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February 22, 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 Opening Brief.

Please contact this office with any questions.

Sincerely,

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 OPENING BRIEF

February 22, 2022

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I. INTRODUCTION

Portland General Electric Company (PGE or Company) requests that the Commission approve a modest rate increase of $10 million, or approximately 0.5 percent overall (excluding net variable power costs (NVPC)).[1] Over the course of this case, PGE reduced its initial rate request of a $58.9 million increase, or 2.9 percent overall (exclusive of NVPC), through four stipulations and the September 2021 load forecast update.[2] PGE's request is eminently reasonable and fair to customers when viewed in the context of the current rising-cost environment—inflation is expected to increase by over 12 percent between the end of PGE's last general rate case (GRC) and the end of the 2022 test period in this case.[3] In the more than three years since its last GRC, PGE has worked hard to control costs and delayed filing this case for as long as possible in order to minimize the impact to customers during the height of the COVID-19 pandemic.[4] At the same time, PGE has made significant strides toward the state's and Company's decarbonization goals, which are also a priority for PGE's customers.[5] The offsetting cost savings from the closure of the Boardman plant helped PGE delay filing this case even as it continued to make significant new investments in support of decarbonization, resiliency, and grid modernization.[6]

Most of the issues in this case have been resolved, 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 cost recovery mechanism.[7] Six issues remain

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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] Stipulating Parties/300, Muldoon-Gehrke-Mullins-Bieber-Chriss-Steele-Ferchland/4.
[3] Stipulating Parties/300, Muldoon-Gehrke-Mullins-Bieber-Chriss-Steele-Ferchland/4.
[4] PGE/100, Pope-Sims/1, 4-6.
[5] PGE/100, Pope-Sims/2-4, 7-10, 12-14.
[6] PGE/100, Pope-Sims/12-13; PGE/2300, Tooman-Batzler/15.
[7] Stipulating Parties/300, Muldoon-Gehrke-Mullins-Bieber-Chriss-Steele-Ferchland/5.

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controverted in this case:

Faraday: Parties agreed to remove the Faraday repowering project from revenue requirement effective May 9, 2022, and PGE now requests that the Commission open Phase II of this docket to address cost recovery for this important, non-emitting, capacity resource. Phase II will allow parties ample opportunity to continue reviewing the prudence of Faraday repowering and will provide PGE with the opportunity to incorporate the prudently incurred repowering costs into rates once the project is placed in service later this year.

Wildfire: Public Utility Commission of Oregon Staff (Staff) proposes to hold back $3 million in wildfire mitigation and vegetation management costs, the prudence of which no party has questioned, and implement a Wildfire Mitigation and Vegetation Management cost recovery mechanism similar to the mechanism adopted in PacifiCorp's last rate case in Docket UM 374. Staff's proposal would not comply with Senate Bill 762 (SB 762). Instead PGE proposes (1) full recovery of proposed vegetation management costs and wildfire mitigation costs in base rates; and (2) implementation of a new automatic adjustment clause (AAC) mechanism to recover incremental wildfire mitigation costs, as directed by SB 762. Consistent with this new mechanism, PGE requests approval 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.

Level III Mechanism: PGE requests that the Commission approve revisions to PGE's Level III outage mechanism, consistent with the Commission's guidance from two prior cases and the Commission's recognition that the current mechanism is unbalanced, as it allocates all of the risk of increasing event intensity to PGE. PGE's proposed revisions to the mechanism make it more balanced, allocating some risk to customers while maintaining PGE's incentive to mitigate

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the impacts of severe events. The Oregon Citizens' Utility Board (CUB) is aligned with PGE on the need for reform and on some aspects of the proposed revisions, although PGE's and CUB's proposals differ in some respects.

Deferrals: PGE continues to advocate that the Commission decline to consider the Boardman, 2020 Wildfire, and 2021 Ice Storm deferrals in this docket and instead consider them in the specific dockets already opened for each deferral. If the Commission seeks to address the deferrals concurrently, it can set the dockets on a similar schedule. But it would be complex and inefficient to address all three deferrals together in this case or in a separate consolidated docket, given the important legal and factual differences between them. If the Commission considers the deferrals in this case, it should find that the Alliance of Western Energy Consumers (AWEC) and CUB have not met their burden of proving that the Boardman deferral is justified as a matter of state law or Commission policy. The Commission should also reject Staff's recommendation to conduct a year-by-year earnings review and Staff's recommended earnings-review parameters. Instead, the Commission should conduct one earnings review for each deferral based on the 2021 calendar year, compare PGE's earnings to its authorized return on equity (ROE), and not impose a sharing requirement.

Schedule 150 Nonbypassability: PGE asks the Commission to approve its proposed Schedule 150, Transportation Electrification, along with PGE's proposed rate spread allocating the costs to all customers, including direct access customers. PGE's proposal would equitably allocate the costs of PGE's transportation electrification pilot program among all utility customers consistent with principles of cost causation and fairness. PGE asks the Commission to approve its proposal on an interim basis, recognizing that that Commission will address the treatment of public-policy driven costs in Dockets AR 651 and UM 2024.

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Schedule 90 Subtransmission Rate: In this GRC, PGE proposed lowering the eligibility threshold for Schedule 90 customers from 100 to 30 average megawatts (aMW). No party opposes this proposal, but AWEC recommends that PGE also offer a subtransmission rate to its Schedule 90 customers. PGE proposed in testimony to study this issue and provide more information in a future GRC, but PGE is also willing to convene a stakeholder process to address these issues if the Commission prefers. AWEC's proposal raises a number of concerns about potential safety and reliability impacts of customer-owned substations; moreover, the details of any subtransmission service and how to design a rate that is most useful for modern customers need to be studied and carefully crafted. Therefore, the Commission should reject AWEC's request to simply apply PGE's legacy subtransmission rate to a new schedule in this case.

By adopting PGE's recommendations, the Commission can support PGE's efforts to deliver a clean-energy future while maintaining grid resiliency in the face of increasing challenges and ensuring affordability for all customers.

II. FARADAY REPOWERING

PGE asks the Commission to open a Phase II of this GRC to review the prudence of the Faraday repowering project and allow the prudently incurred costs of this important, non-emitting capacity resource into rates after the project is placed in service later this year. Under PGE's proposal, Phase II could begin approximately three months before the expected in-service date to allow for a timely Commission decision.[8] Staff, AWEC, and CUB oppose PGE's proposal for Phase II, arguing that the prudence review for Faraday must wait until the project has been placed in service.[9] AWEC and CUB also argue that Faraday's costs should not be incorporated into rates

[8] PGE/2600, Bekkedahl-Tinker/1-2.
[9] Staff's Prehearing Brief at 5-6 (Feb. 7, 2022); AWEC's Prehearing Brief at 19-20 (Feb. 7, 2022); CUB's Prehearing Brief at 13-14 (Feb. 7, 2022).

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without also considering other changes that may impact PGE's revenue requirement.[10] However, parties' concerns are unfounded and are outweighed by the efficiencies and fairness of PGE's proposal.

The parties' prudence review can begin before the repowering project is fully complete. The project is already 70 percent complete, which means that more than two-thirds of the project costs have already been incurred and can be reviewed today.[11] And in fact, parties have already filed testimony addressing the prudence of Faraday repowering costs, including testimony regarding the project management and costs to-date.[12] By the time Phase II begins in July or August 2022, the project will be even closer to completion.

In addition to raising concerns about Faraday repowering costs, Staff also questions the prudence of PGE's decision to repower Faraday. But this issue provides no independent reason to delay consideration of Faraday. PGE's decision to repower Faraday turns on historical information already available to the parties. As Staff itself explains, PGE's decision must be reviewed based on the circumstances that existed when the decision was made.[13] Indeed, Staff already has filed significant testimony regarding PGE's decision to repower Faraday.[14] In short, this element of the Faraday repowering prudence review is already ripe for decision. Because all of the parties' concerns can be evaluated before the final in-service date, there is no need to delay commencement of the prudence review until after the project is complete.

AWEC and CUB also raise concerns about single-issue ratemaking and suggest that a Phase II would be inefficient because the Commission would be required to consider all revenue

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[10] AWEC's Prehearing Brief at 19-20; CUB's Prehearing Brief at 13-14.
[11] PGE/1900, Bekkedahl-Cristea/27.
[12] *See* Staff/1000, Enright/11-26; AWEC/100, Mullins/20-22
[13] Staff's Prehearing Brief at 6; Staff/1000, Enright/12; Staff/200, Fox/9-10 (citing *In Re PacifiCorp Request for a Gen. Rate Revision*, Docket UE 246, Order No. 12-493 at 25 (Dec. 20, 2012)).
[14] Staff/1000, Enright/15-20.

