

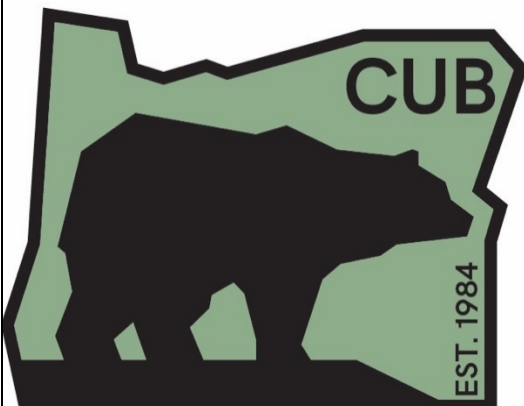
**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 394

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

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

February 7, 2022



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OF OREGON**

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I. INTRODUCTION

A. Background and Procedural Posture

Pursuant to Administrative Law Judge (ALJ) Lackey’s January 6, 2022 Ruling, the Oregon Citizens’ Utility Board (CUB) hereby submits its Prehearing Brief in the above-captioned proceeding. In this Brief, CUB identifies its position on unsettled issues that are subject to ongoing litigation. This Brief will also address CUB’s support for the Fourth Partial Stipulation and provide context for its decision to not oppose the rate spread portion of the Stipulation.

On July 9, 2021, Portland General Electric Company (PGE or the Company) filed this request for a general rate revision under Oregon Revised Statutes (ORS) 757.205 and 757.210 and Oregon Administrative Rules (OAR) 860-022-0025 and 860-022-0030. The proceeding was subsequently docketed as Oregon Public Utility Commission (Commission) Docket No. UE 394. The Company’s initial filing requested an increase in rates of approximately \$59.0 million, or 2.9 percent. PGE separately requested a 2.0 percent increase in power costs as filed in the

Company's annual update tariff (Docket No. UE 391), for a total revenue requirement increase of \$99.0 million. PGE proposed to offset those values with a decrease of 0.9 percent related to supplemental schedules and a decrease of 0.1 percent for cycle billing basis. The result was an all-in price change of 3.9 percent proposed in its initial filing.¹

Since that time, the many parties to this proceeding have met in good faith several times to discuss potential settlement of the wide-ranging issues encompassed in the Company's request. A settlement conference was held on September 10, 2021 to discuss issues related to Cost of Capital. As a result of those discussions, PGE, Staff of the Public Utility Commission of Oregon (Staff), CUB, the Alliance of Western Energy Consumers (AWEC), Fred Meyer Stores and Quality Food Centers, Division of The Kroger Co. (Kroger), and Walmart, Inc. (Walmart) (Stipulating Parties) reached a resolution on a First Partial Stipulation. Calpine Energy Solutions (Calpine) was not a party to the Stipulation, but did not oppose it. The First Partial Stipulation, filed September 30, 2021, resulted in agreement on issues related to Return on Equity, Capital Structure, Cost of Long-Term Debt, and Rate of Return.² After reaching agreement on the First Partial Stipulation, the Stipulating Parties and Calpine continued settlement discussions on November 5, 2021. The Stipulating Parties subsequently agreed to terms on a Second Partial Stipulation that addressed issues related to the Company's Integrated Operations Center, Level III Storm Outage Accrual, and Working Capital, among others.³

The Stipulating Parties and Calpine participated in a third round of settlement discussions beginning on December 7, 2021. Small Business Utility Advocates (SBUA) was not a party to the First or Second Partial Stipulations, but joined in the third round of settlement discussions.

¹ UE 394 – PGE/100/Pope – Sims/16.

² UE 394 – First Partial Stipulation (Sept. 30, 2021).

³ UE 394 – Second Partial Stipulation (Dec. 2, 2021).

As a result of the discussions, the Stipulating Parties and SBUA reached a compromise resolving several additional issues in this docket (Third Partial Stipulation). Calpine did not take a position on the issues resolved in the Third Partial Stipulation. The Third Partial Stipulation resolved all remaining revenue requirement issues in the proceeding for a \$10 million increase in non-net variable power costs, subject to three exceptions.⁴ The Third Partial Stipulation also addressed other issues including the Company's commitment to permanently cease the collection of residential customer deposits.

