BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 394

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Request for a General Rate Revision.	**STAFF PREHEARING BRIEF**

Staff of the Public Utility Commission of Oregon files this prehearing brief pursuant to the Administrative Law Judge (ALJ)'s January 6, 2021 Ruling modifying the procedural schedule in this matter. Under the original schedule adopted on August 3, 2021 and as slightly modified by the ALJ, the parties have the opportunity to file three briefs: the Prehearing brief due on February 7, 2022, the Opening Brief due on February 22, 2022, and the Closing Brief due on March 2, 2022.

Portland General Electric Company (PGE or Company) filed this general rate case (GRC) on July 9, 2021. As discussed in prehearing briefs, parties to this case have executed four stipulations resolving most of the issues presented by PGE's rate filing. Seven issues remain for resolution in this case: PGE's Level III Outage Mechanism, Staff's proposed performance based ratemaking mechanism for wildfire mitigation and vegetation management costs, the Faraday Repowering project, the Boardman deferral, amortization of the Boardman deferral, the 2020 Labor Day wildfire and 2021 Winter Storm deferrals, the Schedule 190 sub-transmission rate, and Schedules 137 and 150 non-bypassability. Staff addresses each of these issues below.

ARGUMENT

A. Staff recommends that the Commission reject PGE's proposed changes to PGE's Level III Outage Mechanism and adopt the modification proposed by Staff.

PGE's Level III Outage Mechanism dates back to PGE's 2009 rate case. In that rate case, PGE explained that it categorizes outages as Level I, Level II, and Level III. Level III

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

outages are those that meet at least one of the following criteria: (1) affect at least 50,000 customers; (2) qualify for Institute of Electrical and Electronics Engineers (IEEE) Major Day Event exclusion; or (3) include several substations or feeders. Prior to 2011, PGE purchased property insurance to cover Level III outage restoration costs (hereinafter referred to as "Level III outage costs"). PGE's actual cost for this insurance was approximately $1.5 million a year and expense for this insurance was included PGE's revenue requirement for purposes of setting rates.[1]

In its 2009 general rate case, PGE testified that property insurance for Level III outages would no longer be available at favorable terms and that PGE intended to discontinue the policy.[2] PGE proposed to recover Level III outage costs directly from customers with a balancing account mechanism.[3] Under PGE's proposal in its 2010 GRC, PGE would recover $4.5 million annually from customers with $3.5 million accruing to a balancing account and $1.0 million for fixed O&M. Actual costs would accrue to the balancing account as well and the balancing account would become negative if costs exceeded amounts in the account.[4]

Staff opposed PGE's balancing account proposal. Staff proposed rate recovery for Level III outage costs based on a ten-year average of PGE's Level III outage costs, which was $2,034,613.[5] Staff explained that, "[w]hile it is true that expenses associated with Level III outages can vary from year to year, setting rates based on a historical average addresses these fluctuations, incents the company to operate in a manner to control costs, and does not put the burden of auditing and micro managing the company's efforts to restore service on Staff."[6]

---

[1] UE 215 PGE/1000, Pope-Tooman/8-9.

[2] UE 215 PGE/800, Hawke-Nicholson/12-14.

[3] UE 215 PGE/800, Hawke-Nicholson/12-14.

[4] UE 215 PGE/800, Hawke-Nicholson/12-14.

[5] UE 215 Staff/400, Ball/6.

[6] UE 215 Staff/400, Ball/5.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

Parties to PGE's 2010 GRC ultimately stipulated to test year expense of $2 million based on a ten-year rolling average of Level III costs. The parties also agreed to support an accounting order allowing PGE to reserve any unspent dollars for future Level III storm costs. The Commission adopted the parties' agreement.[7]

The amount recovered under the Level III Outage Mechanism has been subject to change, based on the most recent 10-year rolling average, in each of PGE's rate cases since its 2010 GRC. In PGE's most recent rate case, Docket No. UE 335, the parties stipulated the amount recovered in rates should be set to $3.8 million based on a ten-year rolling and litigated PGE's request to modify the mechanism so that it would allow PGE to recover amounts spent on recover in excess of the amounts accrued, i.e "go negative." The Commission denied PGE's application to modify the mechanism but invited the Company to submit a proposal with more justification in a future proceeding, subject to certain criteria:

> We reject PGE's proposal, but we invite the company to return with an alternative that provides more justification, and a chain of causation justifying the change. * * *
>
> * * *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. * * *[8]
>
> As PGE works to refine and improve its proposals for major storm recovery, PGE should also work to ensure that there is balance in the mechanism that operates to encourage PGE to develop a robust and resilient distribution system. Adapting to climate change should be a holistic undertaking in that recovery costs from more frequent high-impact events are balanced with investments and practices that mitigate the negative consequences from those events. If PGE's proposal will increase the ease of recovery of Level III storm costs for the company, 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.[9]

---

[7] *In the matter of Portland General Electric Co.* (UE 215), Order No. 10-478, p. 6.

[8] *In the Matter of Portland General Electric Company, Request for a General Rate Revision* (UE 335), 18-464.

