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March 2, 2022

VIA ELECTRONIC FILING

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

Re: UE 394 – *In re Portland General Electric Company, Request for a General Rate Revision.*

Attention Filing Center:

Attached for filing in the above-referenced docket is Portland General Electric Company's Closing Brief.

Please contact this office with any questions.

Sincerely,

Lisa D. Hardie

Lisa Hardie

Attachment

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 394

In the Matter of

PORTLAND GENERAL ELECTRIC COMPANY,

Request for a General Rate Revision.

PORTLAND GENERAL ELECTRIC COMPANY'S CLOSING BRIEF

March 2, 2022

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I. INTRODUCTION

Portland General Electric Company (PGE or Company) respectfully requests that the Commission approve PGE's stipulated request for a modest rate increase of $10 million, or approximately 0.5 percent overall (excluding net variable power costs).[1] Given the current environment of rising inflation and PGE's significant ongoing investments in support of decarbonization, resiliency, and grid modernization, PGE's rate increase is fair, just, and reasonable for its customers.[2] PGE was able to continue making these important investments over the last three years without filing a rate case as a result of PGE's careful cost control efforts and the offsetting cost savings from the closure of the Boardman plant.[3]

Most of the issues in this case have been resolved cooperatively through settlement, including the $10 million revenue requirement increase—which is subject only to a potential $3 million reduction if the Commission adopts Staff's proposed wildfire mitigation and vegetation management cost recovery mechanism.[4] However, several important policy issues remain for the Commission's resolution.

First, PGE requests that the Commission allow the prudence of the Faraday repowering project to be reviewed in a Phase II of this case so that the prudently incurred costs can be timely incorporated into rates without requiring PGE to file a new general rate case (GRC) shortly after this case concludes.

Second, the Commission should reject Public Utility Commission of Oregon Staff's (Staff) proposal to hold back $3 million in wildfire mitigation and vegetation management costs, the

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[1] Docket UE 394, Joint Testimony in Support of Third Partial Stipulation, Stipulating Parties/300, Muldoon-Gehrke-Mullins-Bieber-Chriss-Steele-Ferchland/4 (Jan. 18, 2022). This amount excludes the forecast for Oregon Corporate Activity Tax (OCAT) of $8.4 million, which will move from a supplemental schedule to base rates and, therefore, does not constitute an actual increase in revenue.
[2] PGE/100, Pope-Sims/12-13.
[3] PGE/2300, Tooman-Batzler/15; PGE/100, Pope-Sims/6.
[4] Stipulating Parties/300, Muldoon-Gehrke-Mullins-Bieber-Chriss-Steele-Ferchland/5.

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prudence of which no party has questioned, and approve proposed Schedule 151, a new cost recovery mechanism applicable to incremental wildfire mitigation costs that would allow dollar-for-dollar recovery of those costs through an automatic adjustment clause (AAC), consistent with the cost recovery language of Senate Bill (SB) 762. Consistent with this mechanism, which would apply to incremental costs associated with wildfire protection plans mandated by SB 762, the Commission should also allow PGE to defer in docket UM 2019 the incremental wildfire mitigation costs associated with implementation of PGE's 2022 Wildfire Mitigation Plan, described in surrebuttal testimony, for recovery at a later date under the new cost recovery mechanism.

Third, PGE's proposed changes to its Level III outage mechanism directly respond to the Commission's guidance from prior cases and should be approved. PGE showed that event frequency and cost are increasing, and that the current structure of the mechanism is not well suited for the clusters of events PGE has experienced. Parties' arguments that costs are not increasing rely on flawed analyses. PGE has proposed a balanced mechanism that more fairly allocates risk between customers and PGE, rather than imposing *all* risk of severe events on the Company and systematically disallowing prudently incurred costs as the current mechanism does. PGE's proposed changes to the mechanism will not alter its current incentive to proactively invest in hardening its system.

Fourth, PGE opposes authorization of the Boardman deferral filed by the Alliance of Western Energy Consumers (AWEC) and the Oregon Citizens' Utility Board (CUB). The record in this case shows that PGE's rates remained just and reasonable following Boardman's closure, and the deferral is not justified by state law or Commission policy. If the Commission considers amortization of the Boardman, 2020 Wildfire, and 2021 Ice Storm deferrals in this case—rather

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than in the specific dockets already opened for them as PGE advocates—the Commission should reject Staff's proposal to aggregate the deferrals prior to the earnings review, which would lead to inappropriate and unfair results for either customers or the Company. Instead, the earnings review should consider each deferral separately, should compare PGE's earnings during the 2021 calendar year with its authorized return on equity (ROE), and should not impose a sharing requirement.

Fifth, PGE proposes expanding its current Schedule 150 to allow it to recover additional costs associated with transportation electrification pilot programs not otherwise included in customer prices, and to allocate these costs to all customers, including direct access customers, using the same methodology PGE would use to allocate the costs to a cost-of-service customer of similar size and load profile.[5] PGE seeks this cost allocation methodology on an interim basis pending a Commission decision in docket UM 2024, where the allocation of public policy costs to direct access customers will be addressed in more detail. In the interim, however, certain costs will be included in customer rates, and PGE's proposal is both fair and consistent with cost-causation principles.

Finally, PGE opposes AWEC's request to simply incorporate PGE's legacy subtransmission rate into a new schedule, Schedule 90. Subtransmission service raises potential safety, reliability, and service-quality issues that should be discussed with stakeholders, and the terms and conditions of any new service should be crafted carefully. Therefore, PGE proposes to study, with input from interested customers and stakeholders, this issue and address it in a future GRC, or to convene a stakeholder process if the Commission prefers.

[5] Schedule 150 adjustment rates are created for each schedule using the applicable schedule's forecasted energy on the basis of an equal percent of revenue applied on a cents per kWh basis to each applicable rate schedule, with long-term opt out and new load direct access customers priced at the equivalent cost of service rate schedule.

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II. FARADAY REPOWERING

PGE asks the Commission to open a Phase II of this GRC to allow parties to review the prudence of the Faraday Repowering project as the project nears completion and to incorporate the prudently incurred costs into rates when the project is in service. As explained in PGE's testimony and briefing, repowering Faraday was necessary to ensure continued, reliable access to a valuable non-emitting capacity resource that will help achieve Company and state decarbonization goals.[6] While Faraday's online date has been delayed due to multiple challenges, including extreme weather, wildfires, and COVID-19,[7] the project is already more than two-thirds complete,[8] and parties have already begun their prudence review.[9] PGE's proposal to complete the prudence review in Phase II is a fair and efficient way to timely include this important resource in rates and help avoid the need for PGE to file an entirely new rate case shortly after this one is resolved.

Staff, CUB, and AWEC question whether Faraday will actually come online in the fourth quarter of 2022.[10] However, PGE is coordinating with its new general contractor and continues to drive toward a 2022 in-service date. AWEC also criticizes PGE for failing to provide an updated budget estimate,[11] but the budget is not relevant to PGE's request that the Commission open a Phase II. If the Commission authorizes Phase II, PGE will provide updated information regarding the costs incurred and the remaining budget in its opening testimony of the Phase II process, giving all parties an opportunity to review and conduct discovery.

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[6] PGE's Prehearing Brief at 9-10.
[7] PGE/700, Jenkins-Cristea/5; PGE/1900, Bekkedahl-Cristea/23-24, 27.
[8] PGE/1900, Bekkedahl-Cristea/27
[9] *See* Staff/1000, Enright/11-26; AWEC/100, Mullins/20-22
[10] Staff's Opening Brief at 20; CUB's Opening Brief at 15; AWEC's Opening Brief at 15.
[11] AWEC's Opening Brief at 15.

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Staff, CUB, and AWEC argue that Phase II cannot begin until Faraday repowering is complete and in-service, and therefore the earliest Faraday repowering could be added to rates is the second quarter of 2023.[12] As explained in PGE's Opening Brief, reviewing the prudence of a capital addition during the final phases of construction is common and occurred for several assets in this case.[13] As is standard practice, PGE will provide an estimate of Faraday's final costs for parties to evaluate during Phase II, and any costs incurred above that estimate would not be included in rates in Phase II. There is no need to await Faraday's final costs to begin the prudence review.

Staff states that the project "has not been adequately vetted and Staff and AWEC have identified concerns with PGE's decision to proceed with the investment at all[.]"[14] But the project need not be vetted to grant PGE's request for Phase II, because the purpose of Phase II is to allow parties a full opportunity to continue vetting the project. PGE is not asking the Commission to approve any portion of the Faraday repowering project at this stage. In fact, parties will have more opportunity to review Faraday repowering than in a typical GRC process because they already reviewed the initial project costs and PGE's decision to repower Faraday during the early stages of Phase I,[15] and they will have another opportunity to review these same issues and the additional costs of the nearly complete project during Phase II.

Staff, CUB, and AWEC dispute PGE's claim that Commission precedent supports its proposal.[16] Staff notes that prior cases where the Commission approved tariff riders that allowed

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[12] Staff's Opening Brief at 20; CUB's Opening Brief at 15; AWEC's Opening Brief at 18.

[13] *See, e.g.*, *In re PacifiCorp, dba Pac. Power, Request for a Gen. Rate Revision*, Docket UE 374, Order No. 20-473 at 32-33 (Dec. 18, 2020) (adopting attestation requirements for plant placed in service before the rate-effective date); Staff/700, Hanhan/6 (recommending that PGE file an officer attestation that each project is in service prior to March 31, 2022 before projects are allowed into rates effective May 9, 2022).

[14] Staff's Opening Brief at 20.

[15] PGE's Opening Brief at 5-6; Staff/1000, Enright/14.

[16] Staff's Opening Brief at 17-20; CUB's Opening Brief at 16; AWEC's Opening Brief at 15-18.

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similar intervals between the rate-effective date and the online date were the result of stipulated agreements.[17] However, the Mona-to-Oquirrh tariff rider that Staff references was actually approved over parties' objections.[18] In that case, the Commission specifically rejected parties' arguments that a period of five months between the rate-effective date and the online date raised serious concerns about regulatory lag and cherry-picking.[19] While PGE proposes a period longer than five months here, PGE's proposal is within a reasonable range and within the Commission's discretion to grant. In addition, the fact that other tariff-rider decisions arose from stipulations does not negate that the Commission found it reasonable in each case to allow an asset into rates many months after the rate-effective date—up to eight and a half months for Port Westward—without requiring an entirely new GRC.[20] Here, PGE's proposal is more conservative than these tariff-rider examples because PGE is not asking for a prudence determination months in advance of the actual in-service date.[21]

Parties state that PGE's proposal departs from traditional ratemaking practice and that PGE has not justified such a departure.[22] While PGE is proposing that parties review Faraday repowering separately, PGE's net plant (including depreciation) is expected to increase between

[17] Staff's Opening Brief at 19.
[18] *In re PacifiCorp, dba Pac. Power, Request for a General Rate Revision*, Docket UE 246, Order No. 12-493 at 4-8 (Dec. 20, 2012). The parties in that case stipulated to the prudence of the project but opposed the tariff rider approach. *Id.* at 4.
[19] Order No. 12-493 at 8. The Commission ordered that the project could come online up to seven months after the rate-effective date with additional conditions.
[20] *See* Staff's Opening Brief at 18; *In re Portland Gen. Elec. Co., Request for a Gen. Rate Revision*, Docket Nos. UE 180/UE 184, Order No. 07-015 at 50 (Jan. 12, 2007); *see also In re PacifiCorp, dba Pac. Power, Request for a General Rate Revision*, Docket UE 263, Order No. 13-474 at 4-5 (Dec. 18, 2013) (adopting stipulation allowing the Lake Side 2 generating plant to enter rates up to six months after the rate-effective date without additional process and up to eight months after the rate-effective date with additional process).
[21] PGE/2600, Bekkedahl-Tinker/5-6. CUB argues that Faraday repowering would come online at the end of the test year, rather in the middle of the test year as in prior cases. CUB's Opening Brief at 16-17. However, CUB's focus on the test year misses the key issue, which is the time between the rate-effective date and the online date for the new resource. Here, the rate-effective date is May 9, 2022, and Faraday is expected to come online within a reasonable time after that date.
[22] Staff's Opening Brief at 16-17; CUB's Opening Brief at 16; AWEC's Opening Brief at 17.

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the rate-effective date and Faraday's in-service date,[23] and inflation is also increasing.[24] Therefore, concerns about adding an investment to rate base in isolation are unwarranted. Moreover, Phase II will be a more efficient use of the Commission's and parties' resources than requiring PGE to file a new GRC right on the heels of this case—especially given that parties already started to develop the Faraday repowering prudence-review record in this case.[25]

CUB disputes PGE's claim that the benefits of Faraday are already in rates through the Annual Update Tariff (AUT), arguing that customers have been harmed by having Faraday's low-cost generation offline during repowering.[26] However, any repowering project necessitates taking the facility offline for a time. As CUB implicitly recognizes, customers will benefit from having Faraday's low-cost generation reliably available for decades to come following the repowering project. And even while Faraday has been under construction, PGE has provided generation and production tax credit (PTC) benefits to customers.[27]

Other issues raised by the parties that are not relevant to the narrow issue at hand, whether to approve a Phase II of this GRC, will be addressed only briefly. First, Staff criticizes PGE for failing to include Faraday repowering in its integrated resource plan (IRP).[28] While Faraday repowering was not specifically analyzed in an IRP, Faraday's generation is consistently included in PGE's resource planning. And PGE undertook comprehensive economic analysis before deciding to proceed with the repowering project, as explained in detail in PGE's testimony.[29] In any event, Staff's concern can be addressed during the prudence review in Phase II.

