

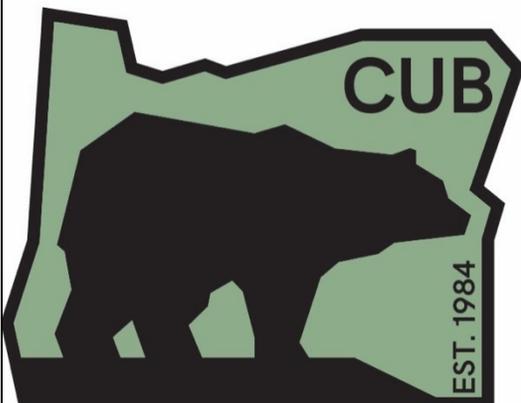
**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 394

In the Matter of)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
Request for a General Rate Revision.)
_____)

**CLOSING BRIEF
OF THE
OREGON CITIZENS' UTILITY BOARD**

March 2, 2022



**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 394

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC COMPANY,)	CLOSING BRIEF OF THE OREGON CITIZENS' UTILITY BOARD
)	
Request for a General Rate Revision.)	
_____)	

I. INTRODUCTION

A. Background

Pursuant to Administrative Law Judge (ALJ) Lackey’s January 6, 2022 Ruling, the Oregon Citizens’ Utility Board (CUB) hereby submits its Closing Brief in the above-captioned proceeding. In this Brief, CUB responds to issues raised by Portland General Electric Company (PGE or the Company). CUB also addresses issues and arguments raised by other parties, including Staff of the Public Utility Commission of Oregon (Staff) and the Alliance of Western Energy Consumers (AWEC).

In its Opening Brief, PGE proclaims that its request to increase rates by \$10 million is “eminently reasonable and fair to customers.”¹ However, PGE’s requested increase fails to tell the entire story, and the Company’s advocacy in this proceeding demonstrates its comfort in shifting inappropriate levels of cost and risk onto customers. The Company continues to propose

¹ UE 394 – PGE’s Opening Brief at 1.

to illegally retain \$109,909,915² in Boardman costs that belong to its customers.³ By taking a legally unsupportable position against the Boardman Deferral that differs from its peer utilities' approach to equitably transition from coal, PGE is intentionally standing in the way of Oregon's transition to clean energy.⁴

The Company's unprecedented request for a single-issue rate proceeding for the wildly over-budget and oft delayed Faraday Repowering Project (Faraday) contains no articulable benefit for customers and must be denied. PGE's proposed changes to its Level III Outage Mechanism deviate from clear Public Utility Commission of Oregon (Commission) direction and are not accompanied by the requisite foundational analysis necessary to justify such a marked shift.⁵ Finally, the Company's arguments against Staff's proposed treatment of the Wildfire and Ice Storm deferrals—specifically PGE's proposal for the Commission to conduct one earnings review for each deferral based on the 2021 calendar year—is contrary established Commission precedent.⁶

In contrast, CUB's recommendations are grounded in equitable and legally supportable ratemaking principles. CUB has met its burden of proof to demonstrate that the Boardman Deferral's costs should be amortized over three years for return to customers. CUB's proposals discussed herein fairly balance the interests of the utility investor and consumer and will aid the Commission in setting just and reasonable rates.⁷ CUB incorporates the arguments contained in

² UE 394 – AWEC/301/Mullins/2.

³ UE 394 – PGE's Opening Brief at 3.

⁴ See UE 394 – CUB/400/Jenks – Gehrke/14.

⁵ See, e.g., *in re Portland General Electric Company*, OPUC Docket No. UE 335, Order No. 18-464 (Dec. 14, 2018) (“PGE must explain and discuss the allocation of risks with customers and company incentives for developing a more resilient system that requires less expense to recover from Level III storms.” and “Any request for an alternative Level III storm deferral mechanism based, in part, on claims of greater storm intensity due to climate change, however, should include some foundational analysis to justify this claim, and provide a chain of causation that connects evidence of expected increases in storm frequency and intensity to increased costs.”).