[9] *Id.*, p. 14

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

Subsequently, the Commission addressed PGE's application to defer 2017 Level III outage restoration costs that exceeded the amounts for Level III outages PGE had accrued. The Commission denied PGE's deferral request, but reiterated that it was willing to consider modifications to the Level III mechanism provided certain foundational requirements were met:

> We have previously stated that, in evaluating any future storm recovery mechanism, the Commission expects a holistic plan that balances recovery of costs from more frequent high-impact events with incentives for investments and practices that mitigate the negative consequences from those events. Specifically, in proposing any future alternate storm mechanism that would increase the company's recovery of Level III storm costs, we directed PGE to fully address the allocation of risk with customers and company incentives for developing a more resilient system. In the company's next rate case, we are prepared to consider how to appropriately allocate the risk associated with the cumulative effect of multiple years of above-average storm costs as well.[10]

1. PGE's proposed changes to the Level III Outage Mechanism are not warranted because costs subject to the Mechanism are not trending upward.

In this rate case, PGE once again asks the Commission to modify the Level III Outage Mechanism to allow it to go negative to ensure PGE is allowed to recover Level III Outage restoration costs that exceed the amounts collected in base rates. PGE argues that its proposed modifications comply with the Commission's directive to propose a, "holistic plan that balances recovery of costs from more frequent high-impact events with incentives for investments and practices that mitigate the negative consequences from those events."[11] Additionally, PGE argues that it has satisfied the Commission's foundational requirement for its proposed modifications by establishing Level III outage events frequency, intensity, and cost are increasing.[12] However, because PGE failed to support its proposed modifications with persuasive analysis, PGE's proposed modifications to the Mechanism should not be adopted.

---

[10] *In the Matter of Portland General Electric, Application for the Deferral of Storm-Related Restoration Costs* (UM 1817), Order No. 19-274, pp. 13-14.

[11] PGE's Prehearing Brief, pp. 33-35.

[12] PGE's Prehearing Brief, pp. 35-36.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

As discussed in testimony, Staff agrees with PGE that the frequency of storms is increasing. However, restoration costs per storm collected under the mechanism are decreasing approximately in unison.[13] Because decreasing restoration costs per storm approximately offset increasing storm frequency, Level III outage restoration costs have not been trending upwards over time, a fact that Staff confirmed with statistical analysis. Specifically, Staff performed the Mann-Kendall Test, which is used determine whether a time series has a monotonic upward or downward trend.[14] Staff testified that the "Mann-Kendell statistic for the 14 years of actual costs from 2008 to 2021 fails to reject the null hypothesis that there is no trend" of costs increasing.[15]

PGE argues that Staff's statistical analysis should be discounted because it relies on only one variable (cost), includes too little time-series data with which to evaluate a longer trend caused by climate change, and does not take into account costs of Level III outages that were not recovered under the mechanism."[16] PGE's first argument that Staff's analysis of costs should be discounted because it only considers costs is nonsensical and requires no response. PGE's second argument does not bear out with analysis. In response to PGE's suggestion the Mann-Kendall Test did not use a sufficiently long time period, Staff reran the test using a longer time period, 1996-2021. Once again, the statistic failed to reject the null hypothesis that there is no upward trend.[17]

PGE's third argument that an upward trend in costs is shown by the fact, "50% of the real costs have been incurred in just the past eight years of the 26-year period"[18] is not persuasive because eight years is an arbitrary cut off. For example, it can also be said that 50 percent of real costs have been incurred in the last 10 or 12 years of a 26-year period. An appropriate way to

[13] Staff/2700, St. Brown/3-4.
[14] Staff/1400, St. Brown/6.
[15] Id.
[16] PGE/1400, Tooman-Batzler/41-42.
[17] Staff/2700, St. Brown/5.
[18] PGE/1400, Tooman-Batzler/41.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

estimate if future years are likely to have higher costs is to determine if Level III mechanism costs are trending upwards with statistical analysis, which is exactly what Staff's Mann-Kendall test does. PGE's selection of eight years of costs is not a replacement for an appropriate statistical trend test.

PGE also attempts to refute Staff's observation regarding the lack of an upward trend in costs by pointing out that Staff's analysis does not include costs of declared-emergency events.[19] Staff is willing to agree with PGE that when all Level III events *including declared states of emergency* are considered, there is an increase in costs, mostly due to the 2020 wildfire and the 2021 ice storm. However, costs associated with declared emergency-events have not been recovered under the Level III mechanism and will not be in the future according to PGE's testimony.[20] Instead, PGE has sought recovery of these costs through deferrals and testifies that it plans to do so in the future.[21]

Given PGE's frequent practice of seeking deferrals for extraordinary storm costs and PGE's recently approved emergency deferral account, the question presented in this case is not whether current Level III Outage Mechanism is a sufficient mechanism to recover all extraordinary storm costs. Instead, the question is whether it is a sufficient mechanism for the outages to which it will be applied. Staff's analysis shows that it is.

In its final round of testimony, PGE asserts the current mechanism is not sufficient because the costs of future events are subject to inflation and the impact of expansion to PGE's service area and/or infrastructure and therefore, not fully captured in the historical average.[22] PGE also asserts the 10-year historical average is behind subsequent events, because outage events tend to come in clusters. These arguments are also not persuasive.

---

[19] PGE/2400, Bekkedahl-Tooman /6.

[20] PGE/800, Bekkedahl-Jenkins/64 ("Events that are more extreme in nature, however, and as defined by a declared state of energy, should be covered by alternative cost-recovery, such as emergency deferral.")

[21] *Id.*

[22] PGE/2400, Bekkedahl-Tooman/9.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

First, PGE is mistaken that inflation is not accounted for in the 10-year historical average. The 10-year average is based on constant (inflation-adjusted) dollars. This can be seen in that the 2014 Level III Outage cost in the 10-year average from the Joint Parties Second Partial Stipulation is $6,394,048 instead of its nominal value of $5,623,875.