[23] PGE/2600, Bekkedahl-Tinker/12-13.
[24] Stipulating Parties/300, Muldoon-Gehrke-Mullins-Bieber-Chriss-Steele-Ferchland/4.
[25] *See* Staff/1000, Enright/15-20.
[26] CUB's Opening Brief at 17-18.
[27] *See, e.g.*, PGE/2600, Bekkedahl-Tinker/8.
[28] Staff's Opening Brief at 19.
[29] PGE/1900, Bekkedahl-Cristea/14-20.

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Next, CUB claims that PGE's statement that customers benefit from the repowering PTCs is misleading.[30] To be clear, customers *are* receiving the benefit of the PTCs as reflected in current customer prices approved by the Commission in PGE's 2022 AUT proceeding. CUB's concern is that customers do not receive the "full benefit" due to financing costs at PGE's authorized rate of return.[31] This concern is not unique to the Faraday PTCs, and it is not an issue that PGE can solve because it relates to limitations of taxable income and Internal Revenue Service regulations. Further, customers are not worse off with the provision of PTCs that require deferral and hence financing costs than they would be with no provision of the associated PTC benefits. Simply put, the deferral of PTCs asks customers to pay cents on the dollar for the benefit they are receiving. In any event, this matter is not something that should affect the Commission's determination regarding Phase II.

Given the thorough review of PGE's rates that has occurred in this GRC and the significant effort parties have already devoted to reviewing Faraday repowering in this case, the Commission should approve PGE's request to initiate a Phase II.

III. WILDFIRE MITIGATION COST RECOVERY

In its Opening Brief, Staff disputes PGE's assertion that SB 762 requires dollar-for-dollar cost recovery and an automatic adjustment clause (AAC) and argues that Staff's proposed Wildfire Mitigation and Vegetation Management (WMVM) mechanism is warranted as a cost-control measure.[32] Staff also asks the Commission to deny PGE's request to defer incremental wildfire mitigation costs, as well as PGE's request for an AAC in this rate case.[33] PGE will address each of these issues in turn.

[30] CUB's Opening Brief at 18-19.
[31] CUB's Opening Brief at 19.
[32] Staff's Opening Brief at 10-15.
[33] Staff's Opening Brief at 15-16.

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A. PGE's wildfire mitigation and vegetation management costs are reasonable and appropriate.

At the outset, PGE will address a theme found throughout the wildfire mitigation and vegetation management sections of Staff's briefing, a theme that is nearly absent from Staff's testimony: the suggestion that PGE's wildfire mitigation and vegetation management costs are somehow uncontrolled and need to be reined in by special regulatory mechanisms.[34]

There is no evidence in the record supporting the proposition that PGE's planned wildfire mitigation or vegetation management costs may be imprudent or improper. To the contrary, Staff's witness Dr. Dlouhy reviewed the costs proposed in PGE's direct case—the only vegetation management and wildfire mitigation costs for which PGE is seeking recovery in this case—and found "no issues" with any of them.[35] While PGE's costs in this proceeding do represent a meaningful increase over the costs in PGE's last rate case, Staff reviewed the extensive testimony filed by PGE detailing the new work PGE has done (and continues to do), to ensure these programs are prioritized, and Dr. Dlouhy was satisfied that PGE's costs were appropriate.[36] In short, the wildfire mitigation and vegetation management costs for which PGE seeks cost recovery in this proceeding are reasonable, an assertion no witness in this proceeding has controverted. The concern that PGE's wildfire mitigation spending may not be appropriate or prudent does not appear to be supported by any facts actually asserted in testimony in this proceeding.

Second, in its surrebuttal testimony, PGE noted that during the pendency of this proceeding its forecasted wildfire mitigation expenditures for 2022 have increased, based on its 2022 Wildfire Mitigation Plan that was filed at the end of December 2021, and asked the Commission to authorize

[34] *See* Staff's Prehearing Brief at 6-7; Staff's Opening Brief at 15-16.
[35] Staff/600, Dlouhy/18.
[36] To the extent Dr. Dlouhy's testimony could be read as critical of PGE's evidence of costs in any way, it is possible that Dr. Dlouhy wished PGE had provided a multi-year budget demonstrating that PGE was committed to its long-term wildfire mitigation plan; nothing in Dr. Dlouhy's testimony suggested that PGE had somehow overcommitted, which Staff's brief seems to suggest. *See* Staff/600, Dlouhy/24-25.

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their deferral in docket UM 2019, where PGE has a pending deferral request.[37] Staff's briefing again suggests that PGE's costs are inappropriate and that the Commission must adopt mechanisms to protect customers from PGE's spending.[38] PGE understands that it is critical to keep utility costs as low as possible, but Staff's suggestion that PGE's incremental wildfire mitigation costs could ultimately be found to be imprudent is unfounded by any evidence in the record.

As the Commission is aware, in January 2019, Governor Brown signed Executive Order 19-01 creating the Governor's Council on Wildfire Response (Council) in response to increased wildfire risks. In March 2020, the Governor issued Executive Order 20-04 directing the Commission to "[e]valuate electric companies' risk-based wildfire protection plans and planned activities to protect public safety, reduce risks to utility customers, and promote energy system resilience in the face of increased wildfire frequency and severity…". Executive Order 20-04 specifically relied upon the recommendations of the Council related to mitigating utility wildfire risk. Subsequently the Oregon legislature passed SB 762, codifying in law the Commission's and utilities' obligations to significantly commit to efforts to mitigate the risk of destructive wildfires.

Utilities have spent the last year and a half engaging deeply with the Commission to develop wildfire mitigation rules in dockets AR 638 and AR 648, as well as wildfire mitigation plans[39] necessary to comply with the mandates of SB 762. PGE filed detailed testimony in this proceeding explaining the significant amount of work it has put into development and evolution of its wildfire mitigation plan, some of which has occurred during the pendency of this proceeding.[40] The timing and expectations associated with effective development and

[37] PGE would update its pending request for deferral in that docket consistent with PGE's proposed Wildfire Mitigation AAC in this proceeding should the Commission approve it.
[38] Staff's Opening Brief at 15-16.
[39] SB 762 refers to these plans as "Wildfire Protection Plans," but PGE has referred to its own plan as its "Wildfire Mitigation Plan" and uses the phrases interchangeably here.
[40] PGE/800, Bekkedahl-Jenkins/38-53.

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implementation of SB 762's wildfire mitigation plans—PGE's was filed in December 2021—necessarily require some degree of new spending in order for utilities to accomplish the goals set forth by the Oregon legislature and this Commission. PGE believes that a prudence review of its proposed incremental costs—when that review occurs—will demonstrate that PGE's spending is reasonable and in the public interest. For now, however, PGE would note that it is not seeking recovery of its incremental costs in this proceeding. Those incremental costs are related to the meaningful and mandatory new work currently underway to comply with a new law and new regulations. There is no evidence that this is—as Staff's briefing would suggest[41]—spending run amok.

Finally, PGE would simply emphasize that, however the Commission ultimately interprets SB 762's cost recovery language, the legislature clearly expressed in that statute an intention to make wildfire mitigation spending a state priority. While it is critical for utilities to mitigate the risk of potentially devastating wildfires in a reasonable and cost-effective manner, utilities have been directed to get the work done. Consequently, this Commission should incentivize and encourage prudent spending to meet SB 762's goals rather than penalize utilities' reasonable and prudent efforts to mitigate the risk of wildfires.

B. PGE's proposed Wildfire Mitigation AAC implements the statutory requirements of SB 762 and should be adopted.

Consistent with the legislature's focus on prioritizing wildfire mitigation, SB 762 contains statutory cost recovery language that is substantively identical to language this Commission has previously held to require dollar-for-dollar cost recovery and an AAC.[42] Given this language, PGE has proposed a Wildfire Mitigation AAC in this case that operates much like PGE's

[41] *See* Staff's Prehearing Brief at 6-7; Staff's Opening Brief at 15-16.
[42] *See* ORS 757.963(8).

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renewable automatic adjustment clause (RAC), the mechanism previously adopted under the language at issue. Staff disagrees with PGE's interpretation of SB 762's cost recovery language. PGE will first provide additional detail on its interpretation of SB 762 with the intent of fully articulating its understanding of the legislative language, and then address Staff's alternative interpretation.

Although PGE believes that a plain reading of SB 762's cost recovery language (ORS 757.963(8)) supports PGE's position, the Commission's interpretation of the cost-recovery language in ORS 469A.120 provides meaningful guidance because the cost recovery language is nearly identical to the cost recovery language in SB 762. ORS 469A.120—the RPS statute—states 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 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 Order No. 15-408, the Commission noted the difference between the two sections: The first section, which allows a utility to recover a wide swath of costs associated with a renewable portfolio in rates, is general and includes, among other things, the variable power costs of renewable resources.[43] The second section, by contrast, is more narrow in scope, referring only to

[43] *In re Portland Gen. Elec. Co. and PacifiCorp dba Pac. Power, Request for Generic Power Cost Adjustment Mechanism Investigation*, Docket UM 1662, Order No. 15-408 at 6-7 (Dec. 18, 2015).

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costs to "construct or otherwise acquire" renewable resources.[44] When utilities argued that ORS 469A.120 required the Commission to allow dollar-for-dollar recovery of the costs of both variable and fixed costs of renewable resources in rates, the Commission disagreed, noting that only section (2) indicates such an intent, and the mechanism described in section (2) applies only to costs associated with capital investments.[45] Under the Commission's interpretation of ORS 469A.120, then, variable costs of renewable resources are addressed with other variable resource costs, while costs associated with capital investments are recovered through the RAC.

The Commission's interpretation is consistent with the plain language of the statute. The language in section (1) makes *all* costs of renewable resources associated with RPS standards recoverable in rates. This is a meaningful expression of legislative intent because it frees the Commission from any statutory restrictions that may otherwise limit its ability to authorize cost recovery for the purpose the legislature is seeking to authorize investments. For example, the Commission has held that its statutory authority prevents it from ordering utilities to include in rates costs associated with environmental externalities that a utility is otherwise not required to incur as a cost of doing business.[46] A provision like section (1) eliminates such statutory restrictions and makes clear that the Commission has authority to allow in rates all prudently incurred costs of meeting the legislature's explicitly stated goal, even in the event RPS investments are not economically efficient.

By contrast, section (2) is a more limited provision with a more limited purpose: defining *how* costs should be recovered. The Commission analyzed the language of ORS 469A.160(2) and concluded that, with respect to that section, "the legislature explicitly mandated the use of an

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[44] Docket UM 1662, Order No. 15-408 at 6-7.
[45] *Id.*
[46] *See In Re Development of Guidelines for the Treatment of External Envt'l. Costs,* Docket No. UM 424, *DOJ Memorandum Re: Commission Authority to Consider External Environmental Costs,* (filed Nov. 17, 2015).

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automatic adjustment clause to provide dollar-for-dollar recovery for fixed capital costs associated with RPS compliance."[47] As the Commission noted, the legislative history makes clear that the legislature understood that some costs would be recoverable through an AAC (fixed costs), while others would be subject to recovery in a general rate case (variable generation costs).[48]

In short, ORS 469A.120 contains two cost recovery provisions that can be described as follows: a clause that describes what types of costs can be recovered, and a clause that describes how those costs will be recovered. ORS 469A.120(1) describes *what* can be recovered, namely, "all prudently incurred costs associated with compliance with a renewable portfolio standard." ORS 469A.120(2) then specifies *how* costs will be recovered. Specifically, the Commission "shall establish an automatic adjustment clause as defined in ORS 757.210 or another method that allows timely recovery of costs prudently incurred" for the fixed costs of renewable resources. This means, as the Commission has explained, that costs associated with capital investments in renewable resources must be recovered through "the use of an automatic adjustment clause to provide dollar-for-dollar recovery for fixed capital costs associated with RPS compliance." The cost recovery language for variable power costs in the RPS statute is not specified in the *how* part of the statute and is thus left to the Commission's discretion.

With respect to wildfire mitigation plans, the legislature took language from both ORS 469A.120(1) and (2) and combined them in ORS 757.963(8), which reads as follows:

> 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

[47] Docket UM 1662, Order No. 15-408 at 6-7.
[48] Docket UM 1662, Order No. 15-408 at 7 and fn 4 (quoting from Testimony, Committee on Energy and the Environment, SB 838, April 16, 2007 (Statement of Public Utility Commission Chairman Lee Beyer): "[T]he utility will have to file a general rate case under ORS 757.210 to seek recovery of costs that do not qualify for recovery under the automatic adjustment clause.").

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> clause, as defined in ORS 757.210, or another method to allow timely recovery of the costs.