⁶ UE 394 – PGE's Opening Brief at 3.

⁷ ORS § 756.040.

its Opening Brief here by reference. Rather than reiterating prior arguments, this Brief will address issues raised in other parties' Opening Briefs.

CUB respectfully requests the Commission:

- A. Grant CUB and AWEC's Boardman Deferral and amortize the balance over three years on a functionalized basis for return to customers;
- B. Reject the Company's proposal to conduct a GRC Phase II to bring Faraday into rates;
- C. Adopt CUB's proposed changes to the Company's current Level III Outage Mechanism, or, in the alternative, adopt Staff's proposed changes; and
- D. Adopt Staff's proposal to amortize some Wildfire and Ice Storm Deferral costs over a three-year period in this case while addressing remaining issues in their respective proceedings.

II. ARGUMENT

A. Boardman Deferral

CUB continues to respectfully urge the Commission to order the amortization of the entire balance of the Boardman Deferral over three years for return to customers.⁸ At a minimum, the Commission should approve the deferral, which would set the stage for a dispute over the merits of amortization in Docket No. UM 2119 or a separate contested case. However, the record is sufficient for the Commission to order amortization of the entire balance in this case. Should the Commission disagree with CUB's primary proposal, CUB supports Staff's

⁸ UE 394 – CUB/400/Jenks – Gehrke/5.

Boardman Deferral amortization proposal as an alternative, including requesting that the Commission approve the Boardman Deferral in this proceeding.⁹

PGE advocates for the Commission to decline to consider the Boardman, 2020 Wildfire, and 2021 Ice Storm deferrals in this docket and instead consider them in their respective proceedings.¹⁰ PGE asks the Commission to deny authorization of the Boardman deferral, arguing that the approximately \$109,909,915¹¹ it seeks to improperly charge customers did not result in any harm due to offsetting regulatory lag.¹² PGE asserts the deferral therefore does not meet the Commission’s discretionary or statutory criteria.¹³ PGE argues that CUB’s interpretation of ORS § 757.355 is incorrect, asserting that the Commission has been clear that if utility rates are just and reasonable, not discriminatory, and not confiscatory, they are legal, even if the rates include depreciation expense and a return for a retired plant.¹⁴ PGE argues CUB’s approach would be impractical and would result in asymmetric treatment.¹⁵ PGE asserts its approach does not hinder Oregon’s transition to clean energy merely because it is removing coal from rates ahead of SB 1547’s 2035 deadline.¹⁶

⁹ UE 394 – Staff/2600/Moore – Dlouhy – Storm/5 (“Given that PGE has filed its Results of Operation (ROO) report for 2020, it is clear the Commission can resolve in this case the amortization of amounts deferred in 2020 and Staff recommends the Commission do so.”) and Staff/2600/Moore – Dlouhy – Storm 15 (“Staff recommends the Commission adopt an earnings test benchmark of 100 basis points below PGE’s authorized ROE. . . . PGE would [] not be able to amortize any portion of a credit that would cause PGE’s earnings to go below this benchmark.”) and Staff/2600/Moore – Dlouhy – Storm/13 (“Under Staff’s proposal, the earnings review would be conducted in three tranches, one for each calendar year of approved deferrals.”) and Staff/2600/Moore – Dlouhy – Storm/17 (Staff recommends no sharing for the Boardman Deferral because “allowing PGE to keep a percentage of the deferred amounts will not incent behavior that is beneficial for customers.”).

¹⁰ UE 394 – PGE’s Opening Brief at 3.

¹¹ UE 394 – AWEC/301/Mullins/2.

¹² UE 394 – PGE’s Opening Brief at 30.

¹³ *Id.*

¹⁴ *Id.* citing *In re the Application of Portland Gen. Elec. Co. for an Investigation into Least Cost Plan Plant Retirement*, Docket DR 10, et al., Order No. 08-487 at 21 (Sept. 30, 2008); see also *Gearhart v. Pub. Util. Comm’n of Or.*, 255 Or App 58, 94, 299 P3d 533 (2013) (affirming the Commission on this point); *Gearhart v. Pub. Util. Comm’n of Or.*, 356 Or 216, 237 n. 15, 339 P3d 904 (2014) (“the fact that rates include a component that is prohibited by statute does not necessarily mean that ratepayers have been injured.”).

