</sup> In conducting an earnings review prior to amortizing the deferral, the Commission will  
15 consider the reasonableness of PGE’s historical earnings during the deferral period.<sup>40</sup> “Reviewing  
16 earnings that are entirely distinct from the deferral period would be inconsistent with general  
17 principles of ratemaking and deferred accounting,” the Commission has stated.<sup>41</sup> Similarly, in this  
18 rate case, the Commission must determine whether the new rates are just and reasonable on a

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<sup>35</sup> Docket UE 394, Ruling Denying Motion to Strike at 4.

<sup>36</sup> Docket UE 394, Ruling Denying Motion to Strike at 4.

<sup>37</sup> Joint Request for Certification at 5.

<sup>38</sup> Docket UM 1224, Order No. 09-316 at 14 (“[A] general rate case does not provide a utility with an opportunity to recoup expenses beyond those forecast in prior rates, nor is the utility expected to remit revenues higher than previously forecast. This prohibition against the retroactive adjustment of rates to account for unexpected expenses or revenues is known as the rule against retroactive ratemaking.”).

<sup>39</sup> See Docket UE 394, AWEC-CUB/100, Mullins-Gehrke/2; Staff/1800, Storm/6.

<sup>40</sup> OAR 860-027-0300(9); see also Docket UM 1224, Order No. 09-316 at 14 (“ORS 757.259(2) directs us to review a utility’s earnings for an interval that includes the deferral period”).

<sup>41</sup> Docket UM 1224, Order No. 09-316 at 14.

1 forward-looking basis—not by looking back at historical deferrals. This rate case will result in  
2 new rates, based on a 2022 test year, that take effect on May 9, 2022. Because AWEC’s and  
3 CUB’s deferral seeks to remove the costs of Boardman from current rates, amortization of the  
4 deferral has no bearing on establishing just and reasonable base rates going forward.<sup>42</sup>

5 **IV. RESPONSE TO REQUEST FOR CERTIFICATION OF RULING DENYING**  
6 **MOTION TO CONSOLIDATE**

7 PGE opposes the Joint Parties’ request for certification because the ALJ correctly denied  
8 the motion to consolidate. For the reasons explained above and in PGE’s briefing regarding the  
9 motion to consolidate and motion to strike, the Joint Parties’ arguments in support of certification  
10 are unpersuasive. If the Commission grants the Joint Parties’ certification request, it should affirm  
11 the denial of consolidation.

12 **V. MOTION FOR EXTENSION OF TIME**

13 If the ALJ denies certification or if the Commission upholds the ALJ’s denial of the motion  
14 to strike, PGE requests a short extension of time to file its reply testimony responding to the  
15 deferral testimony that PGE sought to strike. As explained above, the deferral testimony addresses  
16 three pending deferrals that were not previously part of this case. Addressing these issues will  
17 require a significant amount of time from PGE personnel who are currently fully occupied  
18 responding to other issues in the rate case. Therefore, if PGE is required to respond to the deferral  
19 testimony, PGE requests that it be permitted to file responsive testimony two weeks after the  
20 decision on PGE’s request for certification. To avoid compressing preparation for the hearing,  
21 PGE requests that the rest of the testimony schedule remain unchanged. PGE also requests that

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<sup>42</sup> *Id.* (“It is appropriate to review a utility’s recent earnings when forecasting rates for the future. In contrast, in the extraordinary situation of deferred accounting, it is appropriate to review the utility earnings during the deferral period in order to determine whether retroactive ratemaking is appropriate to address the exceptional revenues or expenses that were deferred.”)

1 the Commission establish a separate, extended briefing schedule for deferral issues to allow parties  
2 sufficient time to fully address these issues. Specifically, PGE proposes that simultaneous opening  
3 briefs on deferral issues be due on March 1, instead of February 22, that simultaneous closing  
4 briefs on deferral issues be due on March 9, instead of March 2, and that oral argument on deferral  
5 issues be set on March 11, instead of March 4.

6 **VI. CONCLUSION**

7 PGE respectfully requests that the Commission grant certification of the ALJ's ruling  
8 denying the motion to strike and strike the Joint Parties' deferral testimony from the record. The  
9 Joint Parties' deferral testimony is not relevant, and allowing the Joint Parties to file testimony  
10 bringing three new deferrals into the case will constrain the case schedule and unduly prejudice  
11 PGE. It also risks concurrent litigation of the deferrals in multiple dockets, which would waste  
12 the limited resources of the Commission and the parties. If the Commission confirms that the  
13 deferrals will be resolved in this case, then PGE requests an extension of time to file its reply  
14 testimony on deferral issues and an extension of the due date for briefing and oral argument on  
15 these issues.

Dated November 18, 2021

**MCDOWELL RACKNER GIBSON PC**



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