Second, PGE's arguments that historical costs are not a reasonable proxy for future costs because PGE's system is expanding ignores the beneficial impacts over time of hardening the system. For example, PGE testifies that, "where cost-effective to do so, PGE will install tree wire (i.e., conductor covered with insulation). This will limit the potential for an outage when tree limbs contact the wire during wind, snow, and/or ice storms."[23] This and similar measures have likely been repeated throughout PGE's territory, which changes the effect a Level III storm or other event can have on PGE's system.

Third, in response to PGE's argument that years of mild weather can pull down the average, Staff notes that years with severe weather do the opposite. Additionally, PGE's argument that the current mechanism fails because it does not allow PGE to build a reserve for years with severe events rings hollow in light of the current balance of the Level III Outage Mechanism. Staff notes PGE currently has approximately $8 million[24] in its reserve balance, so the Company's characterization that, "the accrual and Reserve will likely be insufficient when the next cluster of Events occur"[25] is not persuasive.

Further, the Commission has authorized PGE to establish an Emergency Deferral Account into which PGE's costs related to declared emergencies will automatically accrue (i.e., be deferred). This account provides PGE the opportunity to recover outage restoration costs in excess of their historical average, which has a similar effect as would allowing the Level III balancing account to go negative. Now that there are separate deferrals for declared

---

[23] PGE/800, Bekkedahl-Jenkins/72, lines 5-7.

[24] PGE had a balance of $8.41 million in 2020 in its response to Staff DR 406 and the 2021 accrual and actuals approximately offset each other.

[25] PGE/2400, Bekkedahl-Tooman /10, lines 1-2.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

emergencies, allowing the Level III balancing account to go negative is not necessary. This is because the deferral of costs using PGE's Emergency Deferral Account is same as a Level III Outage Mechanism that allows PGE to defer the same costs when they exceed the amounts accrued under the Mechanism.

Finally, PGE's assertion its proposed changes to the Level III Outage Mechanism are appropriate to incent PGE to harden the system is not well taken. As Staff testified, Staff believes "PGE's incentive to harden its system is strongest when Level III outage expenses are set on a forward-looking basis, rather than trued up after the fact."[26] PGE's general rate case provides significant revenue for PGE to harden its system on a forward-looking basis. PGE testified that its T&D O&M expense increased from 2020 actuals of $146.7 million by approximately $25.9 million.[27] Further, as discussed above, PGE asks to include an enormous amount of recent transmission and distribution investment in rates in this rate case. PGE testified that this rate case is driven primarily by approximately $1.566 billion in capital investments in its transmission and distribution (T&D) system, including over $800 million of investment in "poles and wires."[28] PGE witnesses testified that it made these investments in the past three years to among other things, "withstand increasing weather events due to climate change[.]"[29]

2. The Commission should adopt Staff's proposed changes to the Level III Outage Mechanism.

In response to the concern regarding the increasing frequency of Level III Outages, Staff proposed to modify the Level III Outage Mechanism 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 in an automatic adjustment clause ensures that the 10-year average

---

[26] Staff/2700, St. Brown/6.

[27] PGE/800, Bekkedahl-Jenkins/76.

[28] PGE/100, Pope-Sims/17.

[29] PGE/800, Bekkedahl-Jenkins/7.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

reflects recent actual costs. Staff believes its proposed mechanism appropriately balances risk between customers and the Company and recommends its adoption by the Commission.

B. The Commission should adopt Staff's proposed Wildfire Mitigation and Vegetation Management cost recovery mechanism.

PGE's proposed 2022 Test Year includes $55.3 million for wildfire mitigation and vegetation management overhead and management (O&M) expense. Staff, PGE, the Oregon Citizens' Utility Board (CUB), and the Alliance of Western Energy Customers (AWEC) have stipulated to the inclusion of $55.3 million in PGE's 2022 test year. The only contested issue related to PGE's revenue requirement for wildfire mitigation and vegetation management is whether the recovery of the "last" $3 million, which is approximately five percent of PGE's requested $55.3 million, should be subject to a performance-based ratemaking mechanism (PBRM) proposed by Staff. Under Staff's proposed PBRM, PGE could recover the last $3 million of PGE's proposed Test Year expense, and incremental costs, i.e., those exceed those in base rates, if PGE actually incurs the costs, and if recovery of the expense will not cause PGE's earnings to exceed the applicable earnings benchmark. Under Staff's PBRM, the applicable benchmark is PGE's authorized ROE, or authorized ROE with downward adjustments, depending on the number of vegetation management violations PGE has incurred.

In its second round of testimony, PGE opposed Staff's proposed PBRM and asked the Commission to adopt an automatic adjustment clause (AAC) for its incremental costs but did not provide details about how the AAC would work.[30] In its final round of testimony, PGE continued to oppose Staff's mechanism, and submitted a proposed AAC, Schedule 151, for wildfire mitigation costs.[31] Under PGE's AAC, PGE would defer costs in excess of the amount in base rates and annually update the amount collected in rates to include the deferred incremental amounts.[32] In addition to submitting a proposed AAC, PGE announced that it plans

[30] PGE/2000, Bekkedahl-Jenkins/15.

[31] PGE/3000, Macfarlane-Tang/33-34.