¹⁵ UE 394 – PGE’s Opening Brief at 30-31.

¹⁶ *Id.* at 31.

PGE's arguments are unpersuasive. First, its commentary about offsetting regulatory lag continues to hold no weight. The test relevant to the deferral criteria is whether the magnitude of costs related the event is substantial or that there were extenuating circumstances.¹⁷ Not whether the Company arguably experienced what it perceives to be offsetting costs. Here, the amount in question is clearly substantial and there were extenuating circumstances.¹⁸

Second, PGE's simplistic view of CUB's ORS § 757.355 legal theory is incorrect and misleading. PGE *cites itself* in asserting that its rates remained fair, just, and reasonable following Boardman's closure.¹⁹ PGE does not determine whether its rates meet the just and reasonable standard. The Commission does.²⁰ Here, CUB continues to urge the Commission to find that PGE's rates would fail to meet the just and reasonable standard and that customers would be injured if the amounts in the Boardman Deferral were illegally kept in rates. Customers have fulfilled their obligation by fully depreciate Boardman, and have done so in an accelerated manner. PGE already received a return of and on their investment, the additional amounts they seek are unlawful. The Commission has broad authority to determine just and reasonable rates,²¹ and it is not obligated to employ any single formula or combination of formulas to determine what are in each case just and reasonable rates.²² CUB urges the

¹⁷ UE 394 – Staff/2600/Moore – Dlouhy – Storm/6.

¹⁸ UE 394 – Staff's Opening Brief at 21.

¹⁹ UE 394 – PGE's Opening Brief at 30 citing PGE/2300, Tooman-Batzler/14-15; PGE/2900, Tooman-Ferchland/14-15.

²⁰ ORS § 756.040.

²¹ OPUC Order No. 08-487 at 5 (“[t]he Commission sets rates under a comprehensive and flexible regulatory scheme. The legislature has expressed no specific process or method the Commission must use to determine the level of just and reasonable rates, and the Commission has great freedom to determine which of the many possible methods it will use.”) and *id.* at 4 (The legislature has provided the Commission with “the broadest authority—commensurate with that of the legislature itself—for the exercise of [this] regulatory function.”).

²² *Wah Chang v. Pub. Util. Comm'n*, 256 Or. App. 151, 161, 301 P.3d 934, 940 (2013).

Commission to exercise this authority to protect customers and find that PGE's ratepayers would be injured by PGE's unlawful recovery of post-closure Boardman costs.

Third, PGE's argument that CUB's approach would create an asymmetrical result is both incorrect and ignores its own historical asymmetrical ratemaking requests. As CUB has demonstrated, PGE has gone to great lengths to avoid regulatory lag on nearly all of its generating assets,²³ and most of its future generation investments will be eligible for dollar-for-dollar cost recovery through the RAC without any consideration of an earnings test.²⁴ The Company is similarly seeking to avoid regulatory lag on Faraday in this proceeding, and its position on the two issues is both one-sided and contradictory.²⁵ It would be inequitable for PGE to be able to retain Boardman costs in rates when it has historically avoided regulatory lag. CUB's approach would more equitably match the regulatory treatment PGE has enjoyed for years.

Fourth, PGE's argument that its position on Boardman will not hinder Oregon's transition to clean energy completely misses the point. PGE asserts that it is complying with SB 1547 by getting coal out of rates. While this is true, it mischaracterizes CUB's argument. CUB does not dispute that PGE is complying with SB 1547. PGE is intentionally standing in the way of an equitable transition to clean energy by attempting to charge customers for a coal plant that is not serving them. Beyond being illegal, PGE's tactic departs from the practices of its peer utilities and could have a chilling effect on stakeholders' willingness to collaborate on removing

²³ UE 394 – CUB/400/Jenks – Gehrke/19.