On February 1, 2022, the aforementioned parties engaged in a fourth round of settlement discussions. As a result of the discussions, PGE, Staff, CUB, AWEC, Kroger, Walmart, Calpine, and SBUA reached a compromise settlement resolving several additional issues. This Fourth Partial Stipulation is anticipated to be filed with the Commission on February 7, 2022. The settled issues include PGE's Trojan Nuclear Decommissioning Trust, Schedule 7 Residential Basic Charge, Schedule 7 Residential Line Extension Allowance, Habitat Restoration, and Schedule 138 Energy Storage Cost Recovery, among others. Parties also reached a settlement on all issues related to Rate Spread and Customer Impact Offset. Parties agreed to justify their support or non-opposition to the Fourth Partial Stipulation in these Prehearing Briefs. As this Brief will detail, CUB does not oppose the agreement related to Rate Spread, but does not support it. As a signatory to the remainder of the Fourth Partial Stipulation, CUB urges the

⁴ UE 394 – Third Partial Stipulation (Jan. 13, 2022) (“First, the \$3 million hold-back proposed by Staff within its wildfire mitigation and vegetation management mechanism would continue to be litigated as a part of the mechanism. If Staff prevails, the revenue requirement increase resulting from this stipulation will be \$7 million. If the Commission determines an amount other than \$3 million should be “held back,” the revenue requirement increase associated with this stipulation will be \$10 million minus the amount held back. Second, issues regarding the appropriate limitations on fee free bank card usage by small commercial customers will continue to be litigated. Third, AWEC's issue A-25 Related to the funding of the Trojan Nuclear Decommissioning Trusts will continue to be litigated.”).

Commission to adopt its terms. The parties to the Fourth Partial Stipulation agreed that the following issues will continue to be litigated in this proceeding:

- Level III Outage Mechanism
- Faraday Repowering Cost Recovery Treatment
- Wildfire Mitigation and Vegetation Management Mechanism
- Major Deferrals
- Non-bypassability of Schedule 150
- Schedule 90 Sub-Transmission Rate

Beyond settlement, there have been five rounds of testimony offered by PGE and other parties, creating a robust evidentiary record for the Commission’s consideration. Parties to this proceeding have served and been served a large number of data requests. Issues raised in the Company’s initial filing have been modified or clarified throughout the proceeding. Despite the progress made by all parties through settlement, CUB continues to strongly oppose several of the Company’s requests. Further, CUB believes both approval and subsequent amortization of the Docket No. UM 2119 CUB and AWEC Boardman Deferral is appropriate to comport with ORS § 757.355, Oregon’s “used and useful” statute, and align with sound and equitable ratemaking policy. The record in this proceeding demonstrates that CUB’s proposals addressed herein should be adopted to ensure fair, just, and reasonable rates.

B. Burden of Proof

In a utility dispute before the Commission, the burden of proof consists of two discrete components—the burden of persuasion and the burden of production.⁵ In a utility proceeding,

⁵ *In re Portland General Electric Company Application to Amortize the Boardman Deferral*, OPUC Docket No. UE 196, Order No. 09-046 at 7 (Feb. 5, 2009).

the burden of persuasion and the ultimate burden of producing sufficient evidence to support its claims is always with the utility.⁶ Other parties to the proceeding have the burden of producing evidence to support their argument in opposition to the utility's position.⁷ In a case in which a utility is requesting a change in rates or a schedule of rates—such as a general rate case—the utility bears the burden of showing that its proposed change will result in rates that are fair, just, and reasonable.⁸ In regards to the Boardman Deferral, AWEC and CUB bear the burden of proof as the applicants that initiated Commission Docket No. UM 2119.

C. Summary of Issues

In CUB's view, Prehearing Briefs are an opportunity for parties to frame the outstanding issues that will be addressed at the evidentiary hearing, in post-hearing briefs, and at oral argument. CUB reserves the right to respond to issues raised by parties in Prehearing Briefs, at the evidentiary hearing, or in oral argument. Further, while this Brief will rebut some of the Company's arguments raised in its Surrebuttal Testimony, CUB views the forthcoming Opening Brief as the primary procedural mechanism to formally submit substantive written arguments.