[32] *Id.*

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

to increase its O&M spending for wildfire mitigation in 2022, over what it projected at the time of its opening testimony, by 44 percent and increase its initially estimated capital spending by 67 percent.[33] PGE asks the Commission to authorize PGE to defer these incremental amounts in this rate case for later amortization under its proposed AAC.[34]

1. Staff's proposed PBRM is consistent with Senate Bill (SB) 762(8).

PGE argues that Staff's PBRM inconsistent with SB 762, which adopted requirements related to risk-based wildfire protection plans because Staff's mechanism does not guarantee dollar-for-dollar recovery of all costs incurred to implement the plan as is required by the cost-recovery provision of that bill. PGE relies on Commission precedent interpreting similar cost-recovery provisions for the Renewable Portfolio Standard in ORS 469A.120(1) and (2) to support its assertion that dollar-for-dollar recovery is required. For the reasons discussed below, PGE's arguments should be rejected.

SB 762 concerns wildfire protection and requires public utilities to file risk-based wildfire protection plans. The cost recovery subsection of that bill, now codified at ORS 757.963(8), provides:

> All reasonable operating costs incurred by, and prudent investments made by, a public utility to develop, implement or operate a wildfire protection plan under this section are recoverable in the rates of the public utility from all customers through a filing under ORS 757.210 to 757.220. The commission shall establish an automatic adjustment clause, as defined in ORS 757.210, or another method to allow timely recovery of the costs.

For the RPS, the cost recovery language although identical to the SB 762(8) language, in part, is divided between two separate subsections in ORS 469A.120 as follows:

> (1) Except as provided in ORS 469A.180(5), all prudently incurred costs associated with compliance with a renewable portfolio standard are recoverable in the rates of an electric company, including interconnection costs, costs associated with using physical or financial assets to integrate, firm or shape renewable energy sources on a firm annual basis to meet retail electricity needs, above-market costs and other costs associated with transmission and delivery of qualifying electricity to retail electricity

---

[33] PGE/2800, Bekkedahl-Tinker-Brownlee/5.

[34] PGE/2800, Bekkedahl-Tinker-Brownlee/30.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

consumers.

> (2) The Public Utility Commission shall establish an automatic adjustment clause as defined in ORS 757.210 or another method that allows timely recovery of costs prudently incurred by an electric company to construct or otherwise acquire facilities that generate electricity from renewable energy sources and for associated electricity transmission.

In its order addressing PGE's and PacifiCorp's request for a dollar-for-dollar cost recovery mechanism for variable power costs of renewable resources, the Commission addressed the appropriate interpretation of ORS 469A.120(1), applying the statutory analysis specified by the Oregon Supreme Court.[35] The Commission concluded the language in subsection (1) providing "all prudently incurred costs associated with compliance with a renewable portfolio standard are recoverable in the rates of an electric company[,]" "does not mandate dollar-for-dollar recovery of all RPS costs, but rather allows the utilities the opportunity to recover their variable costs."[36] In that order, the Commission noted that it had previously concluded that ORS 469A.120(2), which requires the Commission to "establish an automatic adjustment clause as defined in ORS 757.210 or another method that allows timely recovery of costs prudently incurred by an electric company to construct or otherwise acquire [renewable resources]" did provide for dollar-for-dollar recovery of capital costs.

PGE argues that the second sentence in SB 757.963(8), which mirrors ORS 469A.120(2), must be subject to the same interpretation as ORS 469A.120(2), and therefore means PGE is entitled to dollar-for-dollar recovery of its costs related to its wildfire protection plan. However, PGE overlooks that ORS 757.963(8) combines the provisions of ORS 469A.120(1) and (2) into one subjection and refers to one category of costs whereas ORS 469A.120(1) and (2) each referred to a different category of costs. This difference means the Commission's previous conclusion regarding the cost recovery provision in ORS 469A.120(2) does not control here.

---

[35] In the Matter of Portland General Electric Company and PacifiCorp, dba Pacific Power, Request for Generic Power Cost Adjustment Mechanism (UM 1662), Order No. 15-408, p. 6, *citing State v. Gaines*, 346 Or 160 (2009).

[36] Id.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

In interpreting ORS 469A.120, the Commission concluded that the legislature intended that under subsection (1), all costs related to RPS compliance are recoverable in utility rates and that under subsection (2), a subset of those costs, the utility's capital investments, must be recovered on a dollar-for-dollar basis. If the Commission's separate interpretations of the language in subsections (1) and (2) are applied to the language as it is combined in ORS 757.963(8), the Commission would have to conclude that the legislature specified that all costs related to implementation of the utility's wildfire protection plan are recoverable, i.e., the utility must have opportunity to recover them, and in the next sentence, specified that these costs must be recovered on a dollar-for-dollar basis under an AAC. This interpretation does not make sense.

If, as PGE argues, the costs must be subject to an automatic adjustment clause that ensures dollar-for-dollar recovery, the first sentence in ORS 757.963(8) describing the same costs as recoverable has no meaning. Such an interpretation is inconsistent with the statutory directive to interpret a statute that has several provisions or particulars in a manner that if possible, give effect to all provisions.[37] Staff's interpretation of ORS 757.963(8), that utilities are entitled to the opportunity to recover their costs in an automatic adjustment clause or other similar mechanism, but not entitled to an automatic adjustment clause that assures dollar-for-dollar recovery, complies with the statutory directive to give meaning to every word in the statute.

Staff's interpretation of ORS 757.963(8) is further supported by examining the distinction between the recovery of capital and non-capital costs. Under ORS 757.335, capital investments can only be recovered in rates after the investments are put in service. Accordingly, to the extent the Commission is required to establish an automatic adjustment mechanism for capital costs, there is only one option, to create a mechanism that will periodically adjust rates for plant

---

[37] ORS 174.010. *See e.g. Waxman v. Waxman & Associates, Inc.*, 224 Or. App. 499, 508 (2008).