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requirement issues. But as PGE explained in its prehearing brief, this is simply not true. The Commission has approved allowing the costs of major assets into rates without conducting a full ratemaking hearing after time periods similar to those at issue here, including, for example, Port Westward 2, Tucannon, and Carty.[15] In this case, the parties have engaged in a "very recent, thoroughly contested rate case which provides a comprehensive analysis of all elements relating to PGE's costs and revenues," minimizing any concerns about single-issue ratemaking given the timing involved.[16]

While seeking Phase II of a rate case is not common, the key elements of PGE's proposal are common, and PGE's proposal is both appropriate and efficient under the unique circumstances of this docket. It is common in a rate case to review the prudence of capital additions during the final phases of construction, before an asset has been placed in service.[17] For example, in this case, Staff reviewed the prudence of seven projects that were not complete when PGE initially filed the GRC. Staff recommended that the forecasted costs of these projects be allowed in rates so long as a PGE officer attests that the projects are placed in service approximately one month before the rate-effective date.[18] Staff originally recommended that PGE file an attestation for Faraday if the repowering project was not completed by the rate-effective date.[19] The parties subsequently agreed in settlement to remove Faraday repowering costs from the revenue requirement for the May 9, 2022, rate-effective date,[20] but there is no reason Phase II cannot

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[15] PGE's Prehearing Brief at 11-12; Staff/2500, Enright/9, Table 1, Summary of Recent Tariff Riders.
[16] PGE's Prehearing Brief at 11-12 (quoting *In re Portland Gen. Elec. Co.'s Revised Tariffs Filed with Regard to Power Costs Deferrals, UM 594 and UM 692, and the Coyote Springs Fixed Costs and BPA Tracker and Schedules for Advice No. 95-11*, Docket UE 93, Order No. 95-1216 at 8 (Nov. 20, 1995)).
[17] *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).
[18] 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).
[19] Staff/1000, Enright/14.
[20] Stipulating Parties/300, Muldoon-Gehrke-Mullins-Bieber-Chriss-Steele-Ferchland/5-6.

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commence shortly before Faraday repowering is placed in service and include an attestation process to confirm that the project is complete and in-service.

PGE's proposal to consider Faraday repowering in Phase II is both fair and efficient for several reasons. First, PGE's net plant is not expected to decrease between the rate-effective date and Faraday's estimated in-service date due to depreciation; in fact, it is intended to *increase*, thus eliminating a key concern about adding investments to rate base in isolation.[21] Second, it would be an inefficient use of the Commission's and parties' resources to require an entirely new GRC less than one year after this GRC concludes, particularly when the parties have engaged on this record on key issues relevant to Faraday repowering. Finally, PGE's 2022 annual update tariff (AUT) included the value of Faraday repowering production tax credits and an energy benefit of approximately $5 million associated with Faraday's total forecast generation based on an estimated online date of December 1, 2022 for the Faraday repowering project. Allowing a Phase II to put all prudent Faraday repowering costs into rates would match the costs in rates with the benefits customers are already receiving.[22]

III. WILDFIRE MITIGATION COST RECOVERY

In its prehearing brief, Staff argues that the only contested issue regarding wildfire mitigation costs is Staff's proposal to remove $3 million of prudent wildfire mitigation costs from PGE's stipulated $10 million revenue requirement and put it in a deferral account where it, like future costs added to the account associated with Staff's Wildfire Mitigation and Vegetation Management (WMVM) mechanism, would be subject to various penalties. While PGE does, indeed, disagree with Staff's proposed treatment of the $3 million Staff identifies, PGE and Staff

[21] PGE/2600, Bekkedahl-Tinker/13.
[22] PGE's Prehearing Brief at 7-8, 12-13.

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disagree about other issues as well.

First, PGE asks the Commission to reject Staff's proposal to hold back $3 million in wildfire mitigation and vegetation management costs, the prudence of which no party has questioned. Second, PGE asks the Commission to approve PGE's 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 (Wildfire Mitigation AAC). Under PGE's reading of SB 762, which became effective in July 2021, PGE's Wildfire Mitigation AAC is mandated by law. Staff does not support PGE's Wildfire Mitigation AAC, PGE's reading of SB 762, or PGE's assertion that Staff's proposed WMVM mechanism is no longer appropriate in light of the passage of SB 762.[23] Finally, in its surrebuttal testimony, PGE informed parties of increases to its planned wildfire mitigation costs for 2022 and asks the Commission to allow PGE to defer these incremental wildfire mitigation costs for prudence review and recovery at a later date under its Wildfire Mitigation AAC. These costs are associated with PGE's implementation of its 2022 Wildfire Mitigation Plan. Staff has not stated a position on this request.

In its prehearing brief, PGE explained why Staff's WMVM mechanism is no longer supportable in light of the passage of SB 762. In the event the Commission disagrees with PGE's legal position and chooses to adopt a WMVM mechanism, PGE's prehearing brief also provided detailed recommendations for updating the mechanism to comport with utilities' and the Commission's evolving understanding of best practices in wildfire mitigation. PGE will not repeat those recommendations here, but will respond to arguments in Staff's prehearing brief related to

[23] Staff/600, Dlouhy/24-25; Stipulating Parties/300, Muldoon-Gehrke-Mullins-Bieber-Chriss-Steele-Ferchland/5 (explaining that the parties will continue to litigate the $3 million holdback associated with Staff's WVM mechanism, and that if Staff's position prevails, it will be deducted from the $10 million stipulated revenue requirement).

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its proposed WMVM mechanism, and then address Staff's legal interpretation of SB 762.

A. Staff misstates PGE's objections to Staff's WMVM mechanism.

At the outset, PGE will address a number of statements in Staff's prehearing brief that PGE finds confusing or misleading. As noted in Staff's and PGE's testimony, Staff proposes a WMVM mechanism that would subject PGE's wildfire mitigation costs—even those deemed prudent in this case—to various reductions or penalties based on the number of vegetation management violations Commission Safety Staff finds across PGE's service territory.[24] PGE and Staff have described the mechanism at length in testimony and briefing, and PGE will not repeat those descriptions here.[25]

For purposes of this brief, PGE would note three key elements of Staff's proposed WMVM mechanism: First, Staff characterized the mechanism as a mechanism to address wildfire risk. As Dr. Dlouhy noted when introducing the mechanism, "[l]eading up to and directly following the 2020 Labor Day wildfires, the Commission's interest in utility activities to address wildfire risk has amplified," leading to rulemakings and ultimately to adoption of PacifiCorp's WMVM mechanism.[26] Second, the mechanism proposed by Staff is modeled after PacifiCorp's WMVM mechanism, which was adopted in 2019 with the goal of tying cost recovery to "PacifiCorp's performance in managing vegetation management *with focus on high consequence fire areas*."[27] Finally, Staff's proposed WMVM mechanism merges together wildfire mitigation activities and *all* vegetation management activities, including those related to mitigating wildfire risk (PGE's Advanced Wildfire Risk Reduction, or AWRR) and those that are not (the vast majority). Staff's

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[24] The WMVM mechanism would also put PGE's <u>non-wildfire</u> mitigation related vegetation management costs at risk. This portion of Staff's proposed mechanism is not implicated by SB 762, but is unsupported by the record. *See* Section III.C (addressing lack of record support for $3 million holdback). And, as will be explained, Staff has not provided any meaningful PGE-specific support for the mechanism in this docket.

[25] *See, e.g.*, PGE's Prehearing Brief at 18-19.

[26] Staff/600, Dlouhy/16.

[27] Staff/600, Dlouhy/17 (emphasis added).

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proposed WMVM mechanism would penalize PGE based on of the number of vegetation management violations on any part of PGE's system. In other words, Staff's mechanism, which appears to be intended to function as a wildfire mitigation tool, instead encourages a utility to focus on activities largely unrelated to wildfire mitigation.

In its testimony and briefing, PGE makes two key points about Staff's proposed mechanism: First, Staff's proposed WMVM mechanism is no longer viable in light of the passage of SB 762; and second, even if it were, utility wildfire management has evolved considerably since 2019, and any mechanism should evolve with it. Given the passage of SB 762, the considerable work the Commission has done on wildfire mitigation rules, and utilities' development of robust and actionable wildfire mitigation plans—all of which has occurred since PacifiCorp's WMVM mechanism was adopted—any mechanism designed to mitigate wildfire risk should focus on wildfire mitigation efforts identified in a utility's wildfire mitigation plan, which includes *only a subset* of a utility's vegetation management efforts. For PGE's service territory, only 6 percent of the vegetation management violations identified by Commission Safety Staff over the past two years were in High Risk Fire Zones (HRFZ).[28] In other words, at least in PGE's service territory, the bucket of "all vegetation management activities" does not map particularly well to "all wildfire risk."

Thus, PGE would submit that a mechanism designed to mitigate wildfire risk should focus on wildfire mitigation efforts identified in a utility's wildfire mitigation plan, which include a subset—but only a subset—of vegetation management costs. For PGE, this subset of wildfire mitigation costs is known as Advanced Wildfire Risk Reduction (AWRR). In other words, even if Staff's proposed WMVM mechanism were appropriate in light of SB 762, it would benefit from

[28] PGE/2800, Bekkedahl-Tinker-Brownlee/17.

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updating as a matter of design. PGE disagrees with Staff that it is appropriate to put all vegetation management and wildfire mitigation activities and costs in a single bucket and characterize that bucket as only wildfire mitigation given the rapid evolution of wildfire mitigation practices since 2019. A mechanism designed to reduce wildfire risk should incentivize a utility to prioritize actions[29] taken in HRFZ rather than, say, tree trimming in downtown Portland during the rainy season. In short, PGE's concern about Staff's conflation of wildfire mitigation and vegetation management is not, as Staff suggests, related to the magnitude of the costs of either category.[30] It is the fact that Staff's mechanism, even if it comported with SB 762, no longer comports with utilities', Staff's, and the Commission's understanding of wildfire mitigation in 2022.

B. Even if Staff's proposed WMVM mechanism were supportable in light of the passage of SB 762, Staff's arguments about PGE's wildfire mitigation and vegetation management costs would not support its adoption.