ORS 757.963(8) describes both *what* is recoverable, and *how* those costs must be recovered. *What* is recoverable are "[a]ll reasonable operating costs incurred by, and prudent investments made by, a public utility to develop, implement or operate a wildfire protection plan."[49] *How* these costs are to be recovered is through "an automatic adjustment clause, as defined in ORS 757.210, or another method to allow timely recovery of the costs." This phrase is directly analogous to ORS 469A.120(2), which mandates use of an automatic adjustment clause to provide dollar-for-dollar recovery of the costs within its scope. In the context of wildfire mitigation plans, all reasonable costs incurred by, *and* prudent investments made by, a public utility to develop, implement or operate a wildfire protection plan are subject to the mechanism. The legislature did not parse out various types of costs or investments that might be incurred under a wildfire protection plan; to the contrary, it made sure to include them all within its scope. And the legislature certainly made no distinction between the treatment of capital costs and variable generation costs, a set of distinctions that make sense in the context of acquiring generation resources but has no analogue in the context of wildfire protection plans.

As the Commission noted in Order No. 15-408, the language of ORS 469A.120, which applied the AAC language only to the fixed costs of capital investments, makes clear that "the legislature appreciated the difference between various types of cost recovery mechanisms," and only mandated dollar-for-dollar recovery of a specific set of costs.[50] Variable generation costs, by contrast, were made allowable in rates, but not made subject to this legislatively mandated cost recovery mechanism, so utilities would have the opportunity to fully recover those costs, "subject

[49] This phrasing is broad and directly analogous to ORS 469A.120(1).
[50] Docket UM 1662, Order No. 15-408 at 7.

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to the deadbands, sharing bands, and earnings test in their respective PCAMs."[51] The Commission expressly recognized the significant distinction between a general legislative mandate providing only an opportunity for cost recovery and a more specific mandate for timely and complete cost recovery under an AAC.[52]

As PGE noted in its prior briefing, the fact that the Commission opined on this language prior to the passage of SB 762 is significant. If, in drafting SB 762, the legislature was looking for specific language to incentivize utilities to invest in wildfire mitigation, it did not need to look further than the RPS statute, which the Commission has interpreted to require, at least for some element of RPS costs, dollar-for-dollar cost recovery and an AAC. Indeed, Oregon courts presume that the legislature is aware of existing law when drafting statutory language.[53] The legal presumption, then, is that the Oregon legislature drafted SB 762's cost recovery language with the Commission's existing interpretation of substantively identical language in mind. In drafting the statute, the legislature made both reasonably incurred costs and prudent investments made in connection with a wildfire protection plan subject to the cost recovery mechanism.

Staff argues that PGE "overlooks that ORS 757.963(8) combines the provisions of ORS 469A.120(1) and (2) into one subsection" and concludes that "[t]his difference means the Commission's previous conclusion regarding the cost recovery provision in ORS 469A.120(2) does not control here."[54] PGE is aware that SB 762 combined the two provision of the RPS statute. To the extent the legislature intended its mandatory cost recovery mechanism to apply to all costs associated with a wildfire mitigation plan, rather than some of them, the legislature could do so by simply combining the provisions. The language of SB 762 states that all costs associated with a

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[51] Docket UM 1662, Order No. 15-408 at 7.
[52] Docket UM 1662, Order No. 15-408 at 7.
[53] *See, e.g.*, *Blachana, LLC v. Bureau of Labor & Indus.*, 354 Or 676, 691 (2014).
[54] Staff's Opening Brief at 11.

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wildfire mitigation plan, not just a subsection of them, are subject to the mandatory cost recovery language.

Staff also suggests that the legislative language stating that costs associated with wildfire mitigation plans are "recoverable" is somehow inconsistent with the application of an AAC.[55] Perhaps Staff interprets the word "recoverable" to mean that the recovery of the costs are committed to the Commission's discretion. But, as PGE noted above, the fact that the legislature described certain categories of costs as "recoverable" in new legislation simply recognizes the Commission's authority to include the costs in rates, a meaningful expression of statutory authority for an agency that has long noted the limits of that authority. If the statute then prescribes *how* the costs must be recovered, the Commission must adopt the statutorily mandated method for cost recovery. If the statute does not prescribe how the costs must be recovered—as is the case for the variable costs of RPS compliance—the costs are recoverable, but their method of recovery is committed to the Commission's discretion. PGE is unclear how Staff's discussion of the word "recoverable" undermines the easily reconcilable language of the statute.

Staff also argues that, while it may be appropriate for an AAC applicable to capital costs to require dollar-for-dollar recovery, it is less evident that that an AAC applicable to variable costs should require this treatment.[56] In the context of generation resources, variable costs are costs that vary with plant output. Staff does not explain what "variable" costs could mean in the context of wildfire mitigation plans. While PGE agrees that the Commission has at times adopted AACs for variable costs of generation resources and made those costs in some instances subject to deadbands or sharing, the language of ORS 757.963(8) reveals no intent to impose such requirements on wildfire mitigation costs. To the contrary, in drafting SB 762's cost recovery language, the

[55] Staff's Opening Brief at 12.
[56] Staff's Opening Brief at 12-13.

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legislature adopted language from a statute the Commission had previously interpreted to require dollar-for-dollar cost recovery and an AAC, and made that same language applicable to "all reasonable costs incurred by, and prudent investments made by, a public utility to develop, implement or operate a wildfire protection plan."[57] The language speaks for itself.

In this case, the text and context of the statute, as well as the legal presumption that the legislature was aware of the Commission's interpretation of the legislative language at issue when it adopted that language, support PGE's requested relief.[58]

Finally, Staff argues that PGE failed to provide details of its proposed AAC until its last round of testimony and that its AAC should not be approved in this case.[59] From a procedural perspective, PGE was not initially intending to seek approval for a Wildfire Mitigation AAC in this rate case. In Staff's opening testimony, however, Staff urged the Commission to adopt an entirely new mechanism applicable to PGE's wildfire and vegetation management costs[60]—one PGE believed to be inconsistent with SB 762. In response, PGE raised objections to Staff's proposal and asked the Commission to approve an alternative mechanism that comported with SB 762.[61] PGE's reply testimony explained PGE's interpretation of SB 762 and described the relief PGE was seeking. Specifically, PGE asked the Commission to adopt an AAC[62] in light of SB 762's statutory mandate for the timely recovery of all prudently incurred wildfire mitigation costs.[63]

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[57] As a practical matter, PGE would note that all costs, even those in an AAC, are subject to a prudence review.
[58] *State v. Gaines*, 346 Or 160 (2009).
[59] Staff's Opening Brief at 15.
[60] *See* Staff/600, Dlouhy/28-29.
[61] PGE/2000, Bekkedahl-Jenkins/10-11.
[62] An AAC is defined by statute. Per ORS 757.210(1)(b), an automatic adjustment clause "means a provision of a rate schedule that provides for rate increases or 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."
[63] PGE/2000, Bekkedahl-Jenkins/10-11.

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PGE provided additional detail in its surrebuttal testimony, modeling its Wildfire Mitigation AAC on its Commission-approved RAC, given the use of the same legislative language for cost recovery in the RPS statute and in SB 762.[64] The Wildfire Mitigation AAC proposed by PGE thus follows a known template and complies with the plain language of SB 762.

C. In the event the Commission imposes a WMVM mechanism for wildfire mitigation costs, Staff's proposed mechanism should be modified.

As PGE explained in its Prehearing and Opening Briefs, if the Commission disagrees with PGE's statutory interpretation of SB 762 and elects to adopt a WMVM mechanism in this docket, that mechanism should be modified in light of SB 762 and the advances that have been made in wildfire mitigation since PacifiCorp's mechanism was adopted in docket UE 374. PGE will not repeat all of its recommendations here, but will provide a brief overview of PGE's key points and recommendations.

As a general matter, any mechanism applicable to recovery of costs associated with a wildfire mitigation plan should be consistent with SB 762's clear expression of legislative intent to prioritize utility spending on wildfire mitigation. PGE would submit that a mechanism that puts *prudently* incurred wildfire costs at risk of non-recovery is not only inconsistent with SB 762's clear directives, but also with the clear expression of legislative intent to incentivize prudent spending on an issue critical to the state. Nor should any such mechanism include penalties, particularly since SB 762 already contains statutory penalties for noncompliance,[65] penalties that did not exist when PacifiCorp's WMVM mechanism was adopted. Staff's WMVM mechanism would subject a utility to one set of penalties, while leaving the utility subject to another set of *statutory* penalties at the same time. As PGE explained previously, the cost recovery language in

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[64] PGE/3000, Macfarlane-Tang/33-34.
[65] *See* ORS 757.990.

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SB 762 is the type of language the legislature has historically used to incentivize prudent utility investment. By contrast, the proposed WMVM mechanism in this case would subject PGE's recovery of prudent wildfire mitigation costs to risk multiple times over.

First, any WMVM mechanism should apply only to incremental costs above and beyond what is included in base rates (that is, the amounts proposed in PGE's direct testimony). Staff's proposal to hold back $3 million in wildfire mitigation and vegetation management costs in this case should be rejected. There is no justification for holding back these costs and putting them at risk of non-recovery once again. Putting these prudent costs at double-risk of non-recovery is inconsistent with SB 762 and unsupported by the record.[66]

Second, the WMVM mechanism should apply only to Advanced Wildfire Risk Reduction (AWRR) costs. The goal of the WMVM mechanism, as PGE understands it, is to reduce wildfire risk by penalizing a utility for failing to invest appropriately in vegetation management activities that reduce wildfire risk. PGE's AWRR is a vegetation management program that is a part of PGE's Wildfire Mitigation Plan and focuses on advanced vegetation management in high risk fire zones (HRFZs).

Third, incremental AWRR costs should be subject to a prudence review.

Finally, the metric used to determine any penalties would be based solely on the number of confirmed vegetation management violations in PGE's HRFZs.

PGE has discussed each of these issues in its Prehearing and Opening Briefs in more detail and would refer the Commission to the discussion therein.[67]

[66] *See* PGE's Opening Brief at 13-16.
[67] PGE Prehearing Brief at pp. 23-27; PGE's Opening Brief at 11-20.

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IV. LEVEL III OUTAGE MECHANISM

The existing Level III outage mechanism has systematically denied PGE an opportunity to recover significant, prudently incurred Level III outage restoration costs. Therefore, consistent with the Commission's direction from dockets UE 335 and UM 1817, PGE proposes revisions to make the mechanism more balanced and better suited for the severity and pattern of events PGE has experienced. As requested by the Commission, PGE justified its proposed changes to the mechanism by demonstrating that event frequency, intensity, and cost are increasing. PGE's proposed revisions to the mechanism appropriately share the risk of these severe events between PGE and its customers, rather than requiring PGE to bear all risk as the Commission recognized that PGE does under the current mechanism.[68] And as the Commission directed, PGE continues to bear some of the risk under PGE's proposed changes. The rebalancing of this important mechanism will not lessen PGE's commitment to increasing the resiliency of its system or restoring service promptly and efficiently when severe events occur.

Under PGE's current Level III mechanism, which was first adopted in 2010 pursuant to a stipulation,[69] PGE collects annually an amount equal to the 10-year rolling average of Level III outage costs and accrues the amount to a reserve account against which PGE charges the incremental O&M costs necessary to restore service following Level III events.[70] Currently, the 10-year average is updated when PGE files a GRC. Any positive balance in the reserve account carries forward for use in future years, but the account balance cannot be negative—meaning that

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[68] *In re Portland Gen. Elec. Co., Application for the Deferral of Storm-Related Restoration Costs*, Docket UM 1817, Order No. 19-274 at 13 (Aug. 19, 2019).
[69] *In re Portland Gen. Elec. Co., Request for a Gen. Rate Revision*, Docket UE 215, Order No. 10-478 at 6 (Dec. 17, 2010).
[70] PGE/800, Bekkedahl-Jenkins/60; *see also In re Portland Gen. Elec. Co., Request for a Gen. Rate Revision*, Docket UE 335, Order No. 18-464 at 13 (Dec. 14, 2018); Docket UM 1817, Order No. 19-274 at 2.

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PGE's shareholders absorb any restoration costs in a given year that exceed the available account balance.[71]

To make the mechanism more symmetrical and balanced and to account for increasing event costs, PGE proposes that the reserve account be allowed to carry a negative balance if restoration costs exceed the available amount, and that PGE will absorb 10 percent of any costs applied to a negative balance.[72] In addition, if the amount in the balancing account exceeds positive or negative $12 million, PGE will amortize the excess amount through a charge or credit, and the excess amount will be shared with 90 percent to customers and 10 percent to PGE.[73]

PGE's proposed revisions and supporting testimony directly and fully respond to the Commission's direction from prior cases. The Commission asked PGE to provide evidence regarding increasing storm frequency, intensity, and cost, and the impacts of climate change to justify its requested changes to the mechanism.[74] No party has taken the position that climate change has no effect on Level III event patterns,[75] and PGE explained that the Fourth National Climate Assessment predicts that the Pacific Northwest is more likely to experience higher wind and rain events and wildfires as a result of climate change.[76] In addition, the frequency of events

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[71] PGE/800, Bekkedahl-Jenkins/61; *see also* Docket UE 335, Order No. 18-464 at 13; Docket UM 1817, Order No. 19-274 at 2, 5.
[72] PGE/800, Bekkedahl-Jenkins/62-63.
[73] PGE/800, Bekkedahl-Jenkins/62-63.
[74] Docket UE 335, Order No. 18-464 at 14.
[75] *See* Staff/1400, St. Brown 9-10 ("to help PGE better recover costs in an environment of increasing frequency of storms…"); CUB/500, Gehrke/11 ("this approach fairly compensates the Company while taking into account climate change's impact on the severity of storms"); AWEC/300, Mullins/21 ("Although climate change in and of itself is certainly relevant and is likely contributing to changes in storm patterns, it has been affecting the weather for many years now."); *see also* Staff/2700, St. Brown/7 (recognizing that Level III costs could trend upwards in the future due to wildfires).
[76] PGE/800, Bekkedahl-Jenkins/67.