This Brief will address the following:

- A. Boardman Deferral
- B. Faraday Repowering Project
- C. Level III Storm Outage Mechanism
- D. Wildfire and Ice Storm Deferrals
- E. Single-Issue Ratemaking Mechanisms

⁶ *Id.*

⁷ *Id.* at 7-8.

⁸ ORS 757.210(1)(a).

F. Fourth Partial Stipulation

II. ARGUMENT

A. Boardman Deferral

CUB continues to respectfully urge the Commission to order the amortization of the entire balance of the Docket No. UM 2119 Boardman Deferral on a functionalized basis over three years for return to customers.⁹ In order to effectuate this remedy, CUB agrees with Staff that the Commission should approve the pending Boardman Deferral request and subsequent reauthorization as a preliminary matter.¹⁰ At a minimum, the Commission should approve the Boardman Deferral in this proceeding to set the stage for a dispute over the merits of amortization in Docket No. UM 2119 or a separate contested case. However, CUB believes the record is sufficient for the Commission to order amortization of the entire Boardman Deferral balance. Staff and AWEC agree that it is appropriate to address the amortization of the deferral in this case.¹¹ Should the Commission disagree with CUB’s primary proposal, CUB supports Staff’s Boardman Deferral amortization proposal as an alternative.¹²

Sound legal and policy rationale exists for the Commission to grant CUB the remedy it seeks. First, ORS § 757.355(1) states that “a public utility may not, directly or indirectly, by any

⁹ UE 394 – CUB/400/Jenks – Gehrke/5.

¹⁰ UE 394 – Staff/2600/Moore – Dlouhy – Storm/4, lines 1-4.

¹¹ UE 394 – Staff/2600/Moore – Dlouhy – Storm 12, lines 18-20.

¹² 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.”).

device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property not presently used for providing utility service to the customer.” Oregon’s “used and useful” statute is firm. From the date that Boardman ceased operating on October 15, 2020, the plant has not been used and useful and customers have not been receiving a benefit from its operations. Therefore, under Oregon law, customers must not bear the costs. CUB, AWEC, and Staff are aligned in this position.¹³ Due to this firm statutory prohibition and the Commission’s broad authority to determine just and reasonable rates,¹⁴ the Commission can end its inquiry here and order the return of the entire Boardman Deferral balance to customers. However, additional legal and policy rationale dictate that CUB’s request be granted.

Second, the Boardman Deferral meets the Commission’s statutory and discretionary deferral criteria. The Commission’s review of a request to defer costs involves two stages of review:¹⁵ The first stage of the Commission’s review involves a determination of whether a deferral application meets the criteria set forth in ORS §757.259(2)(e). ORS § 757.259(2)(e) is a catch-all provision that allows deferral of:

[i]dentifiable utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes

¹³ See UE 394 – AWEC-CUB/100/Mullins-Gehrke/5, lines 1-3 (“Thus, allowing PGE to continue to recover the cost associated with Boardman after it has ceased operation may violate Oregon law.”) and Staff/2600/Moore – Dlouhy – Storm/21, lines 7-10 (“Staff believes the appropriate standard is ORS 757.335 [sic]. Under that statute, PGE should not recover amounts for plant that is not in service in the rates charged to retail customers.”).

¹⁴ *In re Portland General Electric Company*, OPUC Docket Nos. UE 88/DR10, 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.”).