Staff states in its prehearing brief that PGE's proposed test year expense for this rate case represents a "dramatic increase" for wildfire mitigation and vegetation management and that Staff's proposed WMVM mechanism is needed for cost controls.[31] As an initial matter, Staff's cost-control rationale is inconsistent with Dr. Dlouhy's statement that the mechanism is intended to "incentivize the Company to improve its vegetation management practices."[32] Moreover, the costs for which PGE is seeking recovery in this case have been reviewed by the parties and found to be prudent, and there is no evidence supporting the idea that adopting PGE's position in this docket would result in imprudently incurred costs being passed on to customers.

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[29] Actions to mitigate wildfire risk are varied and include risk modeling, operating protocols, asset management and inspections, vegetation management, community outreach and public awareness, PSPS events, and research and development. For example, PGE is expanding its situational awareness capabilities, including measures such as installing new remote automated weather stations, hiring additional full-time meteorological staff, and deploying artificial intelligence-enhanced cameras to automatically notify PGE when they detect a fire, in real time. *See* PGE/2801 (PGE's 2022 Wildfire Mitigation Plan).

[30] *See* Staff's Prehearing Brief at 7.

[31] Staff's Prehearing Brief at 7.

[32] Staff/600, Dlouhy/26.

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PGE's and other utilities' wildfire mitigation costs and vegetation management costs are likely to increase as utilities rapidly develop and implement wildfire mitigation plans and best practices.[33] This does not mean these costs will not be reviewed for prudence. Any such costs to be included in base rates would be reviewed for prudence before they are included in rates, as the costs in PGE's direct case have been here. All incremental wildfire mitigation costs not in base rates, including AWRR, would be subject to PGE's Wildfire Mitigation AAC.[34] Under that AAC, any incremental costs for wildfire mitigation would be put into an account where they would be reviewed for prudence, thus ensuring that only prudently incurred wildfire mitigation costs would be collected via the AAC. With respect to non-wildfire-related vegetation management costs, Staff has not proposed or attempted to support an exclusively *non-wildfire*-related vegetation management mechanism in this case. PGE's non-wildfire-related vegetation management costs then, like any other utility cost, would simply remain subject to the Commission's regulatory review either in a rate case or under other regulatory review mechanisms.

Staff also argues that PGE erroneously stated the amount of wildfire mitigation and vegetation management costs for which PGE is seeking cost recovery in this case, perhaps suggesting that Staff's proposed WMVM mechanism would somehow correct for perceived errors in bookkeeping.[35] However, PGE has consistently and accurately stated the amount and character

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[33] As PGE noted, increases are due to actions taken to comply with directives in SB 762 and with Commission guidance in the ongoing wildfire mitigation rulemakings. PGE's 2022 Wildfire Mitigation Plan, which was filed on December 30, 2021, was developed in accordance with the Commission's new rules, which provide specific guidance regarding risk modeling, wildfire-related engagement with Public Safety Partners and local communities, PSPS-related communications, education and notifications, inspection and repair, vegetation management and clearances, and inspection and patrol activities within the utility-identified HRFZs. *See* PGE/2800, Bekkedahl-Tinker-Brownlee/5; *see also* PGE/800, Bekkedahl-Jenkins/49-50 (explaining the need for increased spending for wildfire mitigation).

[34] 27 percent of PGE's vegetation management budget and 23 percent of a combined wildfire mitigation and vegetation management budget – as proposed in this case – are related to vegetation management in high-risk fire zones.

[35] Staff's Prehearing Brief at 7-8.

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of these costs.[36] Specifically, PGE's vegetation management spending of $48.7 million includes $12.8 million of AWRR spending, which is the vegetation management spending related to wildfire mitigation.[37] In other words, $35.9 million of PGE's vegetation management budget is not related to wildfire mitigation. Dr. Dlouhy correctly recognized this in his opening testimony, where he identified the costs and noted that Staff found "no issues" with PGE's proposed costs.[38]

C. Staff's proposal to hold back $3 million in wildfire mitigation and vegetation management costs is unsupported.

Staff recommends removing $3 million from PGE's stipulated $10 million revenue requirement and putting it in a deferral account where it, like additional costs added to the account, would be at risk of non-recovery.[39] In its prehearing brief, Staff argues the Commission should simply remove $3 million from PGE's stipulated $10 million dollar revenue requirement because doing so "protects customers" in the event the Company "fails to fully make its project expenditures" and also "provides parties an opportunity to review the prudence of such expenditures."[40] Aside from the fact that, as noted above, this double-risk of non-recovery is inconsistent with SB 762, Staff's proposal is also unsupported by the record.

Staff initially argued that PGE should be barred from recovering $3 million of its prudent costs in this rate case because withholding this $3 million would "incentivize the Company to improve its vegetation management practices."[41] Staff submitted no evidence to show that PGE's vegetation management practices were somehow deficient, nor did it provide any consistent or

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[36] Staff's Prehearing Brief at 7-8.
[37] PGE/800, Bekkedahl-Jenkins/54-55.
[38] Staff/600 Dlouhy/18.
[39] Staff/600, Dlouhy/24-25; Stipulating Parties/300, Muldoon-Gehrke-Mullins-Bieber-Chriss-Steele-Ferchland/5 (explaining that the parties will continue to litigate the $3 million holdback associated with Staff's WMVM mechanism, and that if Staff's position prevails, it will be deducted from the $10 million stipulated revenue requirement).
[40] Staff Prehearing Brief at 6-7.
[41] Staff/600, Dlouhy/26.

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supportable reason for the holdback of prudent costs. Indeed, Staff's assertion that PGE needs a new incentive to improve its vegetation management practices is puzzling in light of the uncontested evidence that, as Mr. Muldoon notes, PGE has significantly increased the amounts included in its revenue requirement for wildfire mitigation and vegetation management since its last rate case.[42]

The genesis of the holdback proposal appears to be PacifiCorp's last rate case, Docket UE 374, where the Commission did pull some amount of proposed costs out of PacifiCorp's revenue requirement when it adopted a WMVM mechanism in that docket.[43] In proposing the same outcome here, Staff noted that, "[t]he amount is roughly the same amount that the Commission chose to withhold in UE 374."[44] All evidence suggests that the WMVM proposal was taken directly from PacifiCorp's rate case and simply inserted into this case, as Staff's proposal in this docket was unsupported by any analysis of PGE's utility-specific efforts or service territory. Indeed, Staff even pulled over into this rate case its recommendation from Docket UE 374 that PGE is required to return to the Commission later to provide evidence that the mechanism's "continued use is warranted,"[45] despite the fact that PGE, unlike PacifiCorp, actually opposes Staff's mechanism. In short, Staff's recommendation that a holdback was justified was a conclusory one in the context of this docket, unsupported by any evidence demonstrating that PGE's vegetation management and/or wildfire mitigation practices are deficient or that PGE's performance is not already improving.

In response to PGE's concerns about this lack of foundation, Staff offered arbitrary and

[42] Staff/100, Muldoon/8.
[43] SB 762 became effective on July 19, 2021, seven months after the Commission adopted PacifiCorp's WMVM mechanism, and it materially changed the legal landscape for recovery of utility wildfire mitigation costs.
[44] Staff/600, Dlouhy/26.
[45] Staff/600, Dlouhy/28.

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inconsistent reasons for denying PGE recovery of costs Staff had just reviewed and found prudent. First, Staff explained that PGE should not be able to recover the $3 million of prudently incurred costs in this rate case because Staff "[has] a concern regarding PGE's lack of multi-year budgeting."[46] Because a proposed revenue requirement in a GRC is based on a test year, however, a failure to present "multi-year budgeting" in a rate case would not justify withholding recovery of prudent costs.[47] Staff responded to this point by suggesting without evidence that PGE might not be committed to long-term investment in wildfire mitigation, and that a multi-year budget would demonstrate that PGE has "a robust multi-year plan that extends beyond the test year due to the importance of WMVM expenses."[48] The assertion that PGE may lack a long-term commitment to wildfire mitigation has no basis in fact beyond Staff's mere intimation that it could be so, and it is overwhelmed by record evidence to the contrary.[49] There is no reason to doubt PGE's long-term commitment to its detailed, multi-phase Wildfire Mitigation Plan, which was filed with the Commission on December 30, 2021.[50] PGE has submitted testimony detailing the significant, meaningful, and committed work that has gone into its Wildfire Mitigation Plans.[51]

While arguing on the one hand that PGE may not be sufficiently committed to spending money on wildfire mitigation, Staff also argued that withholding the $3 million was a measure intended "[t]o ensure PGE is . . . focused on cost control."[52] In other words, Staff recommends withholding $3 million of costs demonstrated to be prudent because doing so would somehow

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[46] Staff/600, Dlouhy/24-25.
[47] Staff/600, Dlouhy/24 ("Q. Is this lack of multiyear budgets a reason why you recommend withholding $3 million in WMVM expenses and establishing a performance-based mechanism? A. Yes.").
[48] Staff/2400, Dlouhy/5.
[49] Moreover, the Commission's wildfire mitigation rules and oversight of wildfire protection plans under SB 762 mandate robust, multi-year wildfire mitigation plans.
[50] PGE/2801.
[51] *See, e.g.*, PGE/800, Bekkedahl-Jenkins/39-53; PGE/2801 (PGE's 2022 Wildfire Mitigation Plan).
[52] Staff/100, Muldoon/9 (emphasis added) ("To ensure PGE is also focused on cost control, even with respect to WMVM spending, Staff recommends that the Commission withhold 10 percent of PGE's proposed O&M expense from the Test Year.").