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per year has more than tripled in recent years,[77] and 80 percent of the total Level III costs incurred over the last 27 years were incurred in just the past eight years.[78]

The Commission also directed PGE to include proposed refinements to the mechanism that ensure balance and encourage PGE to develop a robust and resilient system.[79] The Commission recognized that PGE currently bears all the risk under the mechanism and indicated its intent "to consider how to appropriately allocate" risk in this case.[80] In response, PGE proposed to allow the reserve balance to go negative so that PGE has an opportunity to recover more of its prudently incurred restoration costs when a cluster of severe events imposes significant costs. PGE also proposed to absorb 10 percent of any costs applied to a negative balance so that the risk of significant events is shared between PGE and customers, without lessening PGE's commitment to increasing the resiliency of its system.

PGE's proposal is fair and balanced and responsive to the Commission's direction, and it should be adopted in this case. None of the parties' arguments or analyses undermine PGE's proposal.

A. PGE's analyses showing increasing event frequency, intensity, and cost are valid and persuasive.

Staff and CUB agree that some revision to the current mechanism is appropriate, but both disagree with aspects of PGE's proposal and Staff challenges PGE's supporting analyses.[81] AWEC asserts that PGE has not justified any change to the structure of the current mechanism.[82]

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[77] Staff/1400, St. Brown/7 (frequency of events has increased from 0.48 events per year during the 1978-2008 time period to 1.75 events per year since 2014).
[78] PGE/2400, Bekkedahl-Tooman/6. The 80 percent value includes Level III events that were declared emergencies, which is appropriate when evaluating event trends. Even excluding declared emergencies from the analysis, however, a majority of costs (57%) were incurred in the last eight years. PGE/2400, Bekkedahl-Tooman/5-6.
[79] Docket UE 335, Order No. 18-464 at 14.
[80] Docket UM 1817, Order No. 19-274 at 13-14.
[81] Staff's Opening Brief at 4-9; CUB's Opening Brief at 21-23.
[82] AWEC's Opening Brief at 20-22.

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Staff agrees with PGE that the frequency of events is increasing, but disagrees that restoration costs are trending upward.[83] Crucially, however, Staff's conclusion regarding the cost trend is invalid because Staff's analysis excludes declared-emergency events and therefore omits relevant evidence. Staff admits that costs actually *are* increasing when all Level III events, including declared-emergency events, are considered in the analysis.[84] However, Staff claims that the availability of PGE's pre-filed emergency deferral account to recover the costs of declared-emergency events justifies Staff's omission of declared-emergency events from its analysis of cost trends.[85]

Staff's reasoning is flawed because there are no objective criteria governing which events are declared emergencies, as PGE explained in its testimony.[86] As a result, it is possible that a severe event will not be declared an emergency, or that a declared-emergency event will not meet the criteria for a Level III event subject to the mechanism.[87] Therefore, any analysis of Level III event trends must consider *all* Level III events to be valid, assuming the goal of the analysis is to understand event trends.

If, hypothetically, there were an objective demarcation for declared-emergency events—for example, if all events causing more than $15 million in restoration costs were automatically declared emergencies—then Staff's approach would be valid. In that hypothetical scenario, PGE would be assured that its pre-filed emergency deferral account would cover *all* events causing more than $15 million in damage, while only the less severe events would be addressed through the Level III mechanism. If parties were considering changes to the Level III mechanism in that

[83] Staff's Opening Brief at 5.
[84] Staff's Opening Brief at 6.
[85] Staff's Opening Brief at 6.
[86] PGE/2400, Bekkedahl-Tooman/6; PGE's Prehearing Brief at 32-33.
[87] PGE/2400, Bekkedahl-Tooman/6. A declared emergency that occurred in January 2022 did not rise to the level of a Level III event. *Id.*

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scenario, then it would be reasonable to analyze only those events causing less than $15 million in damage when assessing the cost trend. However, there are no such criteria for a declared-emergency event, and therefore it is not valid to assume, as Staff's analysis does, that the pre-filed emergency deferral process will be consistently available for certain categories of events in the future. PGE appropriately analyzed all Level III events, and Staff admits that this analysis reveals increasing event costs.

Staff also criticizes as "arbitrary" PGE's analysis showing that the majority of Level III costs incurred over the last quarter-century have been incurred in just the past eight years.[88] PGE demonstrated that 80 percent of event costs have been incurred in the last eight years if all Level III events are considered, as they should be.[89] But even if declared-emergencies are excluded, more than half of the costs have been incurred in the last eight years.[90] As PGE explained, these figures are not indicative of a uniform or declining trend in costs,[91] and these figures support PGE's and Staff's conclusions that costs *are*, in fact, increasing.[92]

AWEC claims that PGE did not provide compelling evidence regarding the need for a change and did not respond to AWEC's criticisms.[93] However, PGE thoroughly responded to the testimony of AWEC's witness Bradley Mullins in PGE's own testimony. Thus, to the extent AWEC is suggesting that Mr. Mullins's testimony is uncontroverted, AWEC is incorrect. For completeness, PGE will summarize its responses to AWEC again here.

AWEC asserts that PGE's analysis omitted a significant event that occurred in 1995 and points to AWEC's own analysis that it claims shows Level III costs actually declined over time.[94]

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[88] Staff's Opening Brief at 5.
[89] PGE/2400, Bekkedahl-Tooman/6.
[90] PGE/2400, Bekkedahl-Tooman/5-6.
[91] PGE/2400, Bekkedahl-Tooman/6.
[92] *See* Staff's Opening Brief at 6.
[93] AWEC's Opening Brief at 21.
[94] AWEC's Opening Brief at 21 (quoting and citing AWEC/300, Mullins/21).

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However, PGE responded to AWEC's arguments at length, explained why AWEC's approach is flawed, and presented its own analysis, discussed above, showing that the majority of Level III costs have been incurred in the last eight years.[95] As PGE explained in testimony, the 1995 event AWEC included in its analysis was a declared emergency, and any analysis that includes the 1995 event must also include the more recent declared-emergency events to be valid.[96] AWEC's claim that event costs are decreasing over time is fundamentally flawed because it relies on an analysis that includes one large, declared-emergency event that occurred in 1995, while excluding more recent, large, declared-emergency events.

AWEC also asserts that its testimony "explaining the adequacy of the current methodology to capture the impacts of climate change" went unaddressed.[97] In support of this claim, AWEC quotes Mr. Mullins's statement that "[t]he accelerating effects of climate change on storms…cannot readily be isolated to a period of less than 10 years, rendering the 10-year average *inadequate*."[98] However, as AWEC acknowledges later in its brief, PGE *did* address this statement by stating that "AWEC also appears to recognize that the 10-year average is inadequate…. "[99] In its briefing, AWEC criticizes PGE for mischaracterizing AWEC's position and states, "AWEC's position that the current 10-year average *is* adequate has been clear and consistent throughout this case."[100] To the extent AWEC believes PGE has mischaracterized its position, any such mischaracterization was inadvertent. PGE still does not understand AWEC's position with clarity as AWEC appears to be saying that the 10-year average both is and is not adequate, and PGE responded to AWEC's position as it understood it.[101] In any event, AWEC's assertion that its

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[95] PGE/2400, Bekkedahl-Tooman/3-6.
[96] PGE/2400, Bekkedahl-Tooman/4-5.
[97] AWEC's Opening Brief at 21.
[98] AWEC's Opening Brief at 21 (quoting AWEC/300, Mullins/21) (emphasis added).
[99] AWEC's Opening Brief at 22 (quoting PGE's Prehearing Brief at 37).
[100] AWEC's Opening Brief at 22.
[101] AWEC's Opening Brief at 22.

testimony went "wholly unaddressed" is without basis,[102] and PGE's testimony provides ample indicia of the impacts of climate change.

B. Requiring PGE to continue to bear *all* risk that Level III restoration costs will exceed the reserve account balance is not necessary to incentivize PGE to invest in its system or control restoration costs.

Staff argues that PGE has already made major capital investments in its system, in part to withstand severe events, and that PGE's GRC provides it with significant revenue to harden its system "on a forward-looking basis."[103] For these reasons, Staff disputes that PGE's proposed revisions to the mechanism are appropriate to incent PGE to harden its system.[104] To clarify, PGE's position is that changes to the mechanism will not alter PGE's current incentive to continue hardening its system, because under PGE's proposal, PGE would retain significant risk and would not be ensured full recovery of its Level III restoration costs.[105] PGE testified in depth regarding its approach to enhancing the resilience and reliability of its system, and explained that this approach is not dependent on the specific recovery mechanism available to PGE.[106] Because PGE already is investing in hardening its system and will continue to do so in a methodical and reasonable manner, there is no need to prevent PGE from recovering significant prudently incurred restoration costs to incent system hardening.

CUB asserts that its proposal to allow the reserve account to go negative but impose a hard cap "ensures that PGE has a robust incentive to minimize restoration costs where appropriate."[107] The implication of this statement is either that PGE has an incentive to over-spend on restoration efforts or that PGE should restore service more slowly in order to minimize costs. The former is

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[102] AWEC's Opening Brief at 21.
[103] Staff's Opening Brief at 8.
[104] Staff's Opening Brief at 8.
[105] *See* PGE/800, Bekkedahl-Jenkins/70; PGE's Opening Brief at 22.
[106] PGE/800, Bekkedahl-Jenkins/70-72.
[107] CUB's Opening Brief at 21.

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incorrect and the latter is inappropriate. As explained in PGE's testimony, PGE's efforts to safely and promptly restore service in the wake of severe events are managed for efficiency but are not governed by cost-recovery concerns.[108] PGE, its customers, and the Commission expect PGE to make every effort to restore power as quickly as possible, which PGE does by deploying contractors or using overtime, as necessary.[109] At the same time, PGE has no incentive to spend more than necessary on restoration efforts under either the current or PGE's proposed revised mechanism.[110] The costs PGE recovers under the mechanism are O&M costs that PGE does not earn a return on—there is no "gold-plating" concern.[111] And when PGE devotes resources to restoration, it must postpone other scheduled activities and then take up those efforts later, thus increasing total O&M costs.[112] Parties have not demonstrated that denying PGE the opportunity to recover more of its prudently-incurred restoration costs serves any cost-control function or incents behavior that is in the public interest.

Thus, retaining the current mechanism design, under which PGE bears all the risk of severe events and is regularly prevented from recovering its prudently incurred restoration costs, serves no rational purpose. It neither incents PGE's ongoing investment in reliability and resiliency nor provides a needed cost-control incentive. Rather, as PGE has explained, revising the mechanism to give PGE an opportunity for additional recovery supports the Commission's policy of prioritizing safety and promoting emergency preparedness.[113] By this, PGE simply means that it

[108] PGE/800, Bekkedahl-Jenkins/68.
[109] PGE/800, Bekkedahl-Jenkins/68.
[110] PGE/800, Bekkedahl-Jenkins/68.
[111] *See* PGE/2400, Bekkedahl-Tooman/5 n.3; Docket UE 215, PGE/800, Hawke-Nicholson/10-14 (offering initial proposal for a Level III mechanism under the heading "distribution O&M").
[112] PGE/800, Bekkedahl-Jenkins/68-69.
[113] PGE's Prehearing Brief at 31-32.

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allows PGE to focus on response and safe restoration, rather than cost recovery when a major event occurs.[114]

By emphasizing safety and preparedness, PGE is not implying that it needs an additional incentive to provide safe and reliable service, as CUB claims.[115] Instead, PGE is pointing out that the Commission expects utilities to prioritize safety and reliability in the face of extreme events and also recognizes that utilities should have an opportunity to recover the resulting costs. This policy was reflected recently in the Commission's approval of pre-filed emergency deferral accounts that permit *full utility recovery* of the prudent costs of responding to a declared-emergency event.[116] In adopting Staff's proposal for full utility recovery of declared-emergency costs, the Commission implicitly recognized that disallowing prudently incurred costs after the fact does little to incentivize preparedness for severe events or cost control when such events occur.

C. PGE's pre-filed deferral account for declared emergencies does not eliminate the need for reform to the Level III mechanism.

Staff argues that PGE's and CUB's proposals to allow the Level III reserve account balance to go negative are unnecessary because the Commission has adopted a separate deferral process for declared-emergency events.[117] As PGE explained above, there are no criteria governing which events are declared emergencies and therefore Staff's suggestion that a specific subset of events have been removed from the Level III mechanism umbrella is inaccurate. Even if it were correct to assume that declared-emergency deferrals will be available for all of the most severe events going forward, the pre-filed emergency deferral process does nothing to address the impacts of clusters of less severe events on the Level III mechanism. In 2017, for example, PGE incurred

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[114] PGE's Prehearing Brief at 31-32.
[115] CUB's Opening Brief at 22.
[116] *In re Portland Gen. Elec. Co., Application for a Pre-Filed Emergency Deferral of Costs Associated with Declared Emergencies*, Docket UM 2190, Order No. 21-309, App. A at 3 (Sept. 22, 2021).
[117] Staff's Opening Brief at 7-8.