¹⁵ *In re Public Utility Comm’n of Oregon, Staff Request to Open an Investigation Related to Deferred Accounting*, OPUC Docket No. UM 1147, Order No. 05-1070 at 2 (Oct. 5, 2005) (hereafter OPUC Order No. 05-1070).

or the fluctuation of rate levels or to match appropriately the costs borne by and the benefits received by ratepayers.¹⁶

The second stage of the Commission's review involves a permissive exercise of the Commission's discretion under ORS § 757.259(2), providing, in pertinent part:

Upon application of a utility or ratepayer or upon the Commission's own motion . . . the commission by order may authorize deferral of the following amounts for later incorporation into rates.¹⁷

When exercising this discretion, the Commission considers two interrelated factors: the type of event that caused the deferral, and the magnitude of the event's effect.¹⁸ The Commission draws a distinction between risks that can be predicted to occur as part of the normal course of events (stochastic risks) and risks that are not susceptible to prediction and quantification (scenario risks).¹⁹ Stochastic risks are generally not appropriate for deferred accounting unless the magnitude of the financial impact of the event on the utility is substantial. The Commission has held that magnitude of harm to justify deferral of scenario risks is lower—material, rather than substantial.²⁰

The Boardman Deferral meets the statutory criteria for deferred accounting because it will appropriately match the costs borne by and benefits received by customers.²¹ Ratepayers have not benefitted from Boardman following its closure date. It is therefore not appropriate for ratepayers to pay for costs beyond that date.²² If the Boardman Deferral is not approved and amortized, customers would be paying for plant that did not benefit them, which would be in

¹⁶ OPUC Order No. 05-1070 at 2-3.

¹⁷ *Id.* at 3 (emphasis added).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 7.

²¹ ORS 757.259(2)(e).

²² UE 394 – AWEC – CUB/100/Mullins – Gehrke/5, lines 7-10 and CUB/400/Jenks – Gehrke/15.

contravention of ORS § 757.355 and represent a departure from ORS § 757.259(2)(e). Further, the Boardman Deferral meets the criteria to be granted under the Commission’s own discretion. As Staff notes, Boardman’s closure was foreseen, likely rendering it a stochastic risk.²³ Therefore, the magnitude of the deferral must be substantial or there must be extenuating circumstances to justify amortization.²⁴ Here, there were both. AWEC provided a \$109,909,915 figure as an updated estimate for the outstanding balance remaining in the Boardman Deferral as of May 9, 2022—over a month before the Company’s initial filing in this case.²⁵ CUB agrees with Staff that this figure satisfies the magnitude criterion for deferral of a stochastic risk.²⁶ Further, PGE’s practice of collecting revenue to pay for a plant that is no longer in service for over a year represents an extenuating circumstance that justifies exercise of the Commission’s discretion to authorize amortization of the Boardman Deferral.

Regarding any potential earnings test, CUB continues to stress that the Commission retains broad discretion as to its contours.²⁷ Rather than a narrow examination of whether earnings were below or above authorized earnings, any earnings test should recognize the circumstances that gave rise to the deferral in the first place.²⁸ Here, the Commission should recognize the systematic overcollection built into Oregon ratemaking and recognize that PGE has avoided regulatory lag on nearly all of its recent generating assets.²⁹ Further, the Commission should consider that failing to return the amounts in the Boardman Deferral to customers would be direct contravention of ORS § 757.355. This is consistent with the Commission guidance

²³ UE 394 – Staff/2600/Moore – Dlouhy – Storm/9, lines 14-16.

²⁴ *Id.* at lines 16-18.

²⁵ UE 394 – AWEC/301/Mullins/2.

²⁶ UE 394 – Staff/2600/Moore – Dlouhy – Storm/10, lines 15-16.

²⁷ UE 394 – CUB/400/Jenks – Gehrke/18, lines 7-9.

²⁸ UE 394 – CUB/400/Jenks – Gehrke/18, lines 9-11 and Staff/2600/Moore – Dlouhy – Storm/14.

²⁹ UE 394 – CUB/400/Jenks – Gehrke/19.

indicating that “earnings test treatments should be designed to further public policy goals related to the specific deferral.”³⁰ CUB continues to urge the Commission to order the return of the Boardman Deferral without consideration of an earnings test because it would be illegal for PGE to retain the amounts in the deferral. Additionally, as the next section will discuss, the Boardman Deferral furthers important public policy goals.³¹ As an alternative, CUB finds Staff’s recommended treatment as detailed in its testimony to be reasonable.³²

