**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UE 394**

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| In the Matter of<br><br>PORTLAND GENERAL ELECTRIC COMPANY,<br><br>Request for a General Rate Revision. | **STAFF CLOSING BRIEF** |

Staff of the Public Utility Commission of Oregon (Staff) hereby submits its Closing Brief in the above-captioned proceeding. Staff's Opening Brief included a list of litigated issues in this proceeding. Staff's Opening Brief also set forth a substantive discussion on its positions in response to Portland General Electric (PGE or Company) and other parties to this proceeding, which are not repeated here. This closing brief focuses on responding to the arguments set forth in PGE's Opening Brief.

## ARGUMENT

### A. Faraday Repowering.

In its Opening Brief, PGE argues Staff's concern with starting the prudence review of the Faraday Repowering Project ("Faraday Project "or "Project") before the Project has been placed into service is outweighed by the efficiencies and fairness of its proposal to open a Phase II of this General Rate Case to determine the ratemaking treatment for the Project approximately three months before Faraday's anticipated in-service date. Staff disagrees that these efficiencies outweigh the risk to customers that rates may depart from being cost-based rates in this case.

Staff and AWEC have identified concerns with PGE's project cost management and doubt PGE's timeline of when Faraday might actually come online. Staff believes there is no reliable information in the record establishing that the Faraday Repowering Project will be online by the end of 2022. Accordingly, under PGE's proposal, the prudence review of Faraday would take place before the final costs are known. While determining the prudence of a resource



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contemporaneously with its construction is not necessarily atypical, it should not happen for the Faraday Project in light of the issues that have been raised. The prudence and ratemaking treatment of Faraday should be determined after that the project is online and the costs are actually known – not sooner.

For the reasons discussed in Staff testimony, PGE's reliance on previous general rate cases (GRCs) in which the Commission has authorized the utility to adopt a tariff rider to place the costs of a new resource in rates after GRC's rate effective date is misplaced. In those cases, the parties stipulated to the special rate making treatment and did not dispute the prudence of the investment or the utility's cost management practices. Accordingly, the Commission should reject PGE's proposed Phase II for Faraday.

**B. Wildfire Mitigation and Vegetation Management Cost Recovery.**

PGE has proposed to include in its 2022 test year $6.6 million for non-vegetation management wildfire mitigation O&M expenses, $6.0 million in Wildfire Mitigation capital projects, $ 12.8 million for vegetation management-related wildfire mitigation expense (aka AWWR), and $35.9 million or all other vegetation management expense.[1] Staff has proposed a performance-based rate mechanism ("PBRM" or "Mechanism") that would apply to $3 million of this total $55.3 million dollars of test year expense for PGE's wildfire mitigation and vegetation management and any incremental expense for these cost categories. Staff's proposed PBRM would also require PGE to defer and return to customers up to $3 million of the annual expense included in base rates in the event PGE does not actually spend the money.

PGE opposes Staff's proposed Mechanism, arguing that it is unrelated to wildfire mitigation, inconsistent with recent legislation regarding wildfire mitigation (Senate Bill (SB) 762), unsupported by evidence showing a need for the Mechanism, and punitive. With respect to the its argument regarding the nexus between Staff's PBRM and PGE's wildfire mitigation, PGE argues that a mechanism designed to mitigate wildfire risk (again, maintaining that this is

[1] PGE/800, Bekkedahl – Jenkins/54-55.


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what Staff's mechanism is for) should focus on all of PGE's wildfire mitigation efforts identified in a utility's "wildfire mitigation plan, which include a subset—but only a subset—of vegetation management costs[,]" aka Advanced Wildfire Risk Reduction (AWWR) costs.[2] PGE disagrees with Staff that it is appropriate to put all vegetation management and wildfire mitigation activities and costs in a single bucket and characterize that bucket as only wildfire mitigation given the rapid evolution of wildfire mitigation practices since 2019.[3]

First, PGE assertion Staff's proposed PBRM is only related to wildfire mitigation is mistaken. The PBRM as incentive for efficient practices for both wildfire mitigation and vegetation management, and also, as a protection to customers in the event PGE spends then its annual test year for these activities. Although PGE seems to suggest otherwise, PGE's spending on AWWR is more than twice PGE's test year expense for wildfire mitigation management activities that PGE has not classified as vegetation management. Staff acknowledges that it could have proposed a PBRM for wildfire mitigation that included other metrics targeted at different wildfire mitigation spending in addition to those included in the Staff proposed mechanism. Staff doubts PGE would have preferred such a mechanism. Further, given the array of activities at issue, attempting to find metrics to which PGE should reasonably adhere would be difficult.