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simultaneously incentivize both spending and cost control. Staff's inconsistent, post hoc justifications are simply not credible.

Finally, in its prehearing brief, Staff argues that denying PGE recovery of the $3 million in this rate case "protects customers in the event the Company fails to fully make its project expenditures and also provide parties an opportunity to review the prudence of such expenditures."[53] Again, no meaningful evidence supports this new rationale. Staff has pointed to no evidence to suggest that PGE will "fail to make its project expenditures," and in fact, PGE's newly filed Wildfire Mitigation Plan and testimony describing its recent wildfire mitigation efforts controvert any conclusory assertion that such a risk exists.[54] Staff's assertion that the $3 million needs to be reviewed for prudence is also unsupportable because, as stated previously, the $3 million at issue was included in PGE's direct case and has been reviewed for prudence.

Staff also compares the amount of the $3 million holdback to PGE's overall wildfire mitigation and vegetation management budget, apparently suggesting that the amount is de minimis and that PGE's opposition to the holdback is unwarranted. The $3 million, however, is significant in light of PGE's demonstrated efforts between rate cases to hold costs steady during the pandemic and during a subsequent period of significant inflation, and in light of a stipulated revenue requirement increase of $10 million. On the record in this case, Staff's proposal is unsupported and punitive, and to the extent some portion of it represents wildfire mitigation costs, it is inconsistent with the law. The $3 million Staff proposes withholding should be included in PGE's rate recovery in this proceeding.

[53] Staff Prehearing Brief at 6-7.

[54] *See, e.g.,* Staff/100, Muldoon/8 (noting that "PGE has significantly increased the amounts included in its revenue requirement for Wildfire Mitigation and Vegetation Management (WMVM) as compared to its most recent rate case."). PGE would also invite the Commission to review its 2022 Wildfire Mitigation Plan (PGE/2801).

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

In place of Staff's proposed WMVM mechanism, PGE seeks Commission approval of its new Wildfire Mitigation AAC that would allow dollar-for-dollar recovery of those costs through an AAC.[55] As PGE explained in its testimony and prehearing brief, this mechanism is consistent with the cost recovery language of SB 762, which allows utilities to recover all reasonable operating costs and prudent investments in wildfire mitigation through an AAC or other method for timely cost recovery. SB 762's cost recovery provisions apply to all utility costs expended to "to develop, implement or operate" wildfire protection plans, which encompasses the test year wildfire mitigation costs proposed by PGE in this proceeding.

In its prehearing brief, Staff disputes PGE's argument that SB 762 mandates dollar for dollar recovery of wildfire mitigation costs. In support of its position, Staff quotes a 2015 Commission order addressing PGE's and PacifiCorp's request for a special ratemaking mechanism for the variable power costs associated with renewable resources.[56] In that order, the Commission addressed whether the following language in ORS 469A.120—a statute with cost-recovery language very similar to SB 762's—requires dollar-for-dollar cost recovery:

> (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.

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[55] PGE/2800, Bekkedahl-Tinker-Brownlee/4-5; PGE/3000, Macfarlane-Tang/33-35; PGE/3004 (Schedule 151—Wildfire Mitigation Cost Recovery).

[56] In this part of Staff's Prehearing Brief, Staff references a 2007 order and cites to Order No. 14-508. Staff's Prehearing Brief at 8. These references do not match internally, nor do they match the language quoted. PGE believes Staff is referring to the Commission's order in Docket UM 1662, *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) and responds accordingly.

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> (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.

Staff quotes the Commission's conclusion: "Based on our plain reading of the statute, we agree with Staff, CUB, and ICNU that ORS 469A.160(1) does not mandate dollar for dollar recovery of all RPS costs, but rather allows the utilities the opportunity to recover their variable costs."[57]

Staff correctly states the Commission's conclusion with respect to ORS 469A.160(1). However, PGE's testimony and briefing refer to ORS 469A.160(2), which Staff omits from its analysis entirely. The Commission analyzed ORS 469A.160(2) in the same order cited by Staff and concluded that, with respect to that section, "*the legislature explicitly mandated the use of an automatic adjustment clause to provide dollar-for-dollar recovery for fixed capital costs associated with RPS compliance*."[58]

Staff's omission of this analysis is significant because ORS 469A.120(2), the provision the Commission found triggered dollar-for-dollar cost recovery and an automatic adjustment clause, contains language substantively identical to the cost-recovery language in SB 762. ORS 469A.120(2) states:

> (2) (a) *The Public Utility Commission shall establish an automatic adjustment clause* as defined in ORS 757.210 (Hearing to establish new schedules) *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, costs related to associated electricity transmission and costs related to associated energy storage.*

SB 762 contains the same critical language, stating that:

> (8) All reasonable operating costs incurred by, and prudent

[57] Docket UM 1662, Order No. 15-408 at 6-7.
[58] Docket UM 1662, Order No. 15-408 at 6-7.

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

The costs referenced above are the costs "to develop, implement or operate a wildfire protection plan." They, like the fixed costs of renewable resources under ORS 469A.120(2), are subject to dollar-for-dollar cost recovery though an automatic adjustment clause.[59]

Oregon courts presume that the legislature is aware of existing law when drafting statutory language.[60] The legal presumption, then, is that the Oregon legislature drafted SB 762's cost recovery language with the Commission's existing interpretation of nearly identical language in mind. Indeed, recent history suggests PGE's interpretation of this statutory language is not novel. PacifiCorp filed an application with the Commission on January 5, 2022, seeking deferral of costs associated with its SB 762 wildfire protection plan and indicated it would make a filing later this year seeking approval of a rate schedule and AAC to begin recovery of those costs.[61]

As PGE explained in its testimony and prehearing brief, Staff's proposed WMVM mechanism is inconsistent with SB 762 because it puts even prudently incurred wildfire mitigation costs at risk of non-recovery and does not allow for the timely recovery of costs. Staff argues that its WMVM mechanism gives PGE the *opportunity* to fully recover its prudently incurred costs, but this standard of double jeopardy is inconsistent with the language of SB 762 itself.[62] In Docket

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[59] The statute also allows for "another method to allow timely recovery of the costs," but as a practical matter, PGE is not aware of any other regulatory mechanism other than an AAC that would allow PGE to timely recover its wildfire mitigation costs without regulatory lag. PGE/3000, Macfarlane-Tang/34.
[60] *See, e.g.*, *Blachana, LLC v. Bureau of Labor & Indus*., 354 Or 676, 691 (2014).
[61] *See In re PacifiCorp, dba Pac. Power Application for Approval of Deferred Accounting for Operating Costs and Capital Investments Made to Implement and Operate the Company's Or. Wildfire Protection Plan*, Docket UM 2221, Application for Deferred Accounting (Jan. 5, 2022).
[62] Staff/2400, Dlouhy/10.

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UM 1662, 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.[63] Staff's proposal would put incremental wildfire mitigation costs in a deferral account where PGE would face a double risk of non-recovery—first when the costs are reviewed for prudence, and again when they are made subject to Staff's proposed penalties.[64] SB 762 allows non-recovery only for imprudence, not as a penalty for other conduct.

Given the use of the same legislative language for cost recovery of the fixed costs of renewable resources in the RPS statute and in SB 762, PGE modeled its Wildfire Mitigation AAC on its renewable automatic adjustment clause (RAC) and seeks approval of this Wildfire Mitigation AAC in this case.[65]

E. The Commission should approve PGE's request for deferral in Docket UM 2019 to allow PGE to defer its incremental additional wildfire mitigation costs.

As PGE noted in its prehearing brief, since PGE filed its direct case, its planned investments in wildfire mitigation have increased 44 percent for O&M and 67 percent for capital.[66] These increases are due to actions taken to comply with directives in SB 762 and with Commission guidance in the ongoing wildfire mitigation rulemakings. PGE's 2022 Wildfire Mitigation Plan, which was filed on December 30, 2021, was developed in accordance with the Commission's new rules, which provide specific guidance regarding risk modeling, wildfire-related engagement with Public Safety Partners and local communities, public-safety-power-shutoff-related

[63] Docket UM 1662, Order No. 15-408 at 7.
[64] This double risk of non-recovery is illustrated by Staff's proposal in this case to withhold $3 million in costs already deemed prudent in this proceeding and put them in the deferral account where they would again be put at risk. Assuming Staff intends to review the costs again for prudence as part of its WMVM mechanism in addition to adding penalties, it would be subject to even more risk.
[65] PGE/3000, Macfarlane-Tang/33-34. The details of PGE's proposed Wildfire AAC are described in its Prehearing Brief.
[66] PGE's Prehearing Brief at 28 (citing PGE/2800, Bekkedahl-Tinker-Brownlee/5).

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communications, education and notifications, inspection and repair, vegetation management and clearances, and inspection and patrol activities within the utility-identified HRFZs.[67] PGE has worked to develop the plan and its related activities since the time PGE's rate case was filed, and PGE's projected costs have increased as a result. PGE is not seeking recovery of these additional incremental costs in this rate case, but is simply seeking authority to defer these additional incremental costs for later prudence review and recovery under its Wildfire Mitigation AAC. To effectuate this request, PGE proposes to update its pending deferral in Docket UM 2019 to include the Wildfire Mitigation AAC and add its estimated incremental spending. PGE asks the Commission to approve its request.[68] To date, no party has stated whether it supports this proposal.