Finally, returning the amounts in the Boardman Deferral to customers is supported by sound and equitable ratemaking policy and would serve to further Oregon’s policy to decarbonize the electric system. Under the provisions of ORS § 757.518, Oregon electric utilities are required to remove coal plant related costs from rates by January 1, 2030. In order to comply with this mandate, Oregon ratepayers have been required to bear significant costs in connection with accelerating the closure of coal plants throughout the west.³³ Even in this case, PGE is seeking to recover additional costs in connection with accelerated closure of Colstrip Units 3 and 4.³⁴ Given that these costs are being passed to customers in an accelerated manner to facilitate early closures, it is imperative that the benefits be passed to customers as they are realized.³⁵ Failure to do so would create a barrier to Oregon’s transition to clean energy.³⁶ While PGE erroneously claims that CUB’s approach represents a change in Commission policy, the exact opposite is true. By filing the Boardman Deferral, CUB and AWEC are actually

³⁰ *In re Portland General Electric Company*, OPUC Docket No. UE 82, Order No. 93.257 at 11-12.

³¹ *See, e.g.* ORS 757.518.

³² *See supra*, note 13.

³³ UE 394 – AWEC – CUB/100/Mullins – Gehrke/2, lines 8-9.

³⁴ *Id.* at lines 9-10.

³⁵ *Id.* at lines 11-14.

³⁶ UE 394 – CUB/400/Jenks – Gehrke/14.

mirroring the treatment for retired coal plants on PacifiCorp's and Idaho Power's systems.³⁷ Granting the Boardman Deferral would align treatment PGE's share of the plant with Idaho Power's.³⁸ There is no reason why PGE could not have made a similar proposal in Oregon, rather than leaving its customers to seek a refund of the impacts associated with revenue requirement.

Beyond threatening the mandates in Oregon law to decarbonize the electric system, failing to return the amounts in the Boardman Deferral would unfairly advantage PGE to the detriment of its customers. Enabling PGE to sidestep this established regulatory policy would create a perverse incentive for PGE to charge customers for retired plant as long as it can.³⁹ CUB and AWEC's proposal would also more equitably match the regulatory treatment that PGE has enjoyed for years. PGE was allowed to accelerate Boardman's depreciation outside of a general rate case via separate trackers between 2011 and 2013.⁴⁰ This results in increased short-term costs for PGE's captive customers. Further, PGE has historically avoided regulatory lag on a large number of recent generation investments,⁴¹ and, under new climate legislation, most of its future investments will be eligible for dollar-for-dollar cost recovery through the Renewable Adjustment Clause (RAC).⁴² In terms of equity, if ratepayers must be responsible for the additional costs of new renewable resources acquired pursuant to state renewable policy through the RAC, it follows that ratepayers must also get the benefit of retiring coal resources pursuant to state policy at the time the resources are deferred.⁴³

³⁷ UE 394 – CUB/400/Jenks – Gehrke/22 and Staff/2600/Moore – Dlouhy – Storm/17.

³⁸ UE 394 – CUB/400/Jenks – Gehrke/22.

³⁹ UE 394 – Staff/2600/Moore – Dlouhy – Storm/17, lines 14-18.

⁴⁰ UE 394 – CUB/400/Jenks – Gehrke/12.

⁴¹ UE 394 – CUB/400/Jenks – Gehrke/23.

⁴² UE 394 – AWEC – CUB/100/Mullins – Gehrke/3, lines 13-15.

⁴³ *Id.* at 15-18.

B. Faraday Repowering Project

In Surrebuttal Testimony, PGE requested that the Commission allow a continuation of this 2022 general rate case into a second phase starting in the July-August 2022 timeframe to focus on the solely Faraday Repowering Project (Faraday) cost recovery.⁴⁴ According to PGE, this proposal would give parties the opportunity to review Faraday's prudence within approximately three months of the project's in-service date, allow for a timely Commission decision, and provide a matching of Faraday's costs and benefits.⁴⁵ Despite the Company's slight change in direction, CUB continues to oppose the Company's proposal and urges the Commission to reject it outright.