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

already placed in service. Such a mechanism would necessarily allow dollar-for-dollar recovery of prudent plant placed into service.

This same requirement would not apply to an automatic adjustment clause adopted for non-capital costs. A directive to adopt an automatic adjustment clause for non-capital costs does not carry with it an implicit requirement to allow dollar-for-dollar recovery given that many AACs adopted by the Commission in previous orders do not do so. Instead, more than one type of automatic adjustment clause can be used for non-capital costs, and not all types would necessarily result in dollar-for-dollar recovery. For example, the Commission could authorize an automatic adjustment clause that allows PGE to update rates every year to take into account its updated forecast of Wildfire Mitigation expense. Such a mechanism would be consistent with the express requirement in the statute that the costs are "recoverable" and the express requirement that the Commission allow recovery through an automatic adjustment clause or similar method that allows timely recovery.

Staff's interpretation is supported by the statutory analysis used by Oregon's appellate courts. Under this methodology, the first step in a statutory construction analysis is to examine the text and context of a statute, and legislative history if such is proffered.[38] If the legislature's intent remains unclear after examining text, context, and legislative history, the appellate court resorts to general maxims of statutory construction to aid in resolving the remaining uncertainty.[39] ORS 757.963(8) includes no express requirement for dollar-for-dollar recovery. Instead, the statute provides that costs to implement a wildfire protection plan are "recoverable" and that they must be recovered through an automatic adjustment clause as defined in ORS 757.210 or similar method that will allow timely recovery of costs.

"Recoverable" means "capable of being recovered."[40] An "automatic adjustment clause defined in ORS 757.210," means "a provision of a rate schedule that provides for rate increases

---

[38] *State v. Gaines*, *supra*, 346 Or at 171-72.

[39] *Id.*, at 172.

[40] Webster's *Third New International Dictionary*, p. 1898.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

or rate decreases or both without prior hearing, reflecting increases or decreases or both in costs incurred, taxes paid to units of government or revenues earned by a utility and that is subject to review by the commission at least once every two years."[41]

In 1987, the Attorney General provided a formal opinion to the Public Utility Commissioner interpreting the Commissioner's authority to adopt automatic adjustment clauses under ORS 757.210. The Attorney General opined that there are two types of automatic adjustment clauses, ones that incorporate previously incurred costs into future rates and others that that do not.[42] The Attorney General advised the Public Utility Commissioner that without express authority for retroactive ratemaking, the Commission was authorized under to ORS 757.210 to adopt only automatic adjustment clauses that did not amortize previously incurred expenses or revenues into future rates.[43]

The legislature subsequently adopted ORS 757.259, which authorizes the Commission to adopt an automatic adjustment clause that incorporates previously incurred costs into future rates. Notably, however, the legislature did not change the definition of automatic adjustment clause in ORS 757.210 to restrict the Commission's authority to retroactive automatic adjustment clauses that guarantee dollar-for-dollar recovery of incurred costs.

2. Staff's proposed mechanism is warranted by the circumstances.

Because Staff's proposed mechanism is not inconsistent with the language of ORS 757.963(8), the only question Staff's proposal raises is whether it is appropriate as a matter of policy. Staff believes it is given the scope of PGE's requested increase in spending for vegetation management and wildfire mitigation. In its opening testimony, PGE proposed significant increases to both compared to its actual spending in 2020. Given these significantly large increases and the uncertainty of whether PGE can execute on its proposed plans, Staff

[41] ORS 757.210(1)(b).

[42] *Charles Davis, Public Utility Commissioner*, Or. Op. Atty. Gen. OP-6076. (1987 W.L. 278316).

[43] *Id.* (We conclude that the commissioner may employ an automatic adjustment clause to adjust rates prospectively to reflect future costs more accurately, that the commissioner lacks authority to allow the utility retroactively to recover past fuel costs.").

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

proposed a mechanism to protect customers from paying for services PGE does not provide or for overpaying for service that does not meet specified standards.

The majority of PGE's proposed spending for wildfire mitigation is for vegetation management. Based on this and the Commission's recent treatment of PacifiCorp's wildfire mitigation and vegetation management, Staff's PBRM subjects PGE's recovery of any incremental costs for wildfire mitigation and vegetation management, as well as of a fraction of PGE's requested test year revenue requirement ($3 million), to certain requirements related to the efficacy of its vegetation management program. Staff's mechanism also serves to prevent PGE from recovering incremental costs from customers when such recovery will cause PGE's earnings to exceed its authorized ROE and as such is recoverable from shareholders.

3. The Commission should not approve PGE's request to defer incremental wildfire mitigation costs or its request for an AAC in this rate case.

In its most recent round of testimony, PGE acknowledged that its forecasted spending in 2022 for wildfire mitigation had increased again from $19.4 million in O&M to $28 million. PGE does not seek to include this additional expense in this rate case but asks the Commission to approve PGE's request to defer this amount and allow PGE to amortize the incremental expense pursuant to its proposed AAC. Even if the Commission decides to not approve Staff's proposed mechanism, Staff recommends that the Commission deny PGE's request for deferral and the request to an AAC based on the untimely nature of the requests.

As noted above, PGE did not notify parties of its request to defer incremental wildfire mitigation costs or submit a specific proposal for an AAC until its final round of testimony. Accordingly, no party has had the opportunity to testify regarding either proposal. If approved, PGE's requests could result in PGE's recovery of millions of dollars of incremental costs with no regard to PGE's earnings and no incentive to minimize costs. If the Commission approves an AAC for PGE, it should include some sharing and include an earnings test so that PGE is not

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

allowed to recover incremental expenses for wildfire mitigation even when its earnings otherwise exceed its ROE.