IV. LEVEL III OUTAGE MECHANISM

In accordance with the Commission's direction in Dockets UE 335 and UM 1817, PGE proposes revisions to its Level III outage mechanism in this case. PGE's Level III outage mechanism has proven to be inadequate to address the number and severity of events PGE has experienced in the decade since the mechanism was first adopted and has denied PGE an opportunity to recover significant, prudently incurred Level III outage restoration costs.[69] During a severe event, PGE deploys all available resources—including overtime and contractors—to restore service to customers as safely, efficiently, and quickly as possible.[70] Yet under the current mechanism, PGE only recovers for these efforts to the extent there are funds presently available in the reserve account. The Commission recognized that PGE bears *all* the risk under the current mechanism and that greater storm frequency and intensity from climate change could increase the

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[67] *See* PGE/2800, Bekkedahl-Tinker-Brownlee/5.
[68] If the Commission does not approve PGE's mechanism but instead approves a mechanism similar to Staff's, PGE assumes these costs would be subject to deferral under that mechanism and subject to risk of non-recovery based on potential vegetation management violations.
[69] PGE/2400, Bekkedahl-Tooman/8.
[70] PGE/800, Bekkedahl-Jenkins/68.

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risk of depleting the Level III account and shifting costs to PGE, unless the event is extraordinary and warrants a deferral.[71] The Commission stated that it is "prepared to consider how to appropriately allocate the risk associated with the cumulative effect of multiple years of above-average storm costs" in this rate case.[72]

A. PGE's proposed changes to the Level III mechanism create a balanced mechanism that allocates some risk to customers while retaining PGE's incentive to proactively mitigate risk.

Consistent with the Commission's direction, PGE proposes a balanced mechanism that maintains PGE's incentive to harden its system.[73] Specifically, PGE proposes to allow the Level III reserve account to carry a negative balance, and PGE proposes sharing (90 percent to customers and 10 percent to PGE) both the costs applied to a negative Level III account balance and any positive or negative balance in the account that exceeds $12 million.[74] Unlike the uncapped mechanism the Commission rejected in PGE's last rate case,[75] PGE's current proposal includes caps and a process for handling balances that exceed the cap. Moreover, because it incorporates two different sharing aspects, PGE's proposal fairly allocates costs between customers and shareholders[76] and would not result in dollar-for-dollar recovery of Level III outage restoration costs, despite Staff's assertion to the contrary.[77]

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[71] *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).

[72] PGE's Prehearing Brief at 30; *In re Portland Gen. Elec. Co., Request for a Gen. Rate Revision*, Docket UE 335, Order No. 18-464 at 13-14 (Apr. 12, 2019); Docket UM 1817, Order No. 19-274 at 14.

[73] Docket UE 335, Order No. 18-464 at 13-14.

[74] PGE/800, Bekkedahl-Jenkins/62-63. Staff's Prehearing Brief incorrectly stated that "ratepayers would pay all costs of Level III outages" except for costs that cause the accrual to dip below negative $12 million, of which PGE would absorb ten percent. Staff's Prehearing Brief at 3. To be clear, PGE proposed to absorb ten percent of costs applied toward *any* negative balance *and also* ten percent of the reserve balance if it exceeds positive or negative $12 million. PGE/2400, Bekkedahl-Tooman/16-17.

[75] Docket UE 335, Order No. 18-464 at 13-14.

[76] PGE/800, Bekkedahl-Jenkins/67.

[77] Staff's Prehearing Brief at 3.

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PGE's proposal in this case fairly allocates risk by allowing the reserve account balance to go negative. CUB agrees with PGE that the current mechanism should be changed and that negative balances should be permitted.[78] CUB recommends imposing a hard cap on the negative balance, asserting that a hard cap is superior to PGE's proposal that customers and the Company share costs applied to a negative balance.[79] While both proposals improve upon the current mechanism, PGE's approach fairly and reasonably allocates risks of severe events between the Company and customers by providing PGE the opportunity for cost recovery while also requiring PGE to bear some of the costs when it experiences significant events that result in a negative reserve balance.

B. PGE has demonstrated that the current mechanism is not well suited to handle the clusters of events with increasing intensity that PGE has experienced.

PGE's testimony shows that the current mechanism structure is not well-suited to the clustered pattern of events that PGE has experienced. A period of mild conditions lowers the 10-year-rolling-average amount collected from customers, and then the cluster of severe events that follows quickly depletes the reserve.[80] This pattern played out most recently between 2011 and 2017: the reserve account accrued a $6 million balance during the mild conditions from 2011 to 2013, but events in 2014 through 2016 depleted both the $6 million balance and $6 million in additional annual collections.[81] As a result, in 2017, the $2 million collected from customers was wholly inadequate to cover the $11.4 million in event costs incurred that year,[82] and the Commission rejected PGE's request to defer the excess event costs.[83] PGE proposes to allow the

[78] CUB's Prehearing Brief at 14-15. Alternatively, CUB supports Staff's proposal for annual updates. *Id.* at 14.
[79] CUB's Prehearing Brief at 15.
[80] PGE/2400, Bekkedahl-Tooman/9.
[81] PGE/2400, Bekkedahl-Tooman/9 n.11.
[82] PGE/2400, Bekkedahl-Tooman/9 n.11.
[83] Docket UM 1817, Order No. 19-274 at 1.

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reserve balance to go negative so that PGE has an opportunity to recover costs incurred from a cluster of severe events during the milder period that typically follows.

PGE's analysis demonstrates that events are increasing in intensity, and that the increased intensity of events are connected to increased costs.[84] As PGE's testimony shows, total event costs are increasing over time, and the majority of total event costs incurred over the past 27 years have been incurred in just the last eight years.[85] Staff acknowledges that the frequency of events has significantly increased from 0.48 events per year from 1979-2008 to 1.75 events per year since 2014.[86] PGE's analyses demonstrate meaningful trends in event frequency, intensity, and cost that conform to the predictions in the Fourth National Climate Assessment regarding the impacts of climate change in the Pacific Northwest.[87]

Staff disputes that event costs are increasing, asserting that the average event cost has not increased and that there has not been a statistically significant increase in total event costs.[88] Staff is incorrect. First, Staff erroneously excludes from its statistical analysis Level III events that were also declared emergencies. While PGE generally agrees that—as a matter of regulatory procedure—declared emergency events should be addressed through the Commission's new pre-filed emergency deferral process, rather than through the Level III mechanism, the impacts of such events must be included in any analysis that seeks to understand overall event trends.[89] Staff excludes data crucial to this analysis. Even if declared emergencies are excluded, however, the past eight years still include a majority of the total event costs incurred in the last 26 years.[90]

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[84] Order No. 18-464 at 14.
[85] PGE/2400, Bekkedahl-Tooman/4-6 and Figures 1 & 2; PGE/2401.
[86] Staff/1400, St. Brown/7; PGE/1400, Tooman-Batzler/41.
[87] PGE/800, Bekkedahl-Jenkins/66-67; PGE/2400, Bekkedahl-Tooman/10-11.
[88] Staff's Prehearing Brief at 4; Staff/2700, St. Brown/4-5.
[89] PGE/2400, Bekkedahl-Tooman/6, 8.
[90] PGE/2400, Bekkedahl-Tooman/5-6.

Second, Staff's review of the average event cost in each year obscures the severity of events PGE has experienced by averaging severe events with milder events that occurred in the same year.[91] For example, in 2017 when PGE incurred more than $10 million in total event costs from four Level III events, the *average* event cost was deceptively low because PGE experienced two large events and two smaller events.[92] Staff's conclusion that the average cost per storm is decreasing is not meaningful in understanding the severity and variability of events PGE has experienced and will likely experience in the future. Despite Staff's claim that event costs are not increasing, Staff nevertheless supports modifying the mechanism to update the accrual amount annually "to alleviate PGE's concern that the Mechanism does not capture the impact of increasing outage events."[93] PGE appreciates Staff's recognition that some change to the mechanism is necessary.

For its part, AWEC appears to concede that storm costs have increased over time when declared emergency events are considered in the analysis, but claims that a slight increase in storm costs over time is expected due to inflation and the expansion of PGE's service territory.[94] While inflation and the expansion of its service territory have resulted in some increase to restoration costs over time, they do not account for the magnitude of the cost increase or the significant variability in event costs over time reflected in PGE's testimony.[95] Moreover, the increase in costs associated with event trends is non-linear, undermining AWEC's overly simplistic conclusions.

Staff and AWEC also suggest that the Commission's new pre-filed emergency deferral policy eliminates the need to update the Level III mechanism.[96] However, as PGE explained in

[91] PGE/2400, Bekkedahl-Tooman/7-8.
[92] PGE/2400, Bekkedahl-Tooman/7-8.
[93] Staff's Prehearing Brief at 4.
[94] AWEC's Prehearing Brief at 22.
[95] PGE/2400, Bekkedahl-Tooman/4-6 and Figures 1 & 2.
[96] Staff's Prehearing Brief at 4; AWEC's Prehearing Brief at 21.

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its prehearing brief and testimony, there are no objective criteria governing which events are declared emergencies, and there will likely be severe Level III events that are not declared emergencies for which the new emergency deferral policy is not available.[97] The availability of pre-filed emergency deferrals for some Level III events does not replace necessary reform to the Level III mechanism. Rather, the Commission's new emergency-deferral policy confirms that the Commission expects utilities to prioritize safety and reliability in the face of extreme events and that utilities should have an opportunity to recover the costs imposed by such events.[98] Strengthening the Level III mechanism supports the Commission's policy of prioritizing safety and promoting emergency preparedness, while fairly and equitably allocating the increasing risk associated with event trends. PGE asks the Commission to adopt its proposed revisions to the Level III mechanism.

