

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 416

In the Matter of)
)
PORTLAND GENERAL ELECTRIC)
COMPANY)
)
Request for a General Rate Revision)
And 2024 Annual Power Cost Update)
_____)

OPENING TESTIMONY
OF BENEDIKT SPRINGER
ON BEHALF OF THE
COMMUNITY ACTION PARTNERSHIP
OF OREGON (CAPO)

(Non-Confidential)

JUNE 13, 2023



1 **Q. Please state your name, occupation, and business address.**

2 A. My name is Benedikt Springer. I am a utility policy analyst with the Community
3 Action Partnership of Oregon (CAPO). My business address is 2475 Center
4 Street NE, Salem, OR 97301.

5 **Q. Please describe your educational background and work experience.**

6 A. I hold a bachelor's degree in economics and political science from the
7 University of Tübingen (Germany). I earned a PhD in political science from the
8 University of Oregon in 2018.

9 As a utility policy analyst at CAPO, my job is to advocate for low-income
10 interests in utility regulation and improve the energy assistance and
11 weatherization programs our network administers. Our goal is that everyone
12 can meet their basic needs, like accessing electricity, without financial stress.
13 Previously, I worked as a policy analyst at the Morrison Institute for Public
14 Policy at Arizona State University. In that position, I co-led major policy
15 research projects on housing affordability, housing for people with serious
16 mental illness, and homelessness. I have also done policy analysis for the
17 Bureau of Labor and Industries (BOLI), advising the labor commissioner and its
18 (wage and hour, antidiscrimination) law enforcement divisions. As a PhD
19 student and after, I have thought political science classes at the University of
20 Oregon, Portland Community College, and Mount Hood Community College.

21 **Q. What is the Community Action Partnership of Oregon (CAPO) and why**
22 **does it have an interest in this rate case?**

1 A. CAPO is a 501(c)(3) non-profit formed by the 17 Oregon community action
2 agencies and a special purpose organization, the Oregon Human Development
3 Corporation. Our organizations plan, implement, and deliver anti-poverty programs
4 across all of Oregon's 36 counties, including homeless shelters, food banks, and
5 Head Start. Our network is also responsible for implementing state- and federally-
6 funded weatherization programs (e.g. ECHO, WAP) as well as energy assistance
7 programs (e.g. LIHEAP, OEAP). Six of our member organizations have clients that
8 are served by PGE: Yamhill County Community Action, Washington County
9 Community Action Organization, Mid-Willamette Community Action Agency,
10 Multnomah County Youth and Family Services Division, Clackamas County Social
11 Services, and Community Services Consortium. As an association, our mission is to
12 magnify the anti-poverty efforts of our network through advocacy in legislative and
13 regulatory proceedings. Nation-wide, there are over 1000 community action
14 agencies. What unites them is combining direct service delivery with efforts to
15 address the root causes of poverty.

16 We intervene in this rate case because electricity rates that are affordable to
17 everyone are one step closer to addressing causes of poverty than simply
18 administering energy assistance. This has the potential of making a large difference.
19 We serve tens of thousands of low-income households every year. Our advocacy is
20 based on this experience. Unfortunately, in the past, low-income customers have
21 seen little representation in contested proceedings like this general rate revision. We
22 are here to change this.

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to show that PGE's rate schedules, policies,
3 and investments insufficiently consider Energy Justice factors – this is true for
4 the past and for the newly proposed rates in this case. The proposed rate
5 increase for the residential class will exacerbate affordability issues for low-
6 income customers. Furthermore, the organization and conduct of this
7 proceeding itself discourage the consideration of Energy Justice factors. This is
8 problematic because we believe that the law requires and encourages the
9 consideration of these factors. We believe that the proposed general rate
10 revision must be rejected if no additional accommodations for low-income
11 customers are made, and Energy Justice factors are not considered more
12 strongly.