²⁴ UE 394 – AWEC – CUB/100/Mullins – Gehrke/3, lines 13-15 and PGE's Prehearing Brief at 17 ("As with costs subject to the RAC, recovery of these costs would not be subject to an earnings review.").

²⁵ UE 394 – AWEC's Opening Brief at 18 ("It is also one-sided and contradictory for PGE to raise concerns about regulatory lag it may incur on assets between rate cases while simultaneously seeking to retain the benefits of this lag for its shareholders with respect to the Boardman Deferral.").

thermal resources from rates in the future in a smooth and equitable manner through accelerated depreciation.²⁶

Finally, PGE's insistence that the Boardman Deferral be subject to its version of an earnings review should be ignored.²⁷ As discussed, the Commission broad discretion as to the contours of any potential earnings review.²⁸ Consistent with established Commission precedent, earnings reviews should recognize the circumstances that gave rise to the deferral in the first place.²⁹ Here, the Commission should recognize PGE's systematic overcollection and recognize that PGE has avoided regulatory lag on nearly all of its generating assets.³⁰ Further, the Commission should consider that failing to return the amounts in the Boardman Deferral to customers would be unlawful under ORS § 757.355. This is consistent with the Commission guidance indicating that "earnings test treatments should be designed to further public policy goals related to the specific deferral."³¹ CUB urges the Commission to decline to apply an earnings test to the amounts in the Boardman Deferral.

CUB respectfully requests that the Commission approve the Boardman Deferral and order amortization of the amounts therein over a three-year period for return to customers.

B. Faraday Repowering Project

CUB continues to recommend that the Commission reject PGE's proposal to open a Phase II of this general rate case (GRC) to evaluate Faraday's prudence before the project is complete.³² In support of its unprecedented position, PGE argues that efficiency is served because parties' prudence review in a GRC Phase II can begin before the repowering project is

²⁶ UE 394 – CUB/400/Jenks – Gehrke/14-15.

²⁷ UE 394 – PGE's Opening Brief at 34-35.

²⁸ UE 394 – CUB/400/Jenks – Gehrke/18, lines 7-9.

²⁹ UE 394 – CUB/400/Jenks – Gehrke/18, lines 9-11 and Staff/2600/Moore – Dlouhy – Storm/14.

³⁰ UE 394 – CUB/400/Jenks – Gehrke/19.

³¹ *In re Portland General Electric Company*, OPUC Docket No. UE 82, Order No. 93-257 at 11-12.

³² UE 394 – PGE's Opening Brief at 4.

fully complete.³³ PGE argues that key elements of its proposal are common, such as reviewing the prudence of capital additions before the asset has been placed in service.³⁴ PGE points to assets examined in this proceeding to bolster its position, arguing that Staff reviewed the prudence of seven projects that were not complete when PGE initially filed its GRC.³⁵ PGE asserts that its proposal is both fair and efficient, in part because PGE's net plant is expected to increase between the rate effective date in this proceeding and Faraday's estimated in-service date.³⁶

PGE's arguments represent a thinly-veiled attempt to, yet again, avoid any semblance of regulatory lag. As Staff correctly notes, before the Commission has historically allowed single-issue ratemaking proceedings—as PGE requests here—the applicant must demonstrate that circumstances warrant a departure from traditional ratemaking practices.³⁷ PGE has failed to do so. First, it would be inappropriate for parties to review Faraday's costs for prudence before the project is fully complete because the plant has been subject to many delays that call into serious question the accuracy of any cost forecast. This would be true for any project, but it is especially true for Faraday since it is already more than 100% over budget and has been substantially delayed.³⁸

Second, PGE's argument that it is common to review prudence before an asset has been placed into service does not mean that doing so would be appropriate in this instance. Faraday is distinguishable from other generating assets recovered under a tariff rider in that it was not subject to analytical rigor in an Integrated Resource Plan (IRP).³⁹ Since Faraday was not

³³ *Id.* at 5.

³⁴ *Id.* at 6.

³⁵ *Id.*

³⁶ *Id.* at 7.