V. DEFERRALS

As parties' recommendations regarding the three specific deferrals that they added to this GRC continue to evolve and diverge, PGE's insistence that each deferral should be addressed in its own existing docket outside of the rate case remains the simplest and most reasonable path forward. The Commission allowed the deferrals into this GRC over PGE's objection, but in doing so, the Commission explained that it would not necessarily reach a final decision on all issues related to the deferrals and that remaining issues would be addressed in the deferral-specific dockets after this GRC, "including the potential for the application of an earnings test."[99] Given the varied and complex issues associated with each of the three deferrals, and the fact that most of

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[97] PGE/2400, Bekkedahl-Tooman/6; PGE's Prehearing Brief at 32-33.
[98] *See In re Pub. Util. Comm'n of Or., Pre-Filed Emergency Deferral Applications,* Docket UM 2181, Order No. 21-259 (Aug. 12, 2021).
[99] Docket UE 394, Order No. 21-436 at 4 (Nov. 24, 2021).

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the parties' recommendations are premature, there is little efficiency or benefit to be gained by addressing the three deferrals in this GRC.

The three deferrals at issue are summarized in the following table:

Deferral (Docket)	**Proponent (with Burden of Proof)**	**Time Period Covered**	**Status**
2020 Wildfire (UM 2115)	PGE	9/10/2020 - ongoing	Authorized by Order No. 20-389.[100] PGE requested reauthorization, which Staff supports.[101]
Boardman (UM 2119)	AWEC & CUB	10/8/2020 – 5/8/2022	Not authorized.
2021 Ice Storm (UM 2156)	PGE	2/15/2021 – 2/14/2022	Authorized by Order No. 22-020.[102]

Together, parties refer to the Wildfire and Ice Storm deferrals as the "Emergency Deferrals."

Parties' prehearing briefs reflected some changes to their prior positions regarding each of the deferrals. Their current positions can be summarized as follows:

- Staff: Authorize the Boardman deferral, and amortize the 2020 amounts for the Wildfire and Boardman deferrals.[103] Aggregate the deferrals applicable for a given year and apply an earnings test benchmark of 100 basis points below PGE's authorized ROE.[104] Require PGE to absorb 10 percent of the prudently incurred costs of the Emergency Deferrals, but do not require sharing for the Boardman deferral.[105] Net out plant that is no longer used and useful from the Wildfire deferral amounts, and remove amounts for utility overheads and specific items.[106] Staff has not yet provided its

[100] *In re Portland Gen. Elec. Co., Application for Deferral of Wildfire Emergency Costs and Lost Revenues*, Docket UM 2115, Order No. 20-389 (Oct. 27, 2020).
[101] Staff/2600, Moore-Dlouhy-Storm/11.
[102] *In re Portland Gen. Elec. Co., Application for Authorization to Defer Emergency Restoration Costs*, Docket UM 2156, Order No. 22-020 (Jan. 26, 2022).
[103] Staff's Prehearing Brief at 9-11.
[104] Staff's Prehearing Brief at 12.
[105] Staff's Prehearing Brief at 13-14.
[106] Staff's Prehearing Brief at 15.

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recommendation regarding the extent to which PGE should be allowed to amortize the amounts deferred in 2020.[107]

- CUB: Authorize the Boardman deferral, and order amortization of the entire deferral balance over three years.[108] CUB now recommends amortizing the 2020 amount for the Wildfire deferral in this case,[109] and applying an unspecified earnings test and sharing to the Emergency Deferrals, but not to the Boardman deferral.[110] Address prudence concerns regarding post-2020 costs in the Emergency Deferrals in the respective deferral dockets.[111]
- AWEC: Do not amortize the full balances of all three deferrals together in this proceeding.[112] Instead, amortize $15 million related to the Emergency Deferrals, subject to refund, and move the *full balances* of the Emergency Deferrals to the Modified Blended Treasury (MBT) rate.[113] If the Commission does not move the full balances to the MBT rate, AWEC offers a new alternative recommendation to amortize none of the deferrals in this case and instead simply open a new, separate proceeding to consider amortization of all three deferrals together.[114] AWEC does not address authorization of the Boardman deferral and provides no recommendation regarding the earnings review.

To the extent the Commission decides to address the myriad issues surrounding these deferrals in this GRC, PGE requests that the Commission deny authorization of the Boardman

[107] Staff's Prehearing Brief at 16.
[108] CUB's Prehearing Brief at 7.
[109] CUB's Prehearing Brief at 15.
[110] CUB's Prehearing Brief at 11, 15-16.
[111] CUB's Prehearing Brief at 15-16.
[112] AWEC's Prehearing Brief at 9.
[113] AWEC's Prehearing Brief at 8-9.
[114] AWEC's Prehearing Brief at 8-9.

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deferral and order that the earnings review for the Emergency Deferrals will be based on the 2021 calendar year.[115]

A. The Commission should deny authorization of the Boardman deferral.

As explained in PGE's prehearing brief, the Commission applies a two-step authorization analysis in which it considers whether the Boardman deferral meets the statutory criteria in ORS 757.259 and whether it meets the discretionary criteria.[116] 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 be substantial to warrant" authorizing the deferral.[117] Capital deferrals in particular are closely analyzed 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."[118] AWEC and CUB have the burden of producing evidence to support their deferral request and the burden of persuasion.[119]

PGE, Staff, and CUB agree that Boardman's closure represents a stochastic event.[120] Staff and CUB argue that the deferral is justified because customers experienced substantial harm and recovering for a plant that is no longer providing service constitutes extenuating circumstances.[121] CUB also argues that leaving Boardman in rates violates the "used and useful" statute, ORS 757.355.[122] PGE thoroughly addressed each of these arguments in its prehearing brief.[123]

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[115] PGE's 2021 Results of Operations Report will be available by May 1, 2022. PGE/2300, Tooman-Batzler/9. The earnings review will also need to consider the results of PGE's power cost adjustment mechanism.
[116] PGE's Prehearing Brief at 42-43; *see also* Staff's Prehearing Brief at 10; CUB's Prehearing Brief at 8-9;
[117] Docket UM 1817, Order No. 19-274 at 3.
[118] *In re Util. Reform Project, Application for Deferred Accounting*, Docket UM 1124, Order No. 09-316 at 14 (Aug. 18, 2009) (emphasis original).
[119] 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).
[120] Staff's Prehearing Brief at 10-11; CUB's Prehearing Brief at 10.
[121] Staff's Prehearing Brief at 10-11; CUB's Prehearing Brief at 10.
[122] CUB's Prehearing Brief at 7-8.
[123] PGE's Prehearing Brief at 43-46.

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In summary, Boardman's closure was planned for over a decade, and was not exceptional or unpredictable.[124] Customers did not experience any harm—much less substantial harm—because PGE's continued capital investments more than offset the benefit of leaving Boardman in rates. Specifically, even after factoring in the savings from Boardman and revenue growth that occurred in the interim, PGE absorbed almost $100 million in regulatory lag associated with new investments between the rate-effective date of PGE's last rate case and this case.[125] Far from being an extenuating circumstance, leaving a retired asset in rates until the next rate case (while simultaneously making new investments not yet included in rates) comports with traditional ratemaking, as the Commission has recognized.[126] The parties have provided no compelling reason to depart from traditional ratemaking principles under the facts present in this docket.

CUB's argument that ORS 757.355 requires the immediate removal of a retired plant from rates is both legally incorrect and wholly impractical.[127] 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 depreciation expense and a return for a retired plant.[128] PGE's rates remained fair, just, and reasonable following Boardman's closure because the amount of Boardman depreciation and return in rates is more than offset by PGE's rate base investments not yet in rates.[129] From a practical perspective, utilities do not and could not remove assets from rates immediately upon their retirement—doing so would require almost daily rate changes and

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[124] PGE's Prehearing Brief at 43.
[125] PGE's Prehearing Brief at 43-44.
[126] *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 13 (Apr. 30, 2020).
[127] CUB's Prehearing Brief at 7-8.
[128] *In re the Application of Portland Gen. Elec. Co. for an Investigation into Least Cost Plan Plant Retirement*, Docket DR 10, et al., Order No. 08-487 at 21 (Sept. 30, 2008); *see also Gearhart v. Pub. Util. Comm'n of Or.*, 255 Or App 58, 94, 299 P3d 533 (2013) (affirming the Commission on this point); *Gearhart v. Pub. Util. Comm'n of Or.*, 356 Or 216, 237 n. 15, 339 P3d 904 (2014) ("the fact that rates include a component that is prohibited by statute does not necessarily mean that ratepayers have been injured.").
[129] PGE/2300, Tooman-Batzler/14-15; PGE/2900, Tooman-Ferchland/14-15.

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would be contrary to the deferral statute's aim of "minimize[ing] the frequency of rate changes."[130] Moreover, CUB's proposed regulatory treatment is completely asymmetrical, ignoring the fact that utilities continually make new system investments while receiving no cost recovery until those investments receive Commission approval.