13 The Energy Justice factors, we would like to see considered more strongly by
14 all parties, can be summarized as follows:

15 (1) Ensure that basic necessities like electricity are available to all humans
16 without financial stress. (2) Make decisions about generation, distribution, and
17 cost-attribution based on a comprehensive analysis of cost and benefits to
18 differentially situated groups especially those in marginalized communities –
19 so-called recognition justice –, and take into account communities' varying
20 abilities to contribute based on their available resources and histories of
21 oppression –so-called distributional justice. (3) Give more weight in utility
22 governance decisions to voices and perspectives that have been historically
23 powerless –so-called procedural justice. (4) Incorporate a broader set of

1 values, theories, and concepts in rate case discussions and decisions by
2 reforming traditional regulatory processes.¹

3 **Q. Did you prepare any additional exhibits for this docket?**

4 A. No. All information is contained in text and footnotes. All cited documents are
5 available online but can be made available via email.

6 **Q. How is your testimony organized?**

7 A. My testimony is organized as follows:

8 Part I. introduces the concept of Energy Justice, and shows how it is related to
9 questions of the public interest as well as determinations of just and reasonable
10 rates. This section ends with a list of additional issues, that in our opinion, are not
11 sufficiently addressed in this rate case. In nutshell, PGE's proposal does not
12 sufficiently address issues of recognition justice, distributional justice, and
13 procedural justice – all of which must receive more consideration to arrive at any
14 judgement according to the required legal criteria.

15 Part II. applies the concept of Energy Justice to current residential rates and the
16 proposed increase. It showcases the type of considerations we would want PGE to
17 make when determining specific rates for specific customer classes. In a nutshell,
18 current rates (the rate spread) insufficiently considers affordability and distributional
19 concerns. Even with the currently existing assistance programs, rates fall short of

¹ For discussions of Energy Justice see: Kirsten Jenkins et al., 2016, "Energy justice: A Conceptual Review," Energy Research & Social Science, Volume 11, <https://doi.org/10.1016/j.erss.2015.10.004>; Salma Elmallah, Tony G. Reames, and Anna Spurlock, 2022, "Frontlining Energy Justice: Visioning Principles for Energy Transitions from Community-Based Organizations in the United States," Energy Research & Social Science, Volume 94, <https://doi.org/10.1016/j.erss.2022.102855>.

1 one of the basic rate requirements (or basic rights), being affordable to all types of
2 customers. This problem will be exacerbated by the proposed rate increase.

3 Part III. applies the concept of Energy Justice to this proceeding itself. It
4 showcases the types of perspectives that are currently missing. In a nutshell,
5 procedural justice demands that rates are set on more than just the expertise of
6 attorneys and economists and consider more than “traditional” models of utility
7 regulation.

8 **Q. What are your main recommendations?**

9 A. The main recommendations that follow from my testimony are:

- 10 - Require PGE to explicitly address Energy Justice factors, i. e. questions of
11 recognition justice, distributional justice, and procedural justice in all matters
12 at issue in this case. Consider those factors in all final decisions regarding the
13 revenue requirement, its distribution across customer classes, the
14 composition of customer classes, specific rate schedules, policies, and
15 investment decisions.
- 16 - Define and center the public interest more clearly in all decision making.
- 17 - Redesign residential rates to keep energy affordable to all households (i.e.
18 keep their contribution below 6% of their income) and reduce the number of
19 disconnections for non-payment. Implement rate designs that achieves
20 affordability not for AVERAGE customers but ALL customers.
- 21 - Finance affordability by taking into account the ability to pay more strongly,
22 expanding contributions by richer residential customers, commercial and
23 industrial customers, as well as executives and shareholders.

1
2
3
4
5
6
7
8
9
10

- Redesign rate proceedings to allow the consideration of different types of perspectives and more clearly delineate the political values at stake in ostensibly technical choices. One way of achieving this are the workshops described in this testimony.
- Make all contested proceedings, including settlement conferences, accessible to the public.
- Require PGE to incorporate stakeholder feedback in all their proposals in rate cases.