C. The Commission should reject PGE's proposed Phase II to determine the prudence and ratemaking treatment of PGE's Faraday Repowering Project.

The Faraday Repowering Project ("Faraday Project") involves the replacement of PGE's original Faraday Hydro Plant on the Clackamas River, specifically Units 1 – 5 and the original powerhouse. The new powerhouse will consist of two higher efficiency turbines (Units 7 and 8), and a reinforced concrete powerhouse with new flood protection systems.[44] In its original testimony, PGE estimated the Faraday Project would be finished in March 2022. In its most recent round of testimony filed February 1, 2022, PGE estimates Faraday will be on-line in December 2022. In the Third Partial Stipulation previously filed in this case, stipulating parties agreed to the removal of the Faraday Project from PGE's proposed revenue requirement underlying PGE's proposed rate change on May 9, 2022.

In its final round of testimony, PGE asks the Commission to conduct a "Phase II" of this general rate case to determine the ratemaking treatment of the Faraday Project. PGE is open to suggestions for the particulars of Phase II but suggests it could commence in July or August 2022 when the repowering project is nearing completion include three rounds of testimony, a hearing and briefing.[45]

PGE's request for a Phase II to address the ratemaking treatment for the Faraday Project is a request for a single-issue ratemaking proceeding. A single-issue rate ratemaking proceeding provides for the recovery of increases in certain costs without concurrent review of the other elements of the revenue requirement as done in a general rate proceeding. The Commission has previously concluded that single-issue ratemaking presents certain risks and shortcomings in the regulatory process and adds increased risks to customers that rates will depart from being cost-

---

[44] Staff/1000, Enright/13.

[45] PGE/2600, Bekkedahl-Tinker/14-15.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

based and will not be subject to the normal reviews for overall reasonableness.[46] For this reason, the Commission has concluded that before it will authorize cost recovery of a single-issue rate case, an applicant must demonstrate that circumstances warrant an exception to typical rate recovery.[47]

PGE has failed to show the circumstance warrant an exception to typical ratemaking for the Faraday Project. Instead, the circumstances, which include concerns regarding the overall prudence of the project and of PGE's cost management as well as the timeliness of the project, support the opposite conclusion, that extraordinary treatment is inappropriate.

PGE argues that previous cases in which the Commission has authorized a tariff rider for plant going into service after the rate effective date of a general rate case is "ample precedent" for its proposal for a Phase II to determine the prudence and ratemaking treatment of Faraday. Staff disagrees. Table 1 below summarizes tariff riders the Commission has approved since 2013.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

---

[46] *In the Matter of Cascade Natural Gas Corporation, Application for Safety Cost Ratemaking Mechanism* (UM 2026), Order No. 20-015, p. 11 (January 15, 2020).

[47] *In the Matter of Cascade Natural Gas Corporation, Application for Safety Cost Ratemaking Mechanism* (UM 2026), Order No. 20-015, p. 11 (January 15, 2020).

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

GRC	PacifiCorp UE 246	PGE UE 283	PGE UE 283	PGE UE 294
Project	**Mona-to-Oquirrh Transmission Project**	**Port Westward 2 Power Plant**	**Tucannon River Wind Farm**	**Carty Power Plant**
Rate effective date	January 1, 2013[48]	January 1, 2015[49]	January 1, 2015[50]	January 1, 2016[51]
Projected in-service date	May 2013[52]	March 31, 2015[53]	March 31, 2015[54]	Q2, 2016[55]
Projected lag	≈ 134 days	89 days	89 days	≈ 135 days
Final allowable in-service date	July 30, 2013[56]	May 30, 2015[57]	May 30, 2015[58]	July 31, 2016[59]
Final allowable Lag	210 days*	149 days**	149 days**	212 days

[48] Docket No. UE 246, Order No. 12-493 at III, part A, section 2.
[49] Docket No. UE 283, Order No. 14-422 at I.
[50] *Id.*
[51] Docket No. UE 294, PGE/300, Pope-Lobdell/15, line 3-4.
[52] Docket No. UE 246, Order No. 12-493 at IV, part A.
[53] Docket No. UE 283, Order No. 14-422 at III, part B, section 2e.
[54] *Id.*
[55] Docket No. UE 294, PGE/300, Pope-Lobdell/15, line 3-4.
[56] Docket No. UE 246, Order No. 12-493 at IV, part A, section 4.
[57] Docket No. UE 283, Order No. 14-422 at III, part B, section 2e, and Staff/902, Ordonez 1.
[58] *Id.*
[59] Docket No. UE 294, Order No. 15-356 at III, part A, section 2b.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

Was prudence determined and agreed to by parties?	Yes.[60]	Yes. [61]	Yes. [62]	Yes. [63]

*If in-service date occurred with > 151 day lag, additional conditions applied.[64]
**If in-service date occurred with > 90 day lag, additional conditions applied.[65]

Each tariff rider in the table above was the result of a stipulated agreement and in each case, Staff and parties agreed on the prudence of the investment prior to the executing the stipulation regarding the tariff rider. In contrast, parties to this parties dispute the prudence of PGE's choice to even proceed with the Faraday Repowering Project and PGE's cost management.