Staff argues that the state policy to remove coal plants from rates constitutes an extenuating circumstance supporting the Boardman deferral.[131] And CUB asserts that the deferral furthers Oregon's transition to clean energy and that PGE's treatment for Boardman should mirror the treatment for retired coal plants on PacifiCorp's and Idaho Power's systems.[132] However, Oregon law does not require the immediate removal of Boardman from rates outside of a rate case—it requires PGE to eliminate coal-fired generation by 2035, and by retiring Boardman in 2020 and removing it from rates on May 9, 2022, PGE is well ahead of schedule. PGE is not similarly situated to PacifiCorp and Idaho Power who own multiple coal plants over their multi-state systems. PGE has closed the only coal plant it operates, so there is no need to adopt any sort of tracker or other special regulatory mechanism to facilitate the orderly closure of PGE's coal plants. Rather, Boardman's retirement is a single event that should be addressed on the specific facts and circumstances related to its closure. As PGE has explained, PGE's offsetting investment in new plant during the time Boardman remained in rates more than offset the potential benefits to customers from removing Boardman. In short, there is no sound justification for deviating from traditional ratemaking treatment.

Not only would removing Boardman from rates between rate cases be highly unusual and unjustified, it would create a completely asymmetrical result. In PGE's five GRCs since the early

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[130] ORS 757.259(2)(e).
[131] Staff's Prehearing Brief at 11.
[132] CUB's Prehearing Brief at 11-12.

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closure of Boardman was announced, no party requested or put PGE on notice that they would seek the extraordinary treatment they now support. And PGE based its planning for when to file this rate case on its understanding that Boardman costs, other than decommissioning costs, would remain in base rates until the effective date of new rates in this case, in accordance with normal ratemaking practices.[133] This, in turn, allowed PGE to make significant investment in new plant to serve customers while delaying its rate case.[134]

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 needed plant to serve customers.[135] 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.[136] 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.

B. The Commission should consider amortization issues in the deferral-specific dockets rather than in this case or in a new, consolidated docket, and should not change the interest rate so long as recovery remains at risk.

AWEC recommends that the Commission open a new docket to consider amortization of all three deferrals.[137] PGE continues to believe amortization should be considered in the individual deferral dockets, which is consistent with the Commission's statement when it allowed the deferrals into this GRC that some issues would likely be decided in those dockets.[138] There is no

[133] PGE/2300, Tooman-Batzler/18-19.
[134] PGE/2300, Tooman-Batzler/18.
[135] *See* PGE/100, Pope-Sims/4-5.
[136] *See* PGE/100, Pope-Sims/4, 7, 13-14.
[137] AWEC's Prehearing Brief at 9.
[138] Docket UE 394, Order No. 21-436 at 4.

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reason to open another docket to consider the three deferrals, and doing so would likely cause confusion of the issues for several reasons. Different parties have the burden of proof for the Boardman deferral (AWEC/CUB) and the Emergency Deferrals (PGE). The Commission has yet to decide whether to authorize the Boardman deferral, and even if it is authorized, the deferrals involve different types of events—the Boardman closure is a stochastic event, whereas the Emergency Deferrals involve scenario events. And there is no relationship between the Boardman and Emergency Deferrals other than the fact that they are large deferrals with similar, but not identical, timeframes. If the Commission wishes to address amortization of the deferrals concurrently, it can require PGE to file for amortization at the same time and set the dockets to be resolved on the same schedule. But there is no need to consolidate the deferrals into a single docket, and doing so will not result in efficiencies given the important factual, legal, and timing differences between the deferrals. Any consolidated docket would need to tease these issues apart and address them separately, a process that could be handled more simply and effectively in separate dockets.

Further, AWEC's attempt to amortize a portion of the Emergency Deferrals subject to refund while moving the full balances to the MBT rate is wholly 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."[139] 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.

[139] Docket UM 1147, Order No. 06-507 at 6 (Sept. 6, 2006).

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C. Any earnings test should be based on 2021.

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. For an earnings test, the Commission must review PGE's earnings during the deferral period or a period "reasonably representative of the deferral period."[140] The Boardman and Wildfire deferrals both span from late 2020 into 2022, with the majority of the costs occurring in 2021.[141] The Ice Storm deferral covers February 15, 2021, through February 14, 2022.[142] Therefore, 2021 is reasonably representative of the deferral period for all three deferrals.[143]

Conducting one earnings review based on 2021 for each deferral is simpler than Staff's proposal of three earnings reviews covering different years and different combinations of deferrals. Staff noted that the Commission previously conducted a year-by-year earnings review for Northwest Natural's environmental remediation deferral.[144] In that case, however, the environmental remediation costs were expected to be incurred over a *20-year period*.[145] Given the very lengthy deferral period in that case, it made sense to conduct regular earnings reviews. Here, however, each deferral will last for a defined period of time of approximately two years, or less, in length. Under these circumstances, conducting multiple earnings reviews creates complication and is not necessary to accurately capture PGE's earnings over the deferral periods.

D. If authorized, the Boardman deferral should be subject to an earnings test.

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

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[140] OAR 860-027-0300(9).
[141] PGE/2300, Tooman-Batzler/10; PGE/2900, Tooman-Ferchland/28; Staff's Prehearing Brief at 14, Table 1.
[142] PGE/2900, Tooman-Ferchland/25.
[143] PGE/2900, Tooman-Ferchland/25-26.
[144] Staff/2600, Moore-Dlouhy-Storm/4-5 (citing *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 7 (Feb. 20, 2015)).
[145] Order No. 15-049 at 7.

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PGE to retain the amounts in the deferral."[146] 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 that utilities are not to refund amounts to customers while earnings are below reasonable levels."[147] Here, the Boardman deferral contains approximately $100 million,[148] and $38 million equates to approximately 100 basis points of ROE for PGE.[149] 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.

E. The Commission should reject Staff's proposed earnings test benchmark and sharing requirements.

Staff proposed that the Commission apply an earnings-test benchmark of 100 basis points below PGE's authorized ROE 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.[150] Staff provides no precedent supporting its 100-basis-points threshold, and as PGE explained in its prehearing brief, Staff's proposal is inconsistent with recent Commission precedent that used the utilities' authorized ROEs as the earnings-test benchmark.[151]

In addition to proposing use of a below-ROE threshold, Staff also recommends that PGE be required to absorb 10 percent of the Emergency Deferral costs before the earnings test is applied.[152] In support of its sharing proposal, Staff states that a utility should bear some business

[146] CUB's Prehearing Brief at 11.
[147] *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).
[148] Staff/2600, Moore-Dlouhy-Storm/10.
[149] PGE/2900, Tooman-Ferchland/20.
[150] Staff's Prehearing Brief at 12-14.
[151] PGE's Prehearing Brief at 49-50.
[152] Staff/2600, Moore-Dlouhy-Storm/16-17.

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risk and relies upon a Commission order from 2007 that adopted 90/10 sharing as "an incentive to the utility to minimize the duration of, and costs associated with, future plant outages."[153] However, the Commission addressed this issue more recently and rejected Staff's proposal for 90/10 sharing in a case where the utility had little discretion in the work covered by the deferral.[154] Neither case supports application of sharing in this case.

For the events that triggered the Emergency Deferrals, PGE was required to rapidly do a significant amount of work and had little discretion in its responsive efforts. As discussed above in reference to the Level III mechanism, PGE uses all resources at its disposal—including overtime and outside contractors—to restore service quickly and safely following severe events, and PGE does not have discretion to forego recovery and restoration efforts in order to minimize costs. In adopting PGE's pre-filed emergency deferral account, the Commission recognized this dynamic stating, "the deferred balance is subject to *full utility recovery*, pending a prudence review."[155] PGE 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. 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.

[153] Staff/2600, Moore-Dlouhy-Storm/16; Staff's Prehearing Brief at 13; *In re Portland Gen. Elec. Co., Application for Deferred Accounting of Excess Power Costs Due to Plant Outage*, Docket UM 1234, Order No. 07-049 at 20 (Feb. 12, 2007).
[154] PGE's Prehearing Brief at 49-50.
[155] *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 at 3 (Sept. 22, 2021) (emphasis added).

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.[156] These costs are allocated 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.[157] PGE proposes expanding Schedule 150 to allow it to recover additional costs associated with transportation electrification not otherwise included in customer prices.[158] AWEC argues that PGE has not demonstrated that costs of transportation electrification should be allocated to direct access customers. Calpine Solutions (Calpine) agrees that transportation electrification costs should be allocated to all customers, including direct access customers, but disagrees with PGE's proposed cost allocation methodology. Staff supports PGE's position and notes that the Commission should approve PGE's proposal on an interim basis pending Commission decisions in Dockets AR 651 and UM 2024.[159]

PGE also asks the Commission to reject AWEC's recommendation that the Commission wait until the conclusion of Docket UM 2024 before deciding whether to allocate transportation electrification costs to direct access customers. That contested case proceeding is not underway, let alone near resolution, and amortization of the deferred costs of PGE's transportation

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[156] *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.

[157] 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.

[158] *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.

[159] In its prehearing brief, Staff discusses PGE's proposed Schedule 137, an issue that was settled as part of the parties' Fourth Partial Stipulation but does not discuss Schedule 150. PGE assumes this was simply an oversight. As a result, PGE's understanding of Staff's position is derived from Staff's testimony.