Finally, for all these reasons, PGE's suggestion that non-vegetation management wildfire protection spending should be excluded from the PBRM because it is unrelated to vegetation management is not well taken. PGE implicitly argues that it should be allowed full recovery of all its non-vegetation wildfire mitigation costs such as those for its new Wildfire Mitigation and Resiliency (WM&R) operation and various program areas including as "Risk Management," "Operating Protocols," "Stakeholder Engagement," and "Research and Development," notwithstanding the efficacy and quality of its vegetation management program. This makes little sense. There is no reason PGE's expense for wildfire mitigation R&D or stakeholder

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[2] PGE Opening Brief at 9.

[3] PGE Opening Brief at 10.



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engagement should not be subject to Staff's proposed performance-based ratemaking if PGE fails to adhere to certain standards for an important and significant part of its overall wildfire mitigation strategy.

Second, PGE's argument that the Mechanism is inconsistent with the cost recovery language of SB 762 ignores the differences between the cost recovery language in SB 762 and the language at issue in the Commission's order regarding the interpretation of similar cost recovery language on which PGE relies. PGE argues that the Commission's interpretation of very similar Renewable Portfolio Standard cost recovery language in ORS 469A.120(2) and argues this interpretation compels the conclusion the cost recovery language in SB 762 **requires** dollar-for-dollar recovery of all PGE's expenses and capital costs for wildfire mitigation. For the reasons discussed in its Opening Brief, the cost-recovery language of SB 762 is distinguishable from 469A.120(2), as are the costs to be recovered. Therefore, the Commission's previous interpretation of the language does not compel the conclusion dollar-for-dollar recovery of all wildfire mitigation costs is required.

PGE's argument the $3 million holdback is punitive and unsupported are not well taken.[4] First, the holdback is intended to protect customers from PGE's over recovery of costs for wildfire mitigation and vegetation management. PGE has dramatically increased its spending on both, as compared to 2020 actuals. At the time Staff drafted its testimony, it was not clear that PGE had not overestimated how much it will spend on wildfire mitigation and vegetation management annually. While PGE reports it is on track to spend more than what it has requested in base rates in 2022, this may not be true for future years.

Furthermore, the Company's argument that the limitations on Staff's holdback proposal is punitive mischaracterizes Staff's rationale for its proposal. As explained in Staff Testimony, Staff's $3 million holdback and mechanism is structured to incentivize the Company to continue to engage in, and improve, its vegetation management practices, including those related to

[4] PGE Opening Brief at 16.



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wildfire mitigation, going forward.[5] As explained by Dr. Dlouhy, the Mechanism is based on attainable levels of vegetation management violations set by OPUC Safety Staff. Therefore, the Mechanism is only punitive if the Company does not have an effective program, which PGE states that it is fully committed to.

Staff has not argued that the Company's vegetation management or wildfire mitigation practices are deficient, nor has it argued that PGE's performance in these areas is not already improving. The Mechanism is designed to allow the Company to benefit from prudent and sound business practices to manage risk to the public. As such, PGE will have opportunity to recover all costs of its effective wildfire mitigation and vegetation management programs if it continues to grow and improve its investment these programs as described in its Opening Brief.[6] Accordingly, the Commission should adopt Staff's Mechanism.

As explained in Staff's Opening Brief, even if the Commission decides not to approve Staff's proposed mechanism, Staff recommends that the Commission deny PGE's request to defer incremental costs for wildfire mitigation and vegetation management and an automatic adjustment clause to track these costs into rates. PGE has failed to show the criteria for deferral are satisfied. Further, given the lateness of PGE's request, Staff believes parties have had insufficient opportunity to address the parameters of such a mechanism. If an AAC is adopted, it should have controls on total expenses that PGE can defer and risk sharing. If the Commission is inclined to adopt an AAC, Staff recommends that the Commission direct Staff to work with parties to develop an AAC and whether the Company's pending deferral in UM 2019 should be updated to include an AAC.

**C. Level III Outage Mechanism**

In its Opening Brief, PGE argues that the current Level III Outage Mechanism does not adequately match the rising level of costs PGE faces as extreme weather events become more

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[5] Staff/2400, Dlouhy/9.

[6] PGE Opening Brief at 15.