While PGE couches its proposal as a "general rate case Phase II," the contours of its proposal are much more akin to a single-issue tariff rider with a prudence review. Under PGE's proposal, the scope of the second phase would be limited to reviewing the prudence Faraday's costs and allowing PGE to recover prudently incurred costs of the project starting with the project in-service date.⁴⁶ This is problematic. Typically, in a general rate case, rates are established based on an overall costs and revenues associated with a specific test year.⁴⁷ Even though substantial questions surrounding Faraday's prudence remain,⁴⁸ any potential future cost recovery proceeding should also consider any changes to costs and revenues across PGE's system.⁴⁹ Put another way, parties should be able to bring forth any potentially countervailing issues that may be relevant. This is consistent with traditional general rate case practices. An

⁴⁴ UE 394 – PGE/2600/Bekkedahl – Tinker/1, lines 20-22.

⁴⁵ *Id.* at 1-2.

⁴⁶ *Id.* at 16, lines 5-8.

⁴⁷ UE 394 – CUB/400/Jenks – Gehrke/24, lines 7-8.

⁴⁸ UE 394 – Staff/2500/Enright/3, lines 1-2.

⁴⁹ UE 394 – CUB/400/Jenks – Gehrke/24.

extension to this proceeding that would only examine Faraday's prudence would unfairly benefit the Company and prejudice other parties. CUB urges the Commission to deny the Company's proposal and direct it to follow traditional ratemaking practices.

C. Level III Storm Outage Mechanism

CUB recommend that the Commission adopt its recommended changes to the Level III Storm Outage Mechanism that would enable the account to carry a negative balance, subject to a hard cap.⁵⁰ CUB's recommended changes adequately account for the dynamic nature of storms that affect the Company's system and fairly balances risk between PGE and its customers.⁵¹ As an alternative, CUB supports Staff's proposal that would not allow negative accrual balances, but would annually recalculate the amount recovered in rates based on an updated ten-year average.⁵² CUB proposes one change to Staff's proposal—that the annual rate change for the ten-year rolling average of costs occur on January 1st of each year.⁵³ This proposal would not be burdensome on PGE and would minimize the frequency of rate changes because the Company already updates several supplemental schedules on January 1.⁵⁴

Under PGE's proposal, the amount collected in base prices will continue to be based on the ten-year average of Level III restoration costs, which will accrue to a reserve account for use against future Level III events.⁵⁵ PGE's proposal would allow the reserve account to carry a

⁵⁰ UE 394 – CUB/500/Gehrke/8, lines 8-11.

⁵¹ *Id.*

⁵² UE 394 – Staff/2700/St. Brown/6.

⁵³ UE 394 – CUB/500/Gehrke/11.

⁵⁴ *Id.*

⁵⁵ UE 394 – PGE/2400/Bekkedahl – Tooman/16, lines 14-16.

negative balance, subject to certain criteria.⁵⁶ CUB's approach is preferred because it is subject to a hard cap, rather than a minimum amount of sharing, as the Company proposes. A hard cap provides much greater protection to customers than a small amount of sharing (i.e. a "soft cap"). This proposal is also less burdensome on Staff and intervenors who must audit the Company's Level III events.⁵⁷ As an alternative, PGE proposes to combine Staff and CUB's proposals.⁵⁸ Neither Staff nor CUB support this proposal.

D. Wildfire and Ice Storm Deferrals

With greater insight into the legislative activity that is anticipated in this year's session and after reviewing recent testimony in this proceeding, CUB now supports Staff's proposal to amortize the Wildfire and Ice Storm deferrals over a three-year period in this rate case.⁵⁹ As Staff notes, once the amounts are approved for amortization, ratepayers will benefit because the applicable interest rate for amortization would decrease from Authorized Rate of Return to the Modified Blended Treasury (MBT) rate.⁶⁰ CUB supports Staff's proposal to 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.⁶¹ Under this proposal, Staff's proposal for earnings tests and sharing can be addressed in this proceeding while ongoing

⁵⁶ *Id.* at 16-17 ("For every year that results in a negative balance, the actual Level III restoration costs that are applied to that negative balance will be shared 90% by customers and 10% by PGE (i.e., 90/10 sharing, where 90% of the costs will be applied to the 3 balancing account and 10% will be absorbed by PGE). If the balancing account exceeds a \$12 million positive or negative balance, PGE will amortize the excess amount by either collection from (negative balance) or refund to (positive balance) customers based on a 90/10 sharing of the excess amount.").