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electrification pilot programs will begin before that docket is concluded. The Commission must make an interim decision in this docket, and PGE's proposal is supported by existing precedent, law, and regulatory policy

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.[160] As a practical matter, PGE understands AWEC's argument to be that PGE has failed to support its policy proposal—that costs associated with legislative mandates to further public policy goals should be shared broadly among all utility customers—with clear Commission precedent. PGE concedes there are few Commission orders supporting PGE's position, or indeed anyone's position, on this issue. In fact, the issue of nonbypassability of public policy costs has been identified as an issue in need of long-term resolution in the Commission's ongoing investigation in Docket UM 2024. Nevertheless, the Commission precedent that *does* exist supports PGE's position, as does the state's transportation electrification legislation. And as a matter of regulatory policy, PGE's proposal is consistent with cost causation principles.

First, as PGE explained in its testimony and prehearing brief, PGE is seeking a cost allocation methodology that is substantially similar to the methodology adopted by the Commission in the context of community solar.[161] The Commission acknowledged in that docket

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[160] AWEC's Prehearing Brief at 15.

[161] *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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that its decision was not precedential, in the sense that it was an interim decision made with the expectation that the issue would be revisited in Docket UM 2024.[162] Nevertheless, the Commission adopted PGE‘s cost allocation proposal as an interim measure pending resolution of issues in Docket UM 2024. PGE seeks the same result here.

In addition to this Commission precedent supporting PGE's proposal, 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.[163]

Finally, cost causation principles support PGE's proposed Schedule 150. Transportation electrification is a legislative goal to be achieved for the benefit of all Oregonians. No party seriously argues that the acceleration of transportation electrification is specifically intended to benefit only the subset of Oregonians who happen to be electric customers of the state's large investor owned utilities (IOU). Nor has any party taken that argument even further and argued that transportation electrification is intended solely to benefit the even *smaller* subset of IOU customers who have not chosen direct access. And yet AWEC's and Calpine's cost allocation arguments implicitly rely to some extent on these very conclusions. In fact, transportation electrification benefits all Oregonians, and its costs should be shared as broadly and equitably as the Commission has authority to spread them.

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

[162] *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).
[163] *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).

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customers. Calpine disagrees with this proposal and asks 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.[164] As a practical matter, Calpine's methodology would ignore the size of the customer and the size of the customer's load in determining what share of public policy benefits the customer enjoys and what costs it should bear, and instead would simply focus on the customer's cost responsibility for its share of the utility's distribution system revenue requirement. 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.[165] This is not only inconsistent with cost causation, it is inequitable.

The most principled cost allocation methodology for spreading costs for these types of public policy mandates would be to allocate them to all Oregonians. The legislature has elected, whether for reasons of practicality or simplicity, to allocate the costs of transportation electrification to the retail customers of the state's large IOUs. Given that retail customers represent only a slice of Oregon citizens who stand to benefit from transportation electrification, it is PGE's position that the most appropriate policy choice is for the Commission to spread these public policy costs as broadly as possible among all retail customers, including direct access customers.[166]

To ensure the Commission understands the types of costs PGE proposes to include in Schedule 150, PGE would note that they are the costs associated with PGE's deferrals in Dockets UM 1938 and UM 2003 identified in the table below.[167]

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[164] Calpine's Prehearing Brief at 6 (Feb. 7, 2022).
[165] Evidentiary Hearing Transcript at 30-31 (Feb. 10, 2022) (hereinafter, "Hearing Transcript").
[166] 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).
[167] *See* PGE/500, Bekkedahl-McFarland/16.

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Table 2
TE Accounting Activity

Accounting Mechanism	Costs
Deferral (UM 1938)	O&M costs associated with original UM 1811 pilots (including Electric Avenue Network O&M, Outreach/Technical Assistance, and pilot evaluation)
Deferral (UM 2003)	O&M costs associated with new UM 1811 pilots (including residential smart charging rebates and business charging rebates)
Base prices	Capital expenditures (e.g., Electric Avenue Network, Electric Mass Transit Pilot, Future charging infrastructure, Fleet Charging Services) O&M costs associated with Fleet Charging enablement, and future charging infrastructure (e.g. Outreach, Data Analysis, Program Management, Software licensing fees, non-capitalized engineering-related costs, hardware maintenance) O&M associated with TE Portfolio administration (management, outside services, data)

Calpine appears in its testimony to suggest that PGE intends to allocate capital costs of distribution system investments under its proposed Schedule 150.[168] This is not the case. PGE is not proposing to include the capital costs of distribution system investment in Schedule 150, only the types of pilot program costs identified in the first two rows above. To the extent PGE makes capital investments to support transportation electrification, those investments are recovered through base rates, not through PGE's proposed Schedule 150.[169]

The majority of costs to be included in PGE's proposed Schedule 150 are costs such as customer rebates, advertising, and administrative costs. There is no regulatory or rate design principle that would allocate these types of costs to customers based on the customer's contribution to the utility's distribution system revenue requirement. Moreover, these types of costs represent costs that PGE would not have incurred but for legislation mandating transportation electrification.[170] 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. This is what PGE's proposal is intended to achieve.

[168] *See* Calpine Solutions/100, Higgins/8 (stating that "the accrued deferral appears to be related exclusively to the addition of distribution-related infrastructure, such as charging infrastructure . . . .").
[169] Hearing Transcript at 28.
[170] Hearing Transcript at 29.

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C. SB 1547 does not require PGE to allocate Schedule 150 costs in the manner Calpine suggests.

Calpine argues that SB 1547 includes specific cost allocation language that mandates Calpine's preferred cost allocation methodology be applied in this case. This is simply incorrect. SB 1547, which was superseded by new legislation last year, stated that tariff schedules and rates for utility transportation electrification programs should allocate in a method "similar to the recovery of distribution system investments."[171] But costs in PGE's Schedule 150 such as advertising and rebates for transportation electrification would not logically be allocated to PGE's distribution system revenue requirement in the first instance,[172] 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."

Even if Calpine were correct that SB 1547 mandated a cost allocation methodology so at odds with cost causation, that methodology would appear to apply only to investments made until September 25, 2021, when HB 3055 became effective. HB 3055 contained the same superseding cost allocation language that was eventually made part of HB 2165, which itself established a new statutory regime for transportation electrification effective on January 1, 2022. HB 2165 mandates that charges to be collected from all retail customers be allocated in precisely the same way PGE proposes allocating Schedule 150 costs here. The allocation of all other transportation electrification costs are, under HB 2165, committed to the Commission's discretion. In other words, even if SB 1547 mandated the cost-allocation methodology Calpine suggests, it would only

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[171] 2016 Or Laws ch 28, § 20(5)(a)(B).
[172] Hearing Transcript at 25.

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apply to costs accrued in PGE's deferral accounts through September 25, 2021.[173] As PGE has testified, costs continue to accrue in those accounts.[174]

In short, while PGE agrees with AWEC that longer-term Commission policy surrounding the nonbypassability of public policy costs is currently being developed in Dockets AR 651 and UM 2024, 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 in this case, recognizing that the Commission expects to revisit these issues in the future in Docket UM 2024, the Commission's current direct access investigation.

VII. <u>SCHEDULE 90 SUBTRANSMISSION RATE</u>

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.[175] AWEC argues that PGE's proposed new threshold would make Schedule 90 available to more customers, including customers *potentially* interested in a subtransmission rate.[176]

PGE opposes introducing a subtransmission rate option for Schedule 90 customers in this rate case but is willing to convene a process with Staff and stakeholders to discuss the appropriate terms and conditions for new subtransmission service. A subtransmission customer builds and owns the substation used to serve its load. While a customer-owned substation must comply with minimum safety standards when it is initially built, there is currently no requirement for

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[173] As PGE noted, the accounts had accured approximately $1.4 million by January 1, 2022. Hearing Transcript at 25.
[174] Hearing Transcript at 25.
[175] 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.
[176] AWEC/200, Kaufman/50-51.

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subtransmission customers to upgrade their substations as safety standards change or the grid evolves.[177] Although PGE has very few customers on its legacy Schedule 89 subtransmission rate, PGE has experienced a number of situations where a customer has failed to properly maintain a substation or neglected meaningful safety issues.[178] These maintenance issues have impacted subtransmission customers as well as other customers on the bulk electric system.[179]

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."[180] 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. Consequently, PGE requests an opportunity to convene a process for discussing this issue with Staff and stakeholders before adding a new service to Schedule 90 to ensure that any new subtransmission—or transmission—service PGE offers strikes the right balance of terms and conditions for the service requested.

Taking additional time to review these issues would also provide an opportunity to discuss whether other types of service, such as transmission service, would actually be preferable to subtransmission. 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 issues that some industries require.[181] In PGE's experience, the

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[177] PGE/3000, Macfarlane-Tang/22-23.
[178] PGE/3000, Macfarlane-Tang/22.
[179] Hearing Transcript at 16.
[180] AWEC Prehearing Brief at 14.
[181] Hearing Transcript at 15-16.

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subtransmission service offered under Schedule 89 has not been attractive for customers with more modern equipment, such as data centers, that require redundancy or higher quality power.[182] In fact, PGE currently offers a subtransmission rate for its largest customers under Schedule 89, yet only five legacy customers have elected the option.[183] And no new subtransmission services have been initiated under Schedule 89 in the last 16 years.[184]

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. A subtransmission (or transmission) service raises unique safety, reliability, and cost issues that require thoughtful crafting and additional discussion with Staff and stakeholders.

VIII. CONCLUSION

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

Dated February 22, 2022

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[182] Hearing Transcript at 15-16.
[183] PGE/3000, Macfarlane-Tang/21.
[184] PGE/3000, Macfarlane-Tang/21.

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