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more than $11 million in Level III restoration costs, but only recovered the $2 million annual accrual amount from customers in that year.[118] The high event costs in 2017 resulted from four separate events—none of which was a declared emergency that would have been covered by the new, pre-filed emergency deferral policy.[119]

Staff also claims that the current Level III mechanism is sufficient because of "PGE's frequent practice of seeking deferrals for extraordinary storm costs."[120] However when PGE sought a deferral to recover for the significant 2017 costs not covered by the mechanism, the Commission denied the request and indicated its plan to reconsider the current Level III mechanism in this case.[121] Therefore, Staff's suggestion that deferrals can or should take the place of the Level III mechanism is not consistent with PGE's experience and appears to be contrary to the Commission's understanding.

Finally, Staff appears to conflate and possibly confuse the interaction between the Level III mechanism and PGE's pre-filed emergency deferral account, stating that the pre-filed emergency deferral account makes allowing a negative Level III balance unnecessary "because the deferral of costs using PGE's Emergency Deferral Account is [the] same as a Level III Outage Mechanism that allows PGE to defer the same costs when they exceed the amounts accrued under the Mechanism."[122] While not entirely clear, it appears that Staff may be suggesting that the pre-filed emergency deferral account is interchangeable with the Level III mechanism and that PGE's pre-filed emergency deferral account is available for any costs that exceed the balance in the Level III mechanism. If this is what Staff means, this is incorrect. Pre-filed emergency deferrals are

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[118] PGE/2400, Bekkedahl-Tooman/9 n.11.
[119] *See* Docket UM 1817, Order No. 19-274 at 1.
[120] Staff's Opening Brief at 6.
[121] Docket UM 1817, Order No. 19-274 at 14-15.
[122] Staff's Opening Brief at 8.

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available only for costs of declared-emergency events and do not offer PGE an avenue to recover costs when a non-declared-emergency event (or events) causes the reserve balance to go negative.

D. It is important to allow the reserve balance to be negative because even an annually updated 10-year average will lag behind clusters of events with increasing event costs.

PGE explained that its proposal to allow a negative balance in the reserve account is crucial because the 10-year historical average will not capture the increasing costs and clustered pattern of future events.[123] PGE illustrated how the 10-year average was inadequate between 2010 and 2017 when PGE experienced several years of mild conditions, which pulled down the average and decreased the amount available in the reserve account, followed by several years of severe conditions that depeleted the reserve account—culminating in 2017 when PGE absorbed more than $9 million in Level III costs that were not covered by the mechanism.[124] And not only does the historical average fail to account for the increasing unpredictability in event costs over time due to climate change, as discussed above, it also fails to account for increase in the costs of the Level III events that can be expected to occur over time, even absent the impact of climate change, due to inflation and expansion of the system.[125]

Staff and AWEC disagree with PGE that the 10-year average is inadequate. Staff responds that while milder conditions pull down the average, severe conditions do the opposite, suggesting that this dynamic allows the mechanism to adapt during clusters of severe events.[126] While Staff's general statement about how the average works is accurate, Staff fails to account for the fact that the average does not adjust immediately, and if the account cannot go negative, then PGE will be forced to absorb potentially significant costs while waiting for the average to slowly creep up to

[123] PGE/2400, Bekkedahl-Tooman/9.
[124] PGE's Prehearing Brief at 36-37; PGE/2400, Bekkedahl-Tooman/9, n.11.
[125] PGE/2400, Bekkedahl-Tooman/8-9.
[126] Staff's Opening Brief at 7.

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an adequate level.[127] Staff also asserts that the current $8 million balance in the reserve account belies PGE's claim that the annual accrual and reserve will likely be insufficient for the next cluster of events.[128] But Staff offers no support for this claim, which recent history suggests is inaccurate. Prior to the 2014-2017 cluster of severe events, the reserve had a $6 million balance, but events in 2014-2016 depleted that balance and left PGE to absorb more than $9 million in events costs in 2017.[129] It is unlikely that even annual updates to the average would have resulted in an adequate annual accrual to cover most of the 2016 or 2017 events.

Regarding PGE's statement about the impacts of inflation and system expansion, AWEC agrees with PGE that inflation and system expansion slightly increase costs over time, but AWEC asserts without elaboration or support that these impacts "are fairly captured in the context of the 10-year average."[130] AWEC does not explain how a historical average fairly captures a future increase, undermining its illogical claim. Staff responds on this point that the average *is* adjusted for inflation.[131] PGE agrees with Staff that the historical costs that flow into the average are adjusted to account for past inflation, but PGE's point was that the average does not capture inflation that will occur in the future, after the accrual amount is set—which is particularly problematic given the current, rapidly rising rate of inflation.[132] Staff also suggests that the 10-year average is adequate because system expansion is offset by the beneficial impacts of hardening PGE's system.[133] Staff's position appears to conflate two concepts, however, as illustrated by a

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[127] If Staff is correct that the 10-year average is adequate and will adjust during clusters of severe events, then allowing the mechanism to go negative is harmless because it will never need to go negative.
[128] Staff's Opening Brief at 7.
[129] PGE Exhibit 816 also shows that the 2015 Level III events exceeded the available reserve balance by approximately $785,000 and that the 2016 event costs exceeded the 2016 accrual by another $2.5 million. The Level III event costs in 2017 then exceeded the 2017 accrual by approximately $9.4 million.
[130] AWEC/300, Mullins/22.
[131] Staff's Opening Brief at 7.
[132] PGE/2400, Bekkedahl-Tooman/8 n.10.
[133] Staff's Opening Brief at 7.

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hypothetical example: If PGE replaces a wooden pole in its existing system with a metal pole, but also acquires a new line with a wooden pole, then PGE still has the same level of risk related to a wooden pole *plus* the risk associated with the metal pole, which has been lowered but cannot be eliminated completely. For all of these reasons, annual updates to the 10-year average do not fully resolve the concerns with the current mechanism, and therefore the Commission should allow the reserve balance to go negative.

E. There is no rational basis for excluding wildfire from the Level III mechanism.

CUB argues that applying the Level III mechanism to wildfire-related costs would be an inappropriate expansion of the mechanism and inconsistent with the mechanism's original intent.[134] CUB's position is based solely on the fact that the mechanism was referred to as a "storm" mechanism in docket UE 215 when it was originally adopted.[135] However, the mechanism was originally designed to address Level III events, and a Level III event is defined by its impact—not its cause.[136] CUB has not explained why one particular cause of Level III events should be excluded from the mechanism. PGE notes that Staff agrees that the mechanism covers wildfires and also recognizes that Level III costs could trend upward in the future due to increasing wildfires.[137]

V. DEFERRALS

The parties brought three specific deferrals into this case: The Boardman deferral, filed by AWEC and CUB, seeks to defer revenue impacts associated with the retirement of the Boardman

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[134] CUB's Opening Brief at 22-23.
[135] CUB's Opening Brief at 22; CUB/200, Gehrke/20.
[136] PGE/1400, Tooman-Batzler/44; Docket UE 215, PGE/800, Hawke-Nicholson/12; Docket UE 215, Order No. 10-478 at 6.
[137] Staff/2700, St. Brown/7.

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plant on October 15, 2020;[138] the 2020 Wildfire Emergency deferral, filed by PGE, covers the impacts of the devastating Labor Day wildfires;[139] and the 2021 Ice Storm Emergency deferral, also filed by PGE, covers restoration costs following the extreme winter weather event that occurred in February 2021.[140] (Together, the Wildfire and Ice Storm deferrals are referred to as the "Emergency Deferrals.")

As PGE noted in its testimony and prior briefing, PGE continues to believe that each of these three deferrals should be fully addressed outside the rate case in its own, existing docket. If the Commission decides to consider the deferrals in this case, PGE urges the Commission to deny authorization of the Boardman deferral and to delay amortization of the Emergency Deferrals until the deferrals are ripe for amortization and all information required for a complete earnings review is available. PGE will not repeat its prior arguments on these points, but will address issues the parties raised with more specificity in their Opening Briefs.

A. If the Commission addresses the Boardman deferral in this docket, it should not authorize the deferral and must conduct an earnings review if the deferral is authorized.

Assuming the Commission agrees that use of its deferral process is appropriate in the context of the Boardman closure, the Commission applies a two-step authorization analysis in which it considers whether a deferral meets the statutory criteria in ORS 757.259 and whether it meets the discretionary criteria.[141] For the latter, "[i]f the event was modeled or foreseen, without extenuating circumstances, and determined to be a stochastic event, the magnitude of harm must

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[138] *In re Alliance of Western Energy Consumers and Or. Citizen's Util. Board, Application for an Accounting Order Requiring Portland Gen. Elec. Co. to Defer Expenses and Capital Costs,* Docket UM 2119, Joint Application for Deferred Accounting of the Alliance of Western Energy Consumers and Oregon Citizens Utility Board (Oct. 8, 2020); Docket UE 394, AWEC-CUB/100, Mullins-Gehrke/1.
[139] *In re Portland Gen. Elec. Co., Application for Deferral of Wildfire Emergency Costs and Lost Revenues,* Docket UM 2115, PGE's Application (Sept. 10, 2020).
[140] *In re Portland Gen. Elec. Co., Application for Authorization to Defer Emergency Restoration Costs,* Docket UM 2156, Application for Deferral of Emergency Restoration Costs (Feb. 15, 2021).
[141] PGE's Prehearing Brief at 42-43; *see also* Staff's Prehearing Brief at 10; CUB's Prehearing Brief at 8-9.

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be substantial to warrant" authorizing the deferral.[142] Capital deferrals in particular are closely analyzed[143] and are warranted only for "costs or revenues that are truly *exceptional* in some way, whether due to unpredictability or magnitude, or a combination of both factors."[144] As PGE has noted, AWEC and CUB have the burden of producing evidence to support their deferral request and the burden of persuasion.[145]

Parties have offered a variety of justifications for their request that the Commission authorize AWEC's and CUB's request for deferral of costs related to PGE's retirement of Boardman. In sorting through the array of arguments proffered by the parties, PGE would submit that the touchstone for all of the Commission's ratemaking decisions—whether made in the context of a general rate case or in the context of an application for deferral—is whether those decisions will result in rates that are fair, just, and reasonable. In this case, the evidence demonstrates there is no justification for a deferral.

1. ORS 757.355 (the "used and useful" statute) does not support CUB's argument that the costs of Boardman must be removed from rates.

Before addressing the Commission's deferral precedent, PGE will briefly address AWEC's and CUB's argument that Oregon law requires the removal of Boardman's costs from rates. In support of its argument that the costs of Boardman should be retroactively removed from rates[146] and returned to customers, CUB leans heavily on its argument that ORS 757.355 "mandates return of the Boardman Deferral to customers."[147] In support of this interpretation, CUB and AWEC

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[142] Docket UM 1817, Order No. 19-274 at 3.
[143] *In re Pub. Util. Comm'n of Or., Investigation of the Scope of the Commission's Authority to Defer Capital Costs,* Docket UM 1909, Order No. 20-147 at 1 (Apr. 20, 2020).
[144] *In re Util. Reform Project, Application for Deferred Accounting*, Docket UM 1224, Order No. 09-316 at 14 (Aug. 18, 2009) (emphasis in original).
[145] Docket UM 1817, Order No. 19-274 at 2, n.4; *In re Pub. Util. Comm'n of Or. Staff Request to Open an Investigation Related to Deferred Accounting*, Docket UM 1147, Order No. 05-1070 at 5-6 (Oct. 5, 2005).
[146] PGE is not referring here to retroactive ratemaking, which PGE recognizes is permitted in the instance where the Commission has properly authorized a deferral under ORS 757.259, but is using the term more generally here.
[147] CUB's Opening Brief at 6.

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discuss *Gearhart* and the *Trojan* line of cases.[148] The parties seem to suggest that under this line of cases, retention of the costs of Boardman in rates after Boardman's closure is "illegal," and that the return of all of the costs to customers is required by law. Respectfully, ORS 757.355 and the Commission's *Trojan* order, which determined the remedy for including an improper element in past rates, do not stand for this proposition. If the *Trojan* line of cases stood for the proposition that utility rates are illegal if they include plant retired between rate cases, the currently authorized rates for every utility regulated by this Commission would all be illegal.

This is not the case. Elements of plant across a utility's system are continually retired and put out of service between rate cases. This scenario does not require the immediate removal of a retired plant from rates, an assertion that is both legally incorrect and wholly impractical.[149] From a legal perspective, 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 plant that is not currently used and useful.[150]

The *Trojan* line of cases has an extensive history, but the question at issue in the proceedings was whether the Commission erred by including in rates a rate element that was not permitted by ORS 757.355, and if so, what remedy should be applied.[151] The reviewing court found that the Commission had committed error by including in rates a "return on" the prudent

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[148] *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) (hereinafter, "*Trojan* order," in which the Commission made 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); *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.").
[149] *See* CUB's Prehearing Brief at 7-8 for the assertion that customers must not bear the costs of any plant from the date the plant is no longer in service.
[150] *Trojan* order at 21.
[151] *Trojan* order at 1-3, 12-16, 21, 26-42.