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frequent. Additionally, PGE disputes Staff's analysis that the average event cost of Level III outages has not increased because Staff excluded Level III events that were also declared emergencies in its statistical analysis of average event cost increase. PGE's arguments are easily rebutted, and Staff's proposed modification to the Level III Outage Mechanism appropriately balances the risk to the Company with increasing frequency of Level III outages and risk to customers.

In recognition of PGE's concern regarding the increasing frequency of Level III outages Staff has proposed a modification so that the amount collected in rates is updated annually, based on a ten-year rolling average. Staff's proposed modification to update the 10-year average annually ensures that the 10-year average reflects recent actual costs.

However, though the number of Level III outages may be increasing, Staff's statistical analysis rejects the conclusion PGE's outage recovery costs recovered under PGE's Level III Outage Mechanism are increasing. PGE urges the Commission to disregard Staff's statistical analysis because Staff did not include costs of previous outages PGE did not recover through the Level III Outage Mechanism. As explained by Staff in its Prehearing and Opening Brief, Staff's statistical analysis excluded Level III events that were declared emergencies because PGE has sought recovery of those events through deferrals.[7] And, in PGE's Opening Brief, the Company states its intention to continue to do so for declared emergencies as a matter of policy.[8] As explained by Staff, it makes no sense to test whether the Level III Outage Mechanism is an appropriate mechanism for the recovery of all Level III outages when this is not its purpose or how it is used by PGE.

[7] Staff notes that both its brief filed on February 7, 2022 and its brief filed on February 22, 2022, were captioned as "Staff Prehearing Brief." Staff's brief filed on February 22, 2022, should have been captioned "Staff Opening Brief."

[8] PGE Opening Brief at 24.



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Staff believes that its proposed modifications more accurately solve for an increase in outages subject to the Level III Outage Mechanism and recommends that the Commission reject PGE's proposal and adopt Staff's modification to the current mechanism.

### D. Deferrals and amortization.

#### 1. The Commission should approve CUB's and AWEC's request to defer Boardman costs in PGE's base rates.

PGE argues CUB and AWEC have failed to meet their burden of proof with respect to their request to defer Boardman costs currently in base rates. Staff disagrees. The closure of Boardman was a stochastic event, which means the impact of the closure must be substantial or there must be extenuating circumstances to warrant deferral.[9] Staff believes both these criteria are satisfied for the reasons discussed in its Opening Brief.

PGE also argues the Commissions should not approve the Boardman deferral because PGE has absorbed, and will continue to absorb, regulatory lag for over a $100 million of offsetting investment during the deferral period for the Boardman costs.[10] PGE's claim it absorbed regulatory lag for other plant during the deferral period is out of place at the deferral stage. In this stage, the Commission applies its discretionary criteria and evaluates the deferral event's impact to the Company. Allowing parties to argue that a deferral is not warranted because of circumstances unrelated to the deferral event introduces confusion and complexity into the Commission's traditional analysis.

Second, PGE argues that approving the deferral will result in a "highly asymmetric result."[11] Staff disagrees. The Commission has authorized PGE to avoid regulatory lag after the

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[9] See *In the Matter of Public Utility Commission of Oregon Staff Request to Open Investigation Related to Deferred Accounting* (UM 1147), Order No. 05-1070.

[10] PGE Opening Brief at 31.

[11] PGE Opening Brief at 31.


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addition of three major plants in the last decade.[12] It is appropriate for the Commission to afford customers comparable treatment for the closure of a major plant. Staff acknowledges that it is recommending the Commission deny PGE's request for similar special rate treatment for its Faraday Repowering Project, but notes that is due to the circumstances of that investment rather than opposition to the concept of avoiding regulatory lag.

Third, PGE argues that the Commission should not approve the deferral because no party announced their intent to seek recovery of these Boardman costs in the five rate cases that have occurred since PGE announced the closure of Boardman. PGE claims that it "based its planning for when to file this rate case on its understanding that Boardman costs, other than decommissioning costs, would remain in base rates until the effective date of new rates in this case, in accordance with normal ratemaking practices."[13] Staff again disagrees with PGE's argument. Neither CUB nor AWEC were obligated to put PGE on notice of their request to defer Boardman costs in rates. Also, it is unlikely CUB and AWEC had reason to know that PGE would not be filing a rate case contemporaneously with the shutdown of Boardman until the shutdown was imminent. Finally, If PGE did not consider the possibility that it would not be allowed to retain amounts collected in rates for the Boardman plant after the plant closed, the fault is not AWEC's or CUB's.