³⁷ UE 394 – Staff's Opening Brief at 17.

³⁸ UE 394 – AWEC's Prehearing Brief at 19 and PGE's Prehearing Brief at 10, lines 6-10.

³⁹ UE 394 – Staff's Opening Brief at 19.

analyzed in an IRP, it is paramount that stakeholders be able to fully review the project for prudence after it has gone into service to ensure that all costs and issues with the project are reasonably knowable. Further, the Commission has allowed tariff riders accompanied by attestations in limited, discrete circumstances with strict conditions attached to them. In those circumstances, the Commission has required that the plant in question be online by the middle of the test year and has required review to ensure the test year forecast is still reasonably accurate.⁴⁰

PGE's proposal differs because Faraday's anticipated online date is still not reasonably certain, and its proposal would provide no ability to ensure the test year forecast in this proceeding is still accurate. Further, PGE's reliance on Staff's position to allow some projects into rates in this GRC with an attestation is misleading. In those limited instances, the projects in question were not subject to continuous delays like Faraday, and Staff effectively mitigated customer risk by recommending that "costs for these seven projects be capped at the total cost forecasted for the projects as of the date of the hearing in this case."⁴¹ With Faraday, both its anticipated costs and online date are not reasonably certain. PGE's Faraday proposal is distinguishable from the examples it relies on.

Finally, PGE's argument that its net plant is expected to increase between the rate-effective date in this proceeding and Faraday's estimated in-service date does little to further its argument. Any potential future Faraday cost recovery proceeding should also consider any changes to costs and revenues across PGE's system.⁴² PGE's reliance on net plant expectations does not ameliorate CUB's concern that PGE may have additional future revenue that should be

⁴⁰ UE 394 – CUB/400/Jenks – Gehrke/25, lines 9-12.

⁴¹ UE 394 – Staff/700/Hanhan/6-7.

⁴² UE 394 – CUB/400/Jenks – Gehrke/24.

taken into consideration when bringing Faraday into base rates. The Company's cherry-picked argument fails to advance its position.

The Company has failed to meet its burden of proof to demonstrate that its proposal for a Phase II of this GRC to examine Faraday's prudence is reasonable. CUB continues to urge the Commission to reject PGE's proposal and direct it to follow traditional ratemaking processes.

C. Level III Storm Outage Mechanism

PGE has failed to carry its burden to prove that its proposal to modify the existing Level III Storm Outage Mechanism is superior to the reasonable and balanced proposals brought forth by Staff⁴³ and CUB. PGE's proposal departs from clear Commission direction articulated in Dockets UE 335 and UM 1817, and lacks the requisite foundational analysis required to be adopted.⁴⁴ In considering any proposal that would increase PGE's recovery of Level III storm costs, the Commission clearly "directed PGE to fully address the allocation of risk with customers and company incentives for developing a more resilient system."⁴⁵ PGE failed to do so. Specifically, the record in this proceeding is devoid of any foundational analysis linking increases in storm frequency to increased costs,⁴⁶ and any discussion from PGE regarding why its allocation of risk enables it to retain an adequate incentive to invest in a more resilient system. PGE's proposed changes are one-sided and would all but ensure dollar-for-dollar recovery of Level III storm costs.

According to PGE, its proposal would fairly allocate costs between shareholders and customers.⁴⁷ While PGE believes CUB's approach would improve on the current mechanism,

⁴³ See UE 394 – Staff's Prehearing Brief at 4.

⁴⁴ See *supra*, note 5.

⁴⁵ *In re Portland General Electric Company, Application for the Deferral of Storm-Related Restoration Costs*, OPUC Docket No. UM 1817, Order No 19-274 at 13-14.

⁴⁶ OPUC Order No. 18-464 at 14.