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cost of retired but not-yet-depreciated Trojan plant.[152] The appellant-complainant argued that the remedy for the Commission's erroneous inclusion of this element in rates was to simply back out the erroneous rate element and refund the "excess" to customers. On remand, the Commission concluded in its seminal *Trojan* order that it was inappropriate to simply back out of rates the amount of the alleged "overcharge," as doing so would be inconsistent with the holistic nature of ratemaking. As the Commission explained,

> It is critical to recognize the distinction between what the Court of Appeals did and did not conclude: The court did find that a single component used in calculating overall rates was based on an erroneous statutory interpretation; the court did not find that overall rates were unlawful . . . . It may seem logical to conclude that the inclusion of an improper rate element necessarily results in unlawful rates. But such a conclusion is contrary to the well-established principle that it is the legality of the end result of the ratemaking process, and not the legality of each calculation or input used during that process, that controls[.][153]

The Commission then explained,

> If a court concludes that a Commission order was made in error [here, by including an element in rates not permitted under the "used and useful" statute], the court is prohibited from establishing new rates, and generally will remand the decision to the Commission for further proceedings. It is then the Commission's job to determine whether the error identified by the reviewing court rendered overall rates unjust and unreasonable or unjustly discriminatory.[154]

Thus, even though the costs of Boardman remained in rates after Boardman's retirement, the *Trojan* line of cases stands for the proposition that so long as PGE's rates remained just and reasonable, the rates remained lawful, and there was no "overcharge" that should be refunded to

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[152] *Trojan* order at 1, 12-13.
[153] *Trojan* order at 22.
[154] *Trojan* order at 24.

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customers. *Trojan* simply does not stand for the proposition that cost of retired plant must be backed out of rates and refunded to customers.[155]

Staff's argument that "[w]hen 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,"[156] is technically correct, as PGE is unaware of any other instance where the Commission sought to use its *deferral* authority to address plant retired between rate cases. However, if the Commission elects to do so here, the Commission should not ignore the regulatory touchstone identified in *Trojan* for determining whether inclusion of plant that was not "used and useful" renders past rates unlawful. The correct touchstone is a review of the end result.[157] A review of offsetting costs is critical to that assessment, and efforts to minimize the importance of that assessment in the context of ratemaking elevates form over substance. PGE absorbed almost $100 million in the costs of new investments between the rate-effective date of PGE's last rate case and this case.[158] There is no reason for the Commission to determine, in its evaluation of this specific deferral request, that there exists any harm to be remedied. In short, there is nothing in the record to suggest that PGE's rates were "illegal" or that any remedy is necessary or appropriate under the Commission's traditional ratemaking principles.

2. Parties seeking deferral of Boardman costs are seeking an unusual remedy that, if approved, requires additional policy guidance.

As the Commission has recognized, utilities typically leave retired assets in rates until the next rate case (while simultaneously making new investments not yet included in rates).[159] The

[155] *See also Trojan* order at 25 ("Contrary to [complainants'] misuse here, the term 'overcharge' does not apply to rates charged in accordance with a lawfully filed tariff, even if the rate order approving the rates included in that tariff is later remanded after judicial review.").
[156] Staff's Opening Brief at 21.
[157] *Trojan* order at 22.
[158] PGE's Prehearing Brief at 43-44.
[159] Docket UM 1909, Order No. 20-147 at 13.

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parties have provided no compelling reason to depart from traditional ratemaking principles under the facts present in this docket, and PGE asks the Commission to continue to rely on its traditional ratemaking policies to set rates prospectively in the event of plant retirements. Granting deferral applications to remove retired plant between rate cases would encourage utilities to file rate cases more frequently to ensure the costs of new plant can be added to rates in a timely fashion if retired plant cannot be used to counterbalance the cost of new investments. The result—more rate cases—runs contrary to a key purpose of the deferral statute, which is to "minimize the frequency of rate changes."[160]

If the Commission nevertheless elects to exercise its deferral authority to address plant retirements between rate cases, utilities would benefit from prospective guidance from the Commission about how that authority might be exercised. For example, Staff argues that the costs of Boardman at issue in this case are in excess of $100 million and are thus "substantial" under the Commission's deferral criteria.[161] If the Commission agrees with this conclusion, the Commission should provide guidance on whether plant retirements between rate cases should be deemed "substantial" only if the costs are caused by a single, large element of plant, or whether a cumulative retirement of $100 million in plant between rate cases would similarly warrant a finding that the amount of retired plant is "substantial."

The issue is relevant because the cumulative amount of smaller plant retirements in a utility's rate base each year can be significant. Moreover, utilities sometimes agree to "stay-out" periods as a condition of settlement in rate cases or delay filing rate cases when they are able to manage costs. NW Natural, for example, stayed out of rate cases completely between 2002 and

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[160] ORS 757.259(2)(e).
[161] *See, e.g.,* Staff's Opening Brief at 21.

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2011.[162] By 2011, the amount of retired plant in NW Natural's rates was undoubtedly significant. Thus, if the Commission intends to make retired plant subject to deferral and later refund to customers, PGE asks for prospective guidance on future application of this policy.

Parties' argument that PacifiCorp and Idaho Power Company have mechanisms that allow for immediate removal of retired coal plants from rates does not remedy the issue with their Boardman requests. Both PacifiCorp and Idaho Power Company have obtained mechanisms that prospectively facilitate the removal of their multiple coal plants from rates, putting them on notice that the Commission will apply specific regulatory treatment to their retired plant. Given SB 1547's mandate to remove coal plants from Oregon rates by 2035 and the complications of multi-jurisdictional regulation, special regulatory mechanisms are appropriate for PacifiCorp and Idaho Power Company to ensure their coal plant retirements are addressed in a uniform and orderly manner. PGE has no such mechanism. Despite parties' knowledge for the past ten years of Boardman's retirement date, no party sought such a mechanism, nor was one warranted here, where PGE is the operator of a single coal plant wholly within the Commission's jurisdiction that can be removed from rates early and without undue impact.

If the Commission decides to exercise its deferral authority in this docket to make Boardman costs subject to refund to customers, PGE believes it would be a new exercise of the Commission's deferral authority. It is too late for PGE to go back and evaluate whether it should have filed its rate case earlier to capture the cost of new investments. But prospective notice of the Commission's intended policy guidelines on this issue going forward would allow PGE and other utilities to make appropriate determinations about when to time their rate case filings.

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[162] *See In re NW Natural Request for General Rate Revision,* Docket UG 221, *NW Natural's Application for General Rate Revision* at 4 (Dec. 30, 2011) (describing NW Natural's cost controls since its 2002 rate case).

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3. Assuming the Commission applies its deferral standards to the Boardman costs, the Commission should deny authorization of the Boardman deferral.

In the event the Commission finds it appropriate to exercise its deferral authority in the context of the Boardman retirement, the Commission should deny authorization of the Boardman deferral on the merits. PGE has addressed the elements of the Commission's deferral policy in its prior briefing and will not address them all here.

As the Commission is aware, Boardman's closure was planned for over a decade, and was not exceptional or unpredictable.[163] Customers did not experience any harm—much less substantial harm—because, as PGE has noted, its continued capital investments more than offset the benefit of leaving Boardman in rates. Even after factoring in the savings from Boardman and revenue growth that occurred in the interim, PGE absorbed almost $100 million in the costs of new investments between the rate-effective date of PGE's last rate case and this case.[164] In this context, the parties' assertions that the Commission should disregard the practical effect of these offsetting costs is unjustified. To ensure that rates were just and reasonable during the time period that the retired Boardman plant remained in rates, the Commission can either deny the application for deferral, recognizing that on the record of this case, there is no harm to be remedied; or it can authorize the application for deferral and apply an appropriate earnings test. PGE would submit that denying authorization for deferral is the most administratively efficient way to reach a fair and appropriate result here.

PGE worked hard to delay the filing of this rate case as long as possible, recognizing how the COVID-19 pandemic continues to impact its customers, and the offsetting savings from the closure of Boardman helped PGE wait until mid-2021 to file this case while enabling PGE to add

[163] PGE's Prehearing Brief at 43.
[164] PGE's Prehearing Brief at 43-44.

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needed plant to serve customers.[165] PGE is taking steps in all aspects of its business to further the state's decarbonization policies, and PGE has been able to undertake these important investments without filing a rate case for the last three years, in part, due to the offsetting savings from Boardman.[166] Unexpectedly pulling Boardman out of rates is not required by state law or policy and does not support PGE's efforts to decarbonize the grid.

4. The Commission can ensure that PGE's rates remain just and reasonable overall by applying an earnings test.

If the Commission decides in this case to rely on its deferral authority to allow the retired Boardman plant to be removed from rates between rate cases, it should follow the guidance provided by *Trojan* to determine whether any remedy is warranted. As the Commission explained in *Trojan*, the question is whether the inclusion of specific costs in prior rates "rendered overall rates unjust and unreasonable or unjustly discriminatory."[167] If the answer is no, then no remedy is warranted. The Commission made this evaluation in *Trojan* by reviewing the overall impact of excluding a specific element of rates from prior periods. If the Commission instead elects to authorize the Boardman deferral, the Commission could accomplish the same holistic rate review required by *Trojan* by applying an earnings test intended to accomplish the same goal.

While Staff argues that the same earnings test should apply to all three deferrals, CUB opposes application of an earnings test to the Boardman deferral "because it would be illegal for PGE to retain the amounts in the deferral."[168] As explained above, CUB's interpretation of the used and useful statute is incorrect. Further, CUB's position is unreasonable as it would disregard the impact of amortization on PGE. The Commission has explained that an earnings test "ensures

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[165] *See* PGE/100, Pope-Sims/4-5.
[166] *See* PGE/100, Pope-Sims/4, 7, 13-14.
[167] Docket DR 10, Order No. 08-487 at 24.
[168] CUB's Prehearing Brief at 11.

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that utilities are not to refund amounts to customers while earnings are below reasonable levels."[169] Here, the Boardman deferral contains approximately $100 million,[170] and approximately $38 million represents 100 basis points of ROE for PGE.[171] Thus, full refund of the deferred amounts could reduce PGE's ROE by 200-300 basis points. If the Boardman deferral is authorized, PGE should not be required to refund the amount to customers without application of an earnings test to ensure that the refund does not endanger PGE's financial health.

CUB argues that docket UM 1920 supports its position that no earnings test is required,[172] but CUB's reliance on that docket is misplaced. As CUB recognizes, in that case the Commission adopted Staff's memorandum reflecting an agreement among the parties that earnings remained within acceptable levels after taking the deferred amounts into account.[173] The Staff memorandum stated, "Parties acknowledge that the Commission must review earnings as specified by ORS 757.259(1), however PGE agrees that the $45 million refund will result in earnings that are within an acceptable level relative to the rate authorized . . . in PGE's 2018 general rate case[.]"[174] Far from standing for the proposition that no earnings reviewed is required, this case demonstrates that PGE's earnings *were* considered and determined to be within a reasonable level, and as a result, PGE agreed that the Commission did not need to undertake its own formal earnings review. Docket UM 1920 does not support CUB's position in this case, where PGE does not agree that no earnings test is required or that its earnings would be at a reasonable level if the Boardman deferral were refunded.

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[169] *In re Idaho Power Co., Request for a Gen. Rate Revision Phase II*, Docket UE 233, Order No. 13-416 at 12 (Nov. 12, 2013).
[170] Staff/2600, Moore-Dlouhy-Storm/10.
[171] PGE/2900, Tooman-Ferchland/20.
[172] CUB's Opening Brief at 11.
[173] *In re Portland Gen. Elec. Co., Application for Authorization to Defer Benefits Associated with the US Tax Reconciliation Act*., Docket UM 1920, Order No. 18-459, App. A at 5 (Dec. 4, 2018).
[174] Docket UM 1920, Order No. 18-459, App. A at 5.

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Another prior case also supports PGE's position that an earnings review is required here. In docket UM 1252, which addressed deferral of the savings associated with the 2005 Oregon Corporate Tax Kicker, an earnings test was conducted, and ultimately parties stipulated that PGE's earnings were insufficient to support amortization of the deferred amount.[175] This case demonstrates that an earnings test is required before refunding deferred amounts to customers, even when customers are paying amounts in excess of the utility's cost, contrary to CUB's assertions.[176] The Commission should reject CUB's unsupported position that no earnings test is required for the Boardman deferral.

B. The Commission should adopt PGE's proposed process for the earnings reviews.

PGE requests that the Commission consider amortization of the Emergency Deferrals, and the Boardman deferral if authorized, in their separate, existing dockets. If the Commission considers amortization in this case, it should require that the earnings review for the authorized deferrals consider the 2021 calendar year, and the Commission should not aggregate the deferrals for purposes of the earnings review.

1. Staff's proposed year-by-year earnings review is unnecessarily complicated and not required by the Commission's rules.

If the Commission elects to consider amortization in this docket, it should reject Staff's proposal to review earnings year-by-year and instead conduct a single earnings test for each deferral based on 2021. Earnings tests should be based on a period "reasonably representative of the deferral period."[177] The Boardman and Wildfire deferrals both span from late 2020 into 2022, with the majority of the costs occurring in 2021.[178] The Ice Storm deferral covers February 15,

[175] *In re Portland Gen. Elec. Co. Application for Deferred Accounting of Savings associated with the 2005 Oregon Corporate Tax Kicker*, Docket UM 1252, Order No. 10-308 at 2 (Aug. 10, 2010).
[176] CUB's Opening Brief at 11.
[177] OAR 860-027-0300(9).
[178] PGE/2300, Tooman-Batzler/10; PGE/2900, Tooman-Ferchland/28; Staff's Prehearing Brief at 14, Table 1.