1 **I. THE PUBLIC INTEREST, JUST AND REASONABLE RATES, AND**
2 **ENERGY JUSTICE**

3 CAPO's main argument in this section is that OPUC must use an Energy Justice
4 framework when determining its decision in this rate case AND OPUC must require
5 PGE to incorporate Energy Justice factors in their request for a rate revision. As we
6 show, theories and jurisprudence of regulation strongly support this contention,
7 specifically, Energy Justice is required for transparency in making political choices;
8 Energy Justice falls within the public interest obligation; and "just and reasonable"
9 cannot be defined without a theory of justice. We think Energy Justice is such a
10 theory, both legally allowable and ethically preferable. Our conclusion is that the
11 present request for a general rate revision can only be approved if the Energy
12 Justice factors described here as well as the specific recommendations explained in
13 the later sections are incorporated.

14 **The Energy Justice Framework**

15 The framework of Energy Justice promotes a specific set of considerations to be
16 made when coming to decisions about energy generation, distribution, and rate-
17 setting. While it does not necessarily pre-determine the outcome, it does identify
18 specific trade-offs that must be explicitly considered by regulatory decision-making.
19 In our opinion, the OPUC has not only the authority to make these considerations
20 but is also legally required to do so. Like every other framework, Energy Justice is
21 not a-political, but promotes some specific values, most importantly: access to
22 energy is a human right, meaning everyone should have access to it regardless of

1 their ability to pay.² As with other fundamental rights (compare to the treatment of
2 the Bill of Rights), it should only be restricted in extreme circumstances but never
3 completely removed.

4 Historically, Energy Justice, or more broadly, environmental justice has grown
5 out of the civil rights movement, the Indigenous environmental movement, and the
6 anti-globalization movement.³ What started with identifying specific instances of
7 “environmental racism,” for instance locating hazardous waste facilities in
8 predominantly African-American neighborhoods, which had been ignored by the
9 mainstream environmental movement, Energy Justice grew to recognize that the
10 burdens and benefits of energy production are unequally distributed along familiar
11 lines of marginalization (White vs. People of Color; global South vs. global North,
12 low-income populations vs. the rest). From these origins, Energy Justice has not
13 only become widely recognized throughout society⁴ but has been transformed by
14 academics into an analytical framework that can guide thinking about policy and
15 regulation regarding energy. The main insight is this: decisions about energy, like
16 the ones in this rate case, “involve aspects of equity and morality that are seldom

² Resolution, First National People of Color Environmental Leadership Summit held on October 24-27, 1991, <https://climatejusticealliance.org/ej-principles/>.

³ Alejandro Colsa Perez et al., 2015, “Evolution of the Environmental Justice Movement,” *Environmental Research Letters* Volume 10, <https://iopscience.iop.org/article/10.1088/1748-9326/10/10/105002/pdf>.

⁴ See for instance, Presidential Executive Order in 1994: Bill Clinton, 1994, “Executive Order 12898 of February 11, 1994,” *Federal Register* 59 (32), <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>; or the current [Website](#) of the US Department of Energy.

1 explicit in contemporary energy planning and analysis.”⁵ Energy Justice as a tool
2 seeks to make these aspects explicit by considering the following three issues:⁶

3 1) **Recognition Justice** requires identifying communities that have been
4 ignored, misrepresented, or not represented at all in energy decisions. This
5 requires analyzing comprehensively how issues like disconnections or prices
6 affect differentially-situated groups along ethnic, racial, and socio-economic
7 lines differently. Recognition Justice forces us to consider that residential
8 customers are in fact not homogenous individuals but groups of customers
9 that experience policies very differently. Application to this rate case
10 (example): PGE’s opening testimony does not discuss whether African-
11 Americans experience rates of disconnection similar to that of the general
12 population. Without such information, it is impossible to judge whether PGE’s
13 disconnection practices are just and reasonable.

14 2) **Procedural Justice** requires that all groups can meaningfully participate in
15 energy decisions that affect them. Procedural Justice forces us to consider
16 who holds power in decision-making processes not only in terms of legal rules
17 but also in actual practice. Application to this rate case (example): the general
18 public generally, and low-income customers particularly have little input on
19 the substantive issues discussed in this rate case because public hearings

⁵ Benjamin K. Sovacool and Michael H. Dworkin, 2015, “Energy justice: Conceptual Insights and Practical Applications,” *Applied Energy*, Volume 142, p. 435, <https://doi.org/10.1016/j.apenergy.2015.01.002>.