**2. The Commission should approve Staff's proposed parameters for the earnings review and amortization of the Boardman, Wildfire, and Winter Storm deferrals.**

PGE opposes Staff's proposal to address certain issues related to the earnings review and amortization of the Boardman, Wildfire, and Winter Storm deferrals in this case, arguing amortization of each deferral should be addressed separately and in the three different deferral dockets previously opened. PGE also opposes Staff's proposal to conduct earnings reviews for

[12] *See In re Portland General Electric* Company (UE 283), Order No. 14-422 (Tucannon Wind Farm and Port Westward II) and *In re Portland General Electric Company* (UE 294), Order No. 15-356 (Carty Power Plant).

[13] PGE Opening Brief at 32.


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the deferrals for each calendar year of the deferrals and Staff's proposed earnings review benchmark and sharing.

Staff acknowledges the Commission should not issue an order approving the amortization of any amounts deferred in 2021 and 2022 because PGE's Results of Operation reports for those years are not available and an earnings review is not yet possible. However, as Staff has stated in testimony and briefs, the Commission could address the amortization of amounts deferred in 2020 and determine the parameters of the earnings reviews and amortization for all the deferrals, even though it could not conduct the earnings reviews or order amortization until after PGE's earnings for the calendar year in question is available. If the Commission chooses to address the amortization and earnings test parameters, Staff recommends the Commission adopt those proposed by Staff.

**a. Earnings review benchmark.**

PGE argues the Commission should reject Staff's proposed earnings review benchmark of 100 bp below PGE's authorized ROE for the Wildfire and Winter Storm deferrals because recent Commission orders support using PGE's authorized ROE. Staff disagrees the appropriate earnings test benchmark should be determined based how the Commission has handled most recent request for amortization of a deferral. The Commission has stated that the structure of the earnings review for amortization of a deferral under ORS 757.259(5) depends on the nature of the deferral and that it should further the purposes of the deferral.[14] Accordingly, it is the nature of the deferral at issue in previous Commission orders, not how recently the orders were issued, that determines their relevance to this case.

PGE's assertion that it should be allowed to amortize deferred Winter Storm and Wildfire restoration costs up to its authorized ROE is not well taken given the purpose of the deferrals and other considerations. The purpose of these deferrals is not to make PGE whole, but to allow PGE

[14] *See e.g., In the Matter of NW Natural Gas Company, dba NW Natural, Mechanism for Recovery of Environmental Remediation Costs* (UM 1635) and *Request for Determination of the Prudence of Environmental Remediation Costs for the Calendar Year 2013 and the First Quarter of 2014* (UM 1706), Order No. 15-049, p. 11, *citing In re PGE*, Docket Nos. UE 82, UM 445, Order No. 93-257.


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to recover additional costs from ratepayers to better match the benefits to customers of unanticipated spending on restoration after significant damage to PGE's system. In this case, amortization should allow PGE to earn a reasonable return, but should not be used to ensure PGE is able to earn its authorized ROE.

Commission precedent establishes that PGE should bear some risk associated with extraordinary winter storms and wildfires. The Commission denied PGE's 2017 request to defer restoration costs for winter costs because the amounts at issue were within the range of reasonable risk a utility should bear between rate cases.[15] Staff has not recommended a deadband on the amounts the PGE is authorized to defer that would represent the normal business risk PGE is expected to absorb between rate cases. While the earnings review serves a different purpose than a deadband imposed on a deferral, the lack of deadband is an appropriate consideration when deciding the benchmark for the earnings test.[16]

Given these circumstances, Staff believes PGE's authorized ROE -100 bp is an appropriate earnings review threshold. This threshold will allow PGE to share costs with customers to the point it earns a "reasonable return" even though it may not result in PGE earning its desired return.[17]

In contrast, the purpose of the Boardman deferral is not to allow PGE to recover costs of an unanticipated event from ratepayers for which PGE bears some business risk, but to refund to customers amounts collected for service PGE did not provide. There is no sharing of risk to consider. Nor is there a reason to allow PGE to keep at least some of the revenue. PGE should be

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[15] *In the Matter of Portland General Electric Company, Application for the Deferral of Storm Related Costs,* UM 1817, Order No. 19-274 at 10.