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2021, through February 14, 2022.[179] Therefore, 2021 is reasonably representative of the deferral period for all three deferrals.[180]

Conducting one earnings review based on 2021 for each deferral is more efficient than Staff's proposal of three earnings reviews covering different years and different combinations of deferrals, as well as more reasonably representative of the deferral period. Staff continues to reference NW Natural's environmental remediation deferral in support of Staff's proposal for a year-by-year earnings review,[181] but that case involved the deferral of costs for over a decade under which NW Natural incurred costs year after year. Here, the majority of PGE's deferred costs were incurred in 2021, making 2021 the time period most reasonably representative of the deferral period. In 2020, by contrast, PGE deferred costs for only a few months, and using the entire calendar year 2020 would not be reasonably representative of this deferral period. Under these circumstances, conducting multiple earnings reviews creates complication and is not necessary to accurately capture PGE's earnings over the deferral periods.

2. Staff's proposal to aggregate the deferrals for the earnings review is contrary to the purpose of the earnings review and would yield unreasonable results.

Staff recommends aggregating the deferrals for purposes of the earnings review to "determine the impact of the net amount on PGE's earnings."[182] However, netting the deferral amounts prior to application of an earnings test is inappropriate, because doing so would effectively allow a collection or refund without consideration of PGE's earnings, leading to logically unsound results. The following hypothetical examples illustrate how Staff's proposal yields significantly different results than conducting separate earnings reviews:

[179] PGE/2900, Tooman-Ferchland/25.
[180] PGE/2900, Tooman-Ferchland/25-26.
[181] Staff's Opening Brief at 23.
[182] Staff's Opening Brief at 23; Staff's Prehearing Brief at 12-13.

a) Example 1: Deferral amounts aggregated before earnings review.

If an earnings review is applied to the deferrals after aggregating the Boardman deferral and the Emergency Deferrals, the net ROE impact of the three deferrals is 0.7 percent.[183] If PGE were earning an ROE of 5 percent prior to the earnings review, then the end result of the aggregated earnings review would be that PGE collects the 0.7 percent net amount to yield an ROE of 5.7 percent, as shown in the following chart:

Regulated ROE prior to earnings test		**5.0%**	
Aggregated deferrals	0.7%	5.7%	5.0% is below 9.5% → collect
Ending result		**5.7%**	

Thus, aggregating the three deferrals when faced with a very low starting ROE effectively results in a refund of the Boardman deferral—notwithstanding the fact that PGE is significantly underearning—and allows PGE the opportunity to collect only those amounts from the Emergency Deferrals that are in excess of the Boardman deferral amount.

Conversely, if PGE were earning an ROE of 12 percent prior to application of the earnings review, then the end result of the aggregated review would be that PGE neither collects nor refunds any amount, and its ROE remains at 12 percent, as shown in the following chart:

Regulated ROE prior to earnings test		**12.0%**	
Aggregated deferrals	0.7%	~~12.7%~~	12.0% is above 9.5% → do not collect
Ending result		**12.0%**	

Thus, PGE would be significantly overearning yet would not refund any of the Boardman deferral amount because that amount would be more than offset by the Emergency Deferrals.

In either situation, the result of the aggregated earnings review is inappropriate.

[183] PGE used a proxy value for the Boardman deferral of $100 million, or 2.70% of ROE; a proxy value for the Ice Storm deferral of $70 million, or 1.90% of ROE; and a proxy value of the Wildfire deferral of $55 million, or 1.50% of ROE. 1.9% + 1.5% - 2.7% = 0.7%. These values are for illustrative purposes only, as the exact amounts are still under review, but they are meant to approximate the values of these deferrals. This hypothetical analysis assumes an average rate base for 2021 of $5.4 billion, which is more than the authorized rate base in UE 335 and approaching the newly authorized rate base in this docket, and a composite tax rate of 27.5%.

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b) Example 2: Deferrals reviewed separately.

If PGE were earning an ROE of 5 percent and the three deferrals were reviewed separately, the process would look like this:

Regulated ROE prior to earnings test		**5.0%**	
Wildfire deferral	1.9%	6.9%	5.0% is below 9.5% → collect
Ice Storm deferral	1.5%	8.4%	6.9% is below 9.5% → collect
Boardman deferral	-2.7%	~~5.7%~~	8.4% is below 9.5% → do not refund
Ending result		**8.4%**	

Thus, PGE would collect the full amount of the Emergency Deferrals and would not refund any of the Boardman deferral, and its earnings would still be below its authorized ROE of 9.5 percent.

If PGE were earning an ROE of 12 percent and the three deferrals were reviewed separately, the process would look like this:

Regulated ROE prior to earnings test		**12.0%**	
Wildfire deferral	1.9%	~~13.9%~~	12.0% is above 9.5% → do not collect
Ice Storm deferral	1.5%	~~13.5%~~	12.0% is above 9.5% → do not collect
Boardman deferral	-2.7%	9.3%	9.3% is below 9.5% → refund to 9.5%
Ending result		**9.5%**	

Thus, PGE would not collect any of the Emergency Deferrals amounts and would refund a portion of the Boardman deferral amount to reach its authorized ROE of 9.5 percent.

In either situation, the separate earnings review not only yields more rational results, it also ensures that the actual effect of the deferred amounts on PGE's earnings is considered and that collections or refunds are authorized, as appropriate, to bring PGE's earnings to a reasonable level. PGE strongly urges the Commission to reject Staff's proposal.

3. AWEC's proposal to consider the deferrals in a new, consolidated docket is unnecessary and inefficient.

AWEC continues to recommend that the Commission open a new docket in which to review and establish amortization schedules for the three deferrals, arguing that doing so "supports

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judicial efficiency and furthers the public interest."[184] However, AWEC offers no support for this bare assertion and does not explain how opening yet another new docket furthers judicial efficiency or how the public interest is affected by the docket in which amortization is considered. As PGE explained in its Opening Brief, considering the deferrals in a new consolidated docket would likely cause confusion of the issues given the differing burdens of proof that apply, the fact that the Boardman deferral is not yet authorized, and the differing circumstances of the deferrals.[185] In addition, the Commission need not consolidate the deferrals into the same docket to consider them on the same timeline—it can simply set the separate dockets on similar schedules.[186]

4. AWEC's proposal to amortize $15 million of the Emergency Deferrals is entirely unsupported.

AWEC's attempt to amortize a portion of the Emergency Deferrals subject to refund while moving the full balances to the Modified Blended Treasury (MBT) rate remains inconsistent with Commission precedent. The Commission applies a lower rate after amortization has been approved *because* "the amortized amount differs from an investment in terms of the risk associated with it."[187] As long as the unamortized balance is at risk of recovery, then that balance should continue to earn interest at PGE's rate of return, not the MBT rate. Instead of offering a substantive response to PGE's position, AWEC simply states that if the Commission accepts PGE's argument on this point, "then AWEC does not advocate any amortization of any of the Deferrals in this case."[188] PGE's position simply reflects Commission policy. The Commission should reject AWEC's request to amortize any deferral amounts in this proceeding.

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[184] AWEC's Opening Brief at 2, 6-8.
[185] PGE's Opening Brief at 32-33.
[186] PGE's Opening Brief at 33.
[187] Docket UM 1147, Order No. 06-507 at 6 (Sept. 6, 2006).
[188] AWEC Opening Brief at 8.

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C. The Commission should reject Staff's punitive earnings-review standards.

Staff recommends that the earnings review compare PGE's earnings to a threshold of 8.5 percent, which is 100 basis points below PGE's authorized ROE of 9.5 percent, and that PGE be required to absorb 10 percent of the prudently incurred costs in the Emergency Deferrals prior to application of the earnings test.[189] PGE's Prehearing and Opening Briefs explained why these proposals are inappropriate and inconsistent with Commission precedent.[190] Staff's proposals would require PGE to absorb 10 percent of the prudently incurred Emergency Deferrals costs, which exceed $100 million, *and also* the amount necessary to bring PGE's ROE from 8.5 to 9.5 percent, which represents approximately $38 million for PGE.[191] Neither proposal is appropriate in isolation, and together, the proposals are punitive and should be rejected.

Staff rejects the recent precedent[192] PGE provided to support use of authorized ROE as the earnings-test benchmark,[193] arguing that none of the precedent is persuasive because none concerns a deferral for extraordinary costs related to a natural event.[194] Instead, Staff relies on an order that is almost 30 years old and addressed a deferral related to an outage at the Trojan plant,[195] which is also not a natural event that caused extraordinary costs. Therefore, it is unclear why the Commission should be persuaded by the 1993 order and should ignore several more recent orders. The Commission previously determined that 9.5 percent represents an appropriate level for PGE

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[189] Staff's Prehearing Brief at 12-14.
[190] PGE's Prehearing Brief at 48-50; PGE's Opening Brief at 35-36.
[191] PGE/2900, Tooman-Ferchland/20.
[192] *See* Docket UE 215, Order No. 10-478, App. B at 4; *In re Nw. Nat. Gas Co., dba NW Nat., Mechanism for Recovery of Environmental Remediation Costs*, Docket UM 1635, et al., Order No. 15-049 at 12-13 (Feb. 20, 2015); *In re Portland Gen. Elec. Co., Schedule 149, Environmental Remediation Costs Recovery Adjustment*, Docket UE 311, et al., Order No. 17-071, App. A at 6 (Mar. 2, 2017); *In re Idaho Power Co., Request to Amortize in Rates Deferred Revenues Associated with the Langley Gulch Power Plant*, Docket UE 382, Order No. 20-374, App. A at 3 (Oct. 27, 2020).
[193] Staff's Opening Brief at 22.
[194] Staff's Opening Brief at 22.
[195] Staff's Opening Brief at 22 (citing Order No. 93-257).

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and its customers, and parties stipulated to maintain PGE's authorized ROE in this case.[196] There is no valid reason to apply a lower threshold in the earnings review.

Staff's sharing proposal is similarly inconsistent with recent precedent. In the NW Natural case, on which Staff relies for its proposal to conduct a year-by-year earnings review, Staff proposed 10 percent sharing, and the Commission rejected Staff's proposal.[197] As PGE explained in its Prehearing Brief, the Commission's reasoning in that case applies equally here, and Staff's proposal should be rejected.[198]

Finally, Staff claims that requiring PGE to bear a portion of the costs "incents PGE to minimize the costs of restoration and to harden its system to avoid similar costs in the future."[199] However, as PGE explained above in its discussion of the Level III mechanism, disallowing prudently incurred costs after the fact does little to further incent system-hardening, which PGE already undertakes in a methodical and rational manner, and also does not provide a needed cost-control incentive, because PGE always restores service as safely, efficiently, and quickly as possible following a major event. Staff recognized this dynamic when it recommended—and the Commission approved—PGE's pre-filed emergency deferral account under which PGE can obtain "full utility recovery" for declared-emergency events.[200]

Importantly, Staff has failed to describe in any meaningful way how its proposed earnings test benchmark would incentivize the behavior Staff seeks to encourage. Utilities have always had incentives to harden their systems but are simultaneously tasked with acting prudently to scale the level of investment to the level of system need. Even so, utilities have historically been accused

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[196] Docket UE 335, Order No. 19-129 at 4, 11 (Apr. 12, 2019); First Partial Stipulation; Stipulating Parties/100, Muldoon-Gehrke-Mullins-Bieber-Chriss-Ferchland/3.
[197] Docket UM 1635, Order No. 15-049 at 11.
[198] PGE's Prehearing Brief at 50.
[199] Staff's Opening Brief at 24.
[200] Docket UM 2190, Order No. 21-309, App. A at 3.

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of over-investing and system "gold plating." The Commission has recently made clear that it expects utilities to harden their systems further, and PGE is ready and willing to do so in a prudent manner. As PGE has noted, it already has ample incentives to harden its system to mitigate the impact of severe events like the 2020 Wildfire and 2021 Ice Storm, as discussed above regarding both wildfires specifically and Level III events in general. By contrast, utilities stand to gain nothing from customer outages. There is no utility profit motive associated with restoration efforts, which divert resources from system operations and tie up resources needed for other system investments. Because Staff has been unable to articulate how its proposed benchmark is intended to incentivize its targeted goal, Staff's proposal simply represents an unbalanced allocation of risk. Therefore, there is no basis for imposing 90/10 sharing for the Emergency Deferrals prior to application of the earnings test, which should use PGE's authorized ROE as the benchmark.

D. PGE's wildfire deferral costs are prudent.

AWEC and Staff raise questions regarding the costs included in the Wildfire deferral.[201] As PGE explained in its Prehearing Brief, these costs are appropriate and prudent.[202] However, to the extent the Commission desires a more thorough prudence review, it should adopt PGE's proposal to address the amortization, earnings review, and prudence issues in the specific deferral dockets.