Further, unlike the other projects for which the Commission has authorized a tariff rider, the Faraday Project was not vetted in an IRP. By way of comparison, Carty is a 450 aMW project that was selected in PGE's 2009 Integrated Resource Plan (IRP) and underwent a rigorous request for proposal (RFP) process, reviewed by stakeholders and the Commission. As AWEC notes, at the time Carty was put into rates, "it had been studied by stakeholders and the Commission for approximately seven years. Comparatively the Faraday Repowering project results in a mere 1.8 aMW of incremental capacity to the system and was not considered in an IRP or an RFP process."[66]

[60] "In their stipulation, the parties stipulated to the prudence of Pacific Power's decision to build the Mona-to-Oquirrh transmission project." Docket No. UE 246, Order No. 12-493 at IV, part A.

[61] "The stipulating parties agree that PGE's decisions to construct PW2 and Tucannon were prudent and that the Commission should approve the tariff riders requested by PGE." Docket No. UE 283, Order No. 14-422 at III, part B, section 2e.

[62] *Id*.

[63] "Staff concluded that Carty was consistent with previous IRPs and RFPs and was a prudent investment as of June 3, 2013, the date PGE decided to proceed with the project." Docket No. UE 294, Order No. 15-356 at III, part A, section 2b.

[64] Docket No. UE 246, Order No. 12-493 at IV, part A, section 4.

[65] Docket No. UE 283, Order No. 14-422 at III, part B, Section 2e, and Staff/902, Ordonez/1.

[66] AWEC/300, Mullins/18.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

PGE's suggestion that its proposal for a Phase II is warranted because the interval between the effective date of rates in this case and the expected on-line date for Faraday is on par with the intervals for the projects subject to tariff riders is misconceived because the Commission's decision on ratemaking treatment for Faraday should not coincide with the Project's on-line date. As discussed above, the Faraday Project has not been adequately vetted and Staff and AWEC have identified concerns with PGE's decision to proceed with the investment at all and begin decommissioning. Further, Staff and AWEC have identified concerns with PGE's project cost management and questioned whether PGE will actually meet its scheduled Q4 on-line date. In light of these concerns, any Phase II proceeding should not commence prior to the time the Faraday Project is actually on-line and the total costs of the project are reasonably known and reviewed for prudence.

Even if PGE's expectations are realized and the Faraday Project is on-line in the fourth quarter or 2022, the soonest the Commission should issue an order regarding the appropriate ratemaking treatment for Faraday is likely sometime in the second quarter of 2023, close to a year after the effective date of rates for the current case. This means that if the Commission's approves PGE's request for a Phase II, PGE receives the benefit of an increase in rates to incorporate the costs of the Faraday Project in the second quarter of 2023 without an examination of whether PGE's costs in other areas are less than what PGE projected in 2021. For the reasons discussed above, this extraordinary treatment is not warranted.

D. The Commission should approve AWEC's and CUB's request to defer amounts PGE collected in rates for Boardman after Boardman was no longer in service.

PGE opposes the request by CUB and AWEC to defer PGE's expenses and capital costs for the Boardman Plant ("Boardman") currently included in the Company's base rates established in its 2019 general rate case and collected after Boardman's closure in 2020. PGE argues CUB and AWEC have not established the Commission's discretionary criteria for deferral are met because retaining Boardman costs in rates did not result in substantial harm to customers

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

that justifies deferred accounting.[67] PGE explains that the impact of continuing to recover for Boardman after it was closed did not substantially harm customers because PGE will have absorbed almost $100 million in regulatory lag associated with new investments between the rate-effective date of PGE's last rate case in Docket No. UE 335 and the effective date of this rate case.[68]

PGE's argument that customers were not substantially harmed by PGE's recovery of Boardman because PGE absorbed offsetting regulatory lag for other investments conflates the Commission's analysis for applications to defer and applications to amortize deferrals. When considering whether to grant a deferral in previous cases, the Commission has not determined the magnitude of the impact by considering the utility's other costs and revenues during the deferral period. Instead, such an analysis is done at the amortization stage. Accordingly, PGE's argument related to offsetting regulatory lag is not pertinent to whether the deferral satisfies the Commission's discretionary criteria.

If PGE's arguments regarding off-setting regulatory lag were relevant, the Commission should consider offsetting revenues or cost savings when asked by a utility for authority to defer costs of an unexpected event. Such an undertaking would complicate the Commission's analysis, and in most cases, be difficult to do unless the Commission delayed its consideration of a deferral until after the deferral period was ended.

When the Commission's discretionary criteria are applied appropriately, the Boardman deferral satisfies the criteria. The closure of Boardman was foreseen. Accordingly, the amounts at issue must be substantial to warrant deferral or there must be extenuating circumstances. Staff believes both criteria are met. The amounts at issue exceed $100 million,[69] which is sufficient to satisfy the standard for a foreseen event. Additionally, there are "extenuating circumstances." As of the date of this testimony, PGE has collected money from customers for over 16 months

[67] PGE's Prehearing Brief, p. 43.

[68] PGE's Prehearing Brief, p. 44.

[69] Staff/2300, Moore-Dlouhy-Storm/10.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

for a plant that is no longer in service. Customers should not have to pay for a generating plant that no longer operates and has been fully paid off. Further, it is the policy of the State to eventually remove from rates all costs of coal-fueled generating resources and application of a deferral will allow this policy to be carried out for the Boardman plant consistent with this State objective.

E. The Commission should approve Staff' proposed parameters for amortizing amounts deferred for Boardman, Labor Day wildfires in 2020, and the February 2021 ice storm.