[16] Order No. 15-049, *supra* at 12 ("An earnings test should be designed to further the purpose of the deferral and consider other relevant factors, such as whether the deferral required sharing of expenses with shareholders.").

[17] *In the Matter of PGE Application to Amortize the Boardman Deferral,* UE 196, Order No. 10-051 at 6 (The Commission must also conduct an earnings review to determine if the utility's earnings were sufficient at the time of the deferral to absorb the deferred amounts and still earn a reasonable return on investment.").


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required to refund all amounts collected for Boardman after it closed unless doing so will cause PGE's earnings to dip below a reasonable return (authorized ROE – 100 bp). PGE should not be allowed to keep revenue collected for plant not in service to ensure it earned at its authorized ROE or above.

**b. Sharing.**

PGE argues the Commission should reject Staff's proposal for 90/10 sharing of the Winter Storm and Wildfire deferrals because Staff's proposal is outdated. PGE dismisses Staff's reliance on a 2009 opinion in which the Commission adopted 90/10 sharing as "an incentive to the utility to minimize the duration of, and costs associated with, future plant outages," arguing this thinking was rejected in the Commission's more recent opinion declining to impose sharing for NW Natural's deferred environmental remediation costs.[18] Again, PGE's reliance on the most recent opinion without careful analysis of whether it is comparable is misplaced.

In the case of NW Natural, its spending on remediation was done at the order of the Oregon Department of Environmental Quality and Federal Environmental Protection Agency.[19] The Commission found there was limited discretion in the work the company is being required to do.[20] Conversely, while PGE is required to adhere to certain standards, no agency specifically directs PGE what actions to take in response to an outage.

**c. Deferral period.**

PGE opposes Staff's proposal to conduct earnings reviews for each calendar year of the deferral period. PGE proposes that the Commission review PGE's earnings using only 2021, asserting this year is reasonably representative of the deferral period.[21] Staff disagrees there is sufficient evidence to show that 2021 is reasonably representative of the deferral period that extends from at least 2020-2022. Contrary to PGE's implicit suggestion, the question of whether

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[18] PGE Opening Brief at 36 (referring to Order No. 15-049).

[19] Order No. 15-049 at 1.

[20] *Id.*, at 10.

[21] PGE Opening Brief at 34.



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2021 is reasonably representative of other years in the deferral period is not determined by 2021's proximity to the other years, but by a comparison of PGE's revenues in each year. PGE has not yet produced its earnings report for 2021 and will not produce such a report for 2022 for at least. Accordingly, it is not possible to determine if 2021 is reasonably representative of the other years. In absence of any evidence showing 2021 is reasonably representative of the entire deferral period, Staff recommends the Commission reject PGE's proposal.

**d. Timing of earnings test.**

Staff disagrees with PGE's proposal to address the amortization of the three deferrals in the three separate deferral dockets. The Commission has not typically determined amortization of deferral amounts in the same docket in which they approved the deferral. Instead, the Commission most often determines the amortization of different deferrals in a rate proceeding.[22] Second, Staff does not believe it is appropriate to conduct separate earnings reviews for the three deferrals in a serial manner. If this occurs, the order in which the earnings reviews are conducted may result in a skewed amortization of the three deferrals.

If the Commission is not inclined to determine the parameters of the three deferrals in this case, Staff recommends the Commission still approve the Boardman deferral and open a new rate proceeding for the purpose of determining the amortization of the three deferrals.

**F. Schedule 90 Subtransmission Rate**

Staff was unpersuaded by PGE's Opening Brief opposing AWEC's proposal for a subtransmission rate for Schedule 90. Staff continues to recommend that the Commission adopt AWEC's proposal.[23]

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[22] *See e.g., In the Matter of Portland General Electric Company Application for an Order Approving Amortization of Deferred Costs Associated with Four Capital Projects*, UE 275, Order No. 13-440; *In the Matter of Portland General Electric Company Application to Amortize the Boardman Deferral*, UE 196, Order No. 10-051.

[23] Staff/2800, St. Brown/18.


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**E. Schedule 150 Nonbypassability**

Staff continues to support PGE's proposal to make Schedule 137 and Schedule 150 charges nonbypassable because spreading costs of the legislation to all customers aligns incentives in that direct access customers will better be able to support decarbonization proposals when they are also financially impacted by them.[24]

## CONCLUSION

Staff respectfully requests that the Commission approve the recommendations outlined in Staff's Briefs.

DATED this 2nd day of March, 2022.

Respectfully submitted,

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