⁶ Kirsten Jenkins et al., 2016, “Energy justice: A Conceptual Review,” *Energy Research & Social Science*, Volume 11, <https://doi.org/10.1016/j.erss.2015.10.004>.

1 are not organized around the issues that are up for debate, while quasi-
2 decision-making meetings (i.e. settlement conferences) are de-facto restricted
3 to those with economics/finance/legal expertise.

4 3) **Distributive Justice** requires that benefits and burdens of energy decisions
5 are distributed somewhat equally with regard to outcomes (“equitably”)
6 considering the differential ability of different customers to contribute.
7 Distributive justice means that if affordability is a goal, we need to make
8 energy affordable to those that are rich and those that are poor. Application to
9 this rate case (example): PGE does not propose a sufficient mechanism to
10 ensure that all customers are able to fulfill their basic energy needs
11 regardless of income.

12 Restorative justice is sometimes considered as part of Energy Justice. However,
13 we leave it out here because it raises some more tricky (and controversial) issues of
14 philosophical and practical nature that might not be resolvable within a rate case or
15 even energy policy alone.

16 **Ratemaking is a Political Process**

17 A reasonable person might reply to the demand for Energy Justice
18 considerations that this is outside the scope of a general rate case. This person
19 might say something like this: “a rate case deals with purely technical issues, like
20 calculating the revenue requirement, that is best left to experts in accounting and
21 economics.” We disagree, “all ratemaking is social ratemaking.”⁷ “Indeed, regulators’

⁷ G. Chan & A. B. Klass, 2022, “Regulating for Energy Justice, New York Law Review, Volume 5 (97), p. 1462, <https://www.nyulawreview.org/wp-content/uploads/2022/11/NYULawReview-Volume-97-Issue-5-ChanKlass.pdf>.

1 frequent claims that they are engaged in a technical ratemaking exercise in setting
2 utility rates, charges, and practices belie the substantial degree of selectivity and
3 judgment regulators deploy, often based on a narrow conceptualization of justice,
4 reasonableness, and non-discrimination.”⁸

5 Most aspects of ratemaking involve political decisions, meaning normative
6 decisions that determine who gets what, when, and how. Trade-offs between
7 contradictory regulatory principles are resolved based on political values,
8 judgements about what should matter the most. At best, technical principles like
9 “cost-causation” provide ways to resolving such political conflicts efficiently, at worst,
10 they veil the power struggle that is actually deciding issues in the background. In
11 either case, we contend that technical principles obscure the political issues under
12 discussion in rate cases:

13 *“Energy justice forcefully reminds us that the selection between*
14 *energy technologies is about more than merely hardware. As we*
15 *exhaust energy resources [...] the biggest challenge will be*
16 *determining how we make this transition, and more*
17 *specifically who gets to make it, and who has to pay for it. This is not*
18 *a question that can ever be answered by economics or engineering*
19 *alone. Such disciplines can tell us how large energy reserves may*
20 *be or how much energy fuels may cost today, but they treat supply*
21 *as a function of geologic availability or of price and demand, not of*
22 *morality. Economics offers an excellent set of tools for estimating*
23 *costs and benefits, but tells us little about who benefits and who*
24 *suffers. [...] Economics is concerned with accounting for efficiency,*
25 *justice with accountability.”⁹*

⁸ G. Chan & A. B. Klass, 2022, “Regulating for Energy Justice, New York Law Review, Volume 5 (97), p. 1462, <https://www.nyulawreview.org/wp-content/uploads/2022/11/NYULawReview-Volume-97-Issue-5-ChanKlass.pdf>.

⁹ Benjamin K. Sovacool and Michael H. Dworkin, 2015, “Energy justice: Conceptual Insights and Practical Applications,” Applied Energy, Volume 142, p. 435, <https://doi.org/10.1016/j.apenergy.2015.01.002>.p. 437.