⁴⁷ UE 394 – PGE's Opening Brief at 22.

the Company argues its approach is superior because it more fairly allocates risks of severe events between the Company and its customers.⁴⁸ PGE asserts it has demonstrated that the current mechanism is not well-suited to the clustered pattern of events it has experienced.⁴⁹ The Company argues it has experienced increased costs due to the increased intensity of Level III events.⁵⁰

While CUB agrees that some changes to the Level III mechanism are warranted, the level to which PGE seeks to alter the mechanism is not supported by the evidentiary record. The Company's proposal contains insufficient incentives for it to invest in a more reliable system, as it would enable it shift the lion's share of Level III storm risk to customers. In contrast, CUB's proposal contains balanced incentives that align with Commission precedent. As Staff has demonstrated, PGE's proposed changes are not warranted because costs are not actually trending upward, as the Company proclaims.⁵¹ Although the frequency of Level III storms has been increasing, the costs associated with these events has not.⁵² Therefore, the Company has not completed the requisite foundational analysis required by the Commission to demonstrate its proposed changes are warranted.

CUB urges the Commission to adopt its proposed changes to the Level III Outage Mechanism. As an alternative, CUB supports Staff's proposal as long as the annual rate change occur on January 1st of each year.⁵³

⁴⁸ *Id.* at 23.

⁴⁹ *Id.*

⁵⁰ *Id.* at 24.

⁵¹ UE 394 – Staff's Opening Brief at 4.

⁵² *Id.* at 5.

⁵³ UE 394 – CUB's Opening Brief at 20.

D. Wildfire and Ice Storm Deferrals

CUB supports Staff's proposal to amortize the Wildfire and Ice Storm deferrals over a three-year period in this rate case.⁵⁴ Under Staff's proposal, the Commission can authorize amortization of some of the deferred amounts—the prudently incurred costs deferred in 2020—to enable these accounts to shift to accruing interest at MBT.⁵⁵ Staff's proposal for earnings tests and sharing can be addressed in this proceeding while ongoing prudence concerns about post-2020 costs in the deferred accounts can be addressed at a later time. CUB supports Staff's proposal to conduct an earnings review by year, as it aligns with recent Commission precedent for multi-year deferrals.⁵⁶

PGE argues that multiple earnings reviews would create complications and are not necessary to accurately capture PGE's earnings.⁵⁷ PGE is wrong. All utility earnings inherently fluctuate from year to year, and Staff's method would more precisely align potential recovery of deferred costs with PGE's earnings in a given year. Staff's proposal would not be difficult to implement once PGE's Results of Operation are published for a given year. Further, Staff's proposal aligns with Commission precedent. On numerous occasions, the Commission has held that:

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. If past ratepayers paid an appropriate amount of rates for service received, it is inappropriate to burden or enrich future ratepayers based on retroactive events.⁵⁸

⁵⁴ UE 394 – Staff/2600/Moore – Dlouhy – Storm/3.

⁵⁵ *Id.* at 13.

⁵⁶ UE 394 – Staff's Opening Brief at 23 citing *in re Northwest Natural Gas Company, Mechanism for Recovery of Environmental Remediation Costs*, OPUC Docket No. UM 1635, Order No. 15-049.

⁵⁷ UE 394 – PGE's Opening Brief at 33.

⁵⁸ *In re Idaho Power Company, Request for a General Rate Revision*, OPUC Docket No. UE 233 (Phase II), Order No. 13-416 at 7 (Nov. 12, 2013) citing OPUC Order No. 09-316 at 14-15.

When a deferral spans multiple years, such as the Wildfire and Ice Storm deferrals considered in this case, it is appropriate to review earnings individually during each year the deferral took place.

CUB urges the Commission to adopt Staff's proposal regarding amortization and the application of an earnings test.⁵⁹

III. CONCLUSION

For the foregoing reasons, CUB respectfully requests that the Commission adopt its recommendations in this proceeding.

Dated this 2nd day of March, 2022.

Respectfully submitted,



Michael P. Goetz, OSB #141465
General Counsel
Oregon Citizens' Utility Board
610 SW Broadway, Ste. 400
Portland, OR 97205
T. (503) 227-1984
E. mike@oregoncub.org

⁵⁹ UE 394 – Staff's Prehearing Brief at 11-16.