Staff recommends the Commission approve the Boardman deferral, address the parameters the amortization of all three deferrals in this general rate case, and authorize amortization of amounts deferred in 2020. Staff agrees with parties that the Commission should not conduct an earnings review for 2021 until PGE has produced its 2021 Results of Operation Report. Because this report is not yet available, Staff does not recommend amortization of any amounts incurred after 2020. Further, AWEC has raised issues related to the prudence of PGE's deferred wildfire recovery costs incurred in 2021. Staff agrees a full prudence review is required for these costs, as well as for PGE's Winter Storm restoration costs before amortization is authorized.

PGE takes issue with Staff's proposed earnings review parameters, arguing Staff's proposal for an earnings test benchmark for the Wildfire and Winter Storm deferrals "ignores recent precedent" in which the company's authorized ROE served as the benchmark in an earnings review."[70] None of the recent precedent on which PGE relies concerns a deferral for extraordinary costs related to a natural event and is therefore not persuasive.[71]

As discussed in Staff's Prehearing Brief, the Commission has previously stated that it tailors the earnings review in ORS 757.259(5) to suit the underlying deferral. "For example, if the Commission authorized deferral of an emergency increase in cost, the earnings test applied

---

[70] PGE's Prehearing Brief, p. 49.

[71] See PGE's Prehearing Brief, p. 49 n276.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

might allow a utility to amortize the deferral to the extent that it brings the utility's earnings for the period up to the bottom of a reasonable range."[72] Conversely,"[i]f the deferral was designed to create a fund for the benefit of customers, the earnings test might require the utility to refund the deferral except for the portion necessary to bring the utility's earnings up to the bottom of the range of reasonable rates of return."[73]

Staff's proposed benchmarks for the credit to customers for the Boardman deferral and for the charges to customers for the Wildfire and Winter Storm deferrals do precisely what the Commission described in its 1993 order. Staff's proposed benchmarks would allow PGE to amortize charges for the Winter Storm and Wildfires to the extent the amortization brings PGE's earnings up to the bottom of a reasonable range and would allow PGE to amortize the refund to the extent the refund did not cause PGE's earnings to fall below a reasonable range. These benchmarks provide reasonable incentives to PGE given the nature of the costs at issue.

PGE also disagrees with Staff's proposal to conduct the earnings review by year, arguing that reviewing the deferrals in this piecemeal approach would not allow a comprehensive determination of the rate impacts of each deferral.[74] Staff's proposal is consistent with the earnings review the Commission applied to NW Natural's multi-year deferral for environmental remediation costs.[75] Staff is uncertain how it would be possible to conduct three different earnings reviews for three different deferrals with overlapping but distinct deferral periods as PGE suggests. Accordingly, Staff recommends the Commission reject this proposal.

Finally, PGE disagrees with Staff's proposal that PGE absorb 10 percent of the costs incurred for Wildfire and Winter Storm Restoration, relying on the Commission's decision declining to impose such sharing for NW Natural Gas Company's deferral for environmental

---

[72] *In re* Portland *General Electric Company* (UE 82), Order No. 93-257, pp. 11-12.

[73] *Id.*

[74] PGE's Prehearing Brief, p. 47.

[75] *See In the Matter of Northwest Natural Gas Company dba NW Natural, Mechanism for Recovery of Environmental Remediation Costs*, Docket No. UM 1635, Order No. 15-049.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

remediation costs.[76] The circumstances for NW Natural's deferral for environmental remediation costs differ from PGE's deferrals for Wildfire and Winter Storm restoration costs. As the Commission noted in response to PGE's request for dollar-for-dollar recovery of Level III Outage restoration costs in Docket No. UE 335, any mechanism for recovery of restoration costs must incent PGE to harden its system, which will mitigate the impact of future storms. Similarly here, any mechanism to provide PGE recovery for storm or wildfire restoration costs should incent PGE to harden its system. Requiring PGE to bear a portion of the costs of restoration incents PGE to minimize the costs of restoration and to harden its system to avoid similar costs in the future.

In contrast, this need for an incentive was not present for NW Natural's environmental remediation costs. The damage that NW Natural is remediating was done years ago by technology that is no longer used. It was not necessary to incent NWN's remediation efforts to harden its system against similar environmental damage.

F. The Commission should approve AWEC's proposal regarding a subtransmission rate for Schedule 90.

Staff testified that it is convinced by AWEC's analysis regarding the appropriateness of a subtransmission rate for Schedule 90. Accordingly, Staff recommends that the Commission adopt AWEC's proposal.[77]

G. The Commission should approve PGE's proposal to spread Schedule 137 and Schedule 150 charges to Direct Access customers.

PGE's Schedule 137 recovers costs associated with its Customer Owned Solar Payment Option, aka its Volumetric Rate Incentive Plan. PGE's Schedule 150 recovers costs associated with transportation electrification in accordance with Section 2(2) of House Bill 2165 (2021). Staff concurs with PGE that the legislation underlying these pieces of legislation benefits

[76] PGE's Prehearing Brief, p. 50.

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

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300

everyone in the State. Allowing PGE to spread 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.[78] Accordingly, Staff supports PGE's proposal to make Schedule 137 and Schedule 150 charges nonbypassable.

DATED this 22nd day of February, 2022.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

/s/ Stephanie Andrus

Stephanie Andrus, OSB No. 925123
Sr. Assistant Attorney General
Of Attorneys for Staff of the Public Utility Commission of Oregon

[78] Staff/1400, St. Brown/27.

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4789 Fax: (503) 378-5300