VI. SCHEDULE 150 NONBYPASSABILITY

PGE's Schedule 150 currently collects a charge to support transportation electrification in accordance with Section 2(2) of House Bill (HB) 2165.[203] These costs are allocated to all

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[201] AWEC's Opening Brief at 8; Staff's Opening Brief at 22.
[202] PGE's Prehearing Brief at 50-51.
[203] *See PGE Advice No. 21-26, Schedule 150 Transportation Electrification Cost Recovery Mechanism* (approved Dec. 28, 2021). Available at: https://assets.ctfassets.net/416ywc1laqmd/bAlUAOkBjG2ttYMFzDBzQ/0ec1c4e2906b245a2bec5dfd2eda5fd7/Sched_150.pdf (last visited Mar. 1, 2022).

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customers, including direct access customers, using the same methodology PGE would use to allocate the costs to a cost-of-service customer of similar size and load profile.[204] PGE proposes expanding Schedule 150 to allow it to recover additional costs associated with transportation electrification not otherwise included in customer prices and allocating them to customers in the same manner that PGE currently uses for the HB 2165 transportation electrification charge described above.[205] PGE is seeking this allocation on an interim basis pending a decision in UM 2024. Staff supports PGE's position and agrees that the Commission should approve PGE's proposal on an interim basis pending Commission decisions in dockets AR 651 and UM 2024.[206] AWEC and Calpine disagree with PGE's proposal.

A. Transportation electrification costs should be allocated to all customers, including direct access customers.

AWEC argues that PGE's proposal to allocate the deferred costs of its transportation electrification pilot programs to direct access customers violates cost causation principles and is unsupported by evidence in the record.[207] PGE explained the basis for its proposal in its testimony and briefing, and has demonstrated that its proposal is justified.

As PGE noted, PGE is seeking a cost allocation methodology that is substantially similar to the methodology adopted by the Commission in the context of the community solar program.[208]

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[204] Schedule 150 adjustment rates are created for each schedule using the applicable schedule's forecasted energy on the basis of an equal percent of revenue applied on a cents per kWh basis to each applicable rate schedule, with long-term opt out and new load direct access customers priced at the equivalent cost of service rate schedule.

[205] *See, e.g.*, *In re Portland Gen. Elec. Co., Application for Deferred Accounting for Costs and Revenues Associated with the Transportation Electrification Plan,* Docket UM 1938; *In re Portland Gen. Elec. Co., Application for Deferral of Costs and Revenues Associated with the Elec. Vehicle Charging Pilots,* Docket UM 2003.

[206] In its Prehearing and Opening Briefs, Staff discusses PGE's proposed Schedule 137, an issue that was settled as part of the parties' Fourth Partial Stipulation.

[207] AWEC's Opening Brief at 19.

[208] *See, e.g.*, *In re Portland Gen. Elec. Co., Advice No. 20-09 (ADV 112), Schedule 136 Cost Recovery Mechanism*, Docket UE 380, Order No. 20-173 at 2 (May 28, 2020) (concluding the Community Solar Program is a legislatively-mandated program intended to provide for broad public, customer, and community benefits such that all customers should contribute to the recovery of program costs and adopting PGE's proposed cost-allocation methodology for start-up costs as an interim cost-allocation methodology while Docket UM 2024 is pending).

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The Commission adopted PGE's cost allocation proposal in the community solar proceeding as an interim measure pending resolution of issues in docket UM 2024. PGE seeks the same result here. Moreover, HB 2165, the state's new transportation electrification legislation, like SB 1547 before it, indicates a clear intent to ensure that transportation electrification costs be shared broadly among all customers.[209]

The costs at issue are associated with PGE's transportation electrification pilot program deferrals in dockets UM 1938 and UM 2003.[210] The majority of costs to be included in PGE's proposed Schedule 150 are costs such as customer rebates, advertising, and administrative costs.[211] There is no regulatory or rate design principle that would allocate these types of costs only to cost of service customers, as these types of costs are not traditional "system" costs. Moreover, these types of costs represent costs that PGE would not have incurred but for legislation mandating transportation electrification.[212] In short, they are precisely the types of costs that, as a matter of principle and regulatory consistency, should be allocated as broadly as possible among all customer groups, including direct access customers.[213] This is what PGE's proposal is intended to achieve.

AWEC asserts that PGE has failed to meet its burden of proof because PGE has "not specified or quantified" the benefits of its transportation electrification programs or the benefits to the electric system that inure from these programs.[214] AWEC's assertion is without merit. The costs associated with PGE's Schedule 150 are pilot program costs associated with accelerating

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[209] *See, e.g.*, *In re Rulemaking Regarding Transportation Electrification Plans*, Docket AR 609, Order No. 19-134 (Apr. 16, 2019) (discussing legislature's broad findings in support of transportation electrification).
[210] *See* PGE/500, Bekkedahl-McFarland/16.
[211] *Id.*
[212] Evidentiary Hearing Transcript at 29 (Feb. 10, 2022) (hereinafter, "Hearing Transcript").
[213] PGE's methodology would also comport with SB 1149's prohibition on creating unwarranted cost shifting in the context of developing and implementing direct access programs. SB 1149, Sec. 8; ORS 757.607(1).
[214] AWEC's Opening Brief at 20.

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transportation electrification in the state.[215] The Commission would be well within its authority to determine that all customers, including direct access customers, should carry their fair share of these costs.

B. PGE's proposed cost allocation methodology comports with cost-causation principles and principles of equity.

PGE's proposed cost-allocation methodology would allocate the deferred costs of PGE's transportation electrification pilots broadly to all customers as if they were cost of service customers, consistent with the methodology adopted on an interim basis for community solar costs and the methodology mandated for allocation of the transportation electrification charge required by HB 2165. Calpine disagrees with this cost-allocation proposal and argues that SB 1547 requires the Commission to allocate the costs as if the Commission were solely allocating costs based on a customer's share of PGE's distribution system revenue requirement.[216] PGE disagrees with Calpine's interpretation of SB 1547, a statute that, in any event, was superseded on September 25, 2021, and thus would apply only to costs incurred before that date. Moreover, as PGE noted in its Opening Brief, the practical result of Calpine's proposed cost allocation methodology is to require smaller customers to shoulder a higher burden of the costs of accelerating transportation electrification in Oregon.[217] This is not only inconsistent with cost causation, it is inequitable.

While it was in effect, SB 1547 stated that tariff schedules and rates for utility transportation electrification programs should be allocated in a method "similar to the recovery of distribution system investments."[218] But costs in PGE's Schedule 150 such as advertising and rebates for transportation electrification would not logically be allocated to PGE's distribution

[215] To the extent PGE has made investment in distribution system infrastructure in the context of transportation electrification, the capital costs of those investments are allocated consistent with PGE's other plant, and no party has raised concerns with that allocation.
[216] Calpine's Prehearing Brief at 6.
[217] Hearing Transcript at 30-31.
[218] 2016 Or Laws ch 28, § 20(5)(a)(B).

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system revenue requirement in the first instance,[219] so allocating them in proportion to a customer's share of responsibility for distribution system costs, as Calpine suggests, is not allocating these costs "similar to the recovery" of these types of "distribution system investments."

In its Opening Brief, Calpine states that the costs incurred under the pilot programs at issue "would total approximately $2.5 million" but could be less.[220] To clarify the meaning of these numbers, PGE originally estimated that approximately $2.5 million would accumulate in the deferral accounts by January 1, 2022. But the actual costs accumulated in the accounts by January 1, 2022, were closer to $1.4 million.[221] These are not the "total" costs of the programs, which continue to accrue in those accounts.[222]

With respect to SB 1547 and its operative dates, PGE agrees with Calpine that SB 1547's statutory language applied to the costs that accrued in the deferral accounts while SB 1547 was in effect. Thus, SB 1547 applied to costs that accrued from the accounts' inception until SB 1547's cost allocation language was superseded. The cost allocation language in SB 1547 appears to have been superseded by new cost allocation language in HB 3055 on September 25, 2021. That superseding cost allocation language eventually made its way into HB 2165, where it now resides. In other words, September 25, 2021, appears to be the date after which the statutory cost allocation language that is currently in HB 2165 should be applied to costs accruing in the deferral accounts. The new cost allocation language makes clear that the appropriate allocation of the transportation electrification costs at issue here is committed to the Commission's discretion.[223]

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[219] Hearing Transcript at 25.
[220] Calpine's Opening Brief at 3.
[221] Hearing Transcript at 25-26.
[222] Hearing Transcript at 25.
[223] ORS 757.357(9)(a)(B) ("Tariff schedules and rates allowed pursuant to subsections (3) [programs to support transportation electrification] to (6) of this section: (A) May allow a return of and a return on an investment made by an electric company under subsections (3) to (6) of this section; and (B) Shall be recovered from the retail electricity consumers of an electric company in a manner determined by the commission.").

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PGE has established a sound rationale for allocating these costs to all customers under its proposed cost allocation methodology in the interim, for purposes of this docket. PGE asks the Commission to approve PGE's proposed Schedule 150.

VII. SCHEDULE 90 SUBTRANSMISSION RATE

In this GRC, PGE proposed lowering the eligibility threshold for Schedule 90 customers from 100 aMW to 30 aMW. No party opposes this proposal, but AWEC recommends that PGE also offer a subtransmission rate to its Schedule 90 customers.[224] PGE explained in testimony that it has concerns about the safety, reliability, and cost issues that could arise in the context of a subtransmission rate and has offered to convene a process with Staff and stakeholders to discuss the appropriate terms and conditions for new subtransmission service. AWEC disregards PGE's concerns about subtransmission, as well as its offer to convene a process to evaluate these issues, arguing that PGE "has failed to present any compelling evidence" that AWEC's proposal is inappropriate.[225] The question for the Commission in determining whether to adopt a rate, however, is whether the evidence demonstrates that the rate would be just and reasonable; in this case, the evidence does not.

A subtransmission customer builds and owns the substation used to serve its load. PGE currently offers subtransmission service under its Schedule 89, the terms and conditions of which have proved at times to be problematic.[226] While a customer-owned substation must comply with minimum safety standards when it is initially built, there is currently no requirement for subtransmission customers to upgrade their substations as safety standards change or the grid

[224] AWEC's Prehearing Brief at 12; AWEC/200, Kaufman/50. Staff has indicated its support for AWEC's proposal. Staff/2700, St. Brown/18. No other party takes a position on this issue.
[225] AWEC's Opening Brief at 8-9.
[226] PGE/3000, Macfarlane-Tang/22.

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evolves.[227] As a result, maintenance issues associated with these customers have at times impacted subtransmission customers as well as other customers on the bulk electric system.[228] Because only five legacy customers have elected the option,[229] however, and no new subtransmission services have been initiated under Schedule 89 in the last 16 years,[230] PGE has not sought to change that schedule. However, if PGE is to offer a new subtransmission rate, it should not simply do so under the same Schedule 89 terms. Rather, the terms and conditions of a new subtransmission service should be discussed with stakeholders and should be brought up to modern standards.

AWEC argues that "[i]f PGE's concerns regarding subtransmission rates were material, it is unclear why PGE has not made a filing to remedy these issues."[231] As PGE has explained, it has a limited number of customers taking subtransmission service and has added none in the past 16 years. AWEC acknowledges that subtransmission customers are not required to adhere to required maintenance standards and states that it "does not oppose PGE's recommendation to maintain consistent safety standards for customer-owned substations."[232] But the contents of any schedule offering a subtransmission (or transmission) rate turn on a number of interrelated issues, including the details of customer maintenance requirements, the quality of power that subtransmission or transmission customers would expect from the service, and a rate crafted to match those terms. AWEC does not address any of these practical issues, but simply repeats its assertion that it is not opposed to a subtransmission tariff that imposes maintenance requirements.

In the end, PGE has voiced its doubts that new customers with modern facilities would be interested in the same type of subtransmission rate PGE currently offers under Schedule 89 (as

[227] PGE/3000, Macfarlane-Tang/22-23.
[228] Hearing Transcript at 16.
[229] PGE/3000, Macfarlane-Tang/21.
[230] PGE/3000, Macfarlane-Tang/21.
[231] AWEC's Opening Brief at 9.
[232] AWEC Prehearing Brief at 14.

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opposed to a transmission rate). But if AWEC is correct in asserting that new customers would be interested in subtransmission service under PGE's Schedule 90, then it would be prudent to first address any cost, safety, and reliability issues that subtransmission rates can implicate. Taking additional time to review these issues would provide an opportunity to discuss whether other types of service, such as the additional reliability associated with transmission service, would actually be preferable to subtransmission, and to ask customers whether they would prefer a service that offers higher power quality than does PGE's current Schedule 89. The subtransmission service offered by PGE to legacy customers under its current Schedule 89 involves non-networked service that may be inadequate to provide the reliability and service quality that some industries require.[233]

In summary, PGE does not support simply grafting the terms and conditions of its legacy subtransmission rate onto its expanded Schedule 90, as AWEC recommends. Given the need to balance the terms and conditions regarding safety, reliability, power quality, and other issues relevant to development of a modern subtransmission (or transmission) rate, there is simply no evidence that the terms and conditions proposed by AWEC are just and reasonable. PGE proposes additional stakeholder process to discuss appropriate terms. A subtransmission (or transmission) service raises unique safety, reliability, and cost issues that require thoughtful crafting and additional discussion with Staff and stakeholders.

[233] Hearing Transcript at 15-16.

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VIII. CONCLUSION

PGE respectfully requests that the Commission approve the specific recommendations outlined in this closing brief.

Dated March 2, 2022

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