⁵⁷ UE 394 – CUB/500/Gehrke/12.

⁵⁸ UE 394 – PGE/2400/Bekkedahl – Tooman/17.

⁵⁹ UE 394 – Staff/2600/Moore – Dlouhy – Storm/3.

⁶⁰ *Id.*

⁶¹ *Id.* at 13.

prudence concerns about post-2020 costs in the deferred accounts can be addressed at a later time in the respective deferral dockets.

E. Single-Issue Ratemaking Mechanisms

In testimony, CUB put forth a proposal to adjust a utility's return on equity downwards by 5 basis points in future proceedings for every one percent of revenue requirement that is held within deferrals.⁶² This proposal was based on the proposition that deferrals and single-issue ratemaking mechanisms reduce shareholder cost recovery risk. At this time, CUB would like to formally withdraw its proposal in this proceeding. However, CUB maintains that single-issue ratemaking mechanisms do have an effect on utility risk and reserves the right to raise issues related to this general proposition in future proceedings.

F. Fourth Partial Stipulation

CUB commends the parties to the Fourth Partial Stipulation for working in good faith and ultimately agreeing to terms that are in the public interest. CUB respectfully urges the Commission to adopt the Fourth Partial Stipulation as a reasonable resolution of several important issues in this proceeding. In the stipulation, CUB notes that it is not a signatory to the portion related to Rate Spread and Customer Impact Offset, but does not oppose that portion. CUB fully endorses the remainder of the stipulation. CUB's decision to not oppose the Rate Spread and Customer Impact Offset is grounded in a desire to retain important Commission precedent. The Commission has a longstanding policy "that precludes any customer class from receiving a rate reduction in the face of an overall increase in revenue requirement."⁶³ This

⁶² UE 394 – CUB/400/Jenks – Gehrke/2.

⁶³ *In re Revised Tariff Schedules Applicable to Electric Service and the Application for Approval of Alternative Form of Regulation Plan Filed by PacifiCorp*, OPUC Docket No. UE 94, Order No. 96-175 at 5-6 (Jul. 10, 1996).

policy was recently reaffirmed in PGE’s last general rate case, and the Commission examined that the rate increase there “will not be reflected equally amongst customer classes—some customer rates will go up while others will go down. We direct the parties in future proceedings to address forecasted rate impacts and provide justification for differing treatment in testimony supporting the stipulation.”⁶⁴

CUB would prefer that future rate spread and rate design stipulations or orders align with the existing Commission precedent that disallows some rate decreases in the face of an overall rate increase. However, some concessions must be made in settlement in order to more closely align the diverse interests of multiple parties. In this instance, CUB was willing to agree to not oppose the portion of the Fourth Partial Stipulation related to Rate Spread and Customer Impact Offset because the effect on Schedule 7 customers matched CUB’s proposal in recent testimony.⁶⁵ Therefore, despite the deviation from existing policy, the customers we represent are not being harmed. Additionally, the Fourth Partial Stipulation provides important benefits to residential customers on issues germane to CUB’s advocacy—notably, residential basic charges, residential line extension allowance, Schedule 138 energy storage treatment, and habitat restoration.

In all, the Fourth Partial Stipulation represents a reasonable resolution of issues that were reached by diverse parties. CUB urges the Commission to adopt its terms. CUB does not oppose the rate spread portion and reiterates the importance of Commission precedent regarding rate spread and allocation of an overall revenue requirement increase between customer classes.

⁶⁴ *In re Portland General Electric*, OPUC Docket No. UE 335, Order No. 19-129 at 11 (Apr. 12, 2019).

⁶⁵ UE 394 – CUB/400/Jenks – Gehrke/28.

III. CONCLUSION

The foregoing represents the universe of live issues that CUB has addressed on the record in this proceeding. CUB will provide additional arguments in support of its above positions throughout the remainder of this proceeding. CUB reserves the right to rebut any arguments raised by other parties at the hearing, in briefs, or in oral argument.

Dated this 7th day of February, 2022.

Respectfully submitted,



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