1 Energy Justice principles, as presented here, are simply a tool for making
2 political choices explicit again. Looked at it this way, asking PGE to consider
3 questions of recognition, procedural, and distributive justice is an ask for basic
4 transparency. Any well-informed citizen should be able to understand the political
5 choices that are being made. Currently, most of these choices are hidden from the
6 public eye in the footnotes of a working paper that is cited in one paragraph in a
7 thousand-page document.

8 **Energy Justice is in the Public Interest**

9 Utility law in general, and in Oregon specifically, requires OPUC to regulate
10 utilities to protect the public interest.¹⁰ What is in the public interest is multi-faceted
11 and, in the end, a political decision (see above). The public interest is not exhausted
12 by rates that are fair, just, and reasonable, by ensuring that utilities can run a
13 profitable business, or by considering affordability to the average customer.¹¹ For
14 instance, ORS 757.230 explains that OPUC, when developing a service
15 classification, may consider “differential energy burdens on low-income customers
16 and other economic, social equity or environmental justice factors that affect
17 affordability for certain classes of utility customers [...].” While not a mandate, this
18 clearly indicates a legislative intent to consider Energy Justice in utility regulation.

19 We can look at the legislative and regulatory climate in Oregon to understand
20 what other factors should be considered when determining the public interest. We
21 find that those are Energy Justice principles:

¹⁰ ORS 756.040 (1).

¹¹ 757.210 (1)

- 1 - Oregon Executive Order No. 20-4 orders OPUC to 5 B (3) “[...] exercise its
2 broad statutory authority to reduce GHG emissions, **mitigate energy burden**
3 **experienced by utility customers**, and ensure system reliability and
4 resource adequacy;” and (6) “in cooperation with Oregon Housing and
5 Community Services, establish a public process to address and mitigate
6 **differential energy burdens** and other inequities of affordability and
7 **environmental justice**, including rate design and other programs to mitigate
8 energy burden.”¹²
- 9 - HB 2475, passed in 2021, explicitly authorizes OPUC to take steps to mitigate
10 energy burdens by moving money from richer to poorer customers.¹³ This law
11 also provides financial assistance for the representation of low-income
12 residential customers and the interest of residential customers that are
13 members of environmental justice communities in rate cases. The only
14 reason we can see for such a provision is that the Oregon Legislature wants
15 OPUC to seriously consider Energy Justice factors when deciding what is in
16 the public interest.
- 17 - HB 2021 also passed in 2021, declares that electric utilities, including PGE,
18 must eliminate greenhouse gas emissions by 2040, while also minimizing
19 burdens for environmental justice communities.¹⁴

¹² Governor Kate Brown, March 10, 2020, P. 8-9, https://www.oregon.gov/gov/eo/eo_20-04.pdf.

¹³ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2475>.

¹⁴ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2021/Enrolled>.

- 1 - HB 4077, passed in 2022, establishes an environmental justice council to
2 advise the Governor.¹⁵
- 3 - Oregon’s DEI Action Plan specifically calls out the role of OPUC to “engage,
4 protect, and advance benefits to vulnerable communities.”¹⁶
- 5 - A presentation of OPUC staff Julie Jent and Bret Stevens on May 3, 2023
6 (PGE Public Comment Hearing) explained that PGE’s filing in the present
7 case will be analyzed through an “Energy Justice Lens.”¹⁷

8 Taken together, this evidence suggests that regulating in the public interest
9 means considering Energy Justice factors. As we explain later, we think PGE’s
10 proposed rates and testimony do not take into account these factors sufficiently.
11 Without any changes, we would therefore expect OPUC to reject the proposed rate
12 revision.

13 **Energy Justice is needed to determine Just and Reasonable Rates**

14 Energy Justice factors are needed to determine what is fair, just, and
15 reasonable. These are not technical terms that can be calculated with sufficient data.
16 Instead, they ask us to make choices between conflicting values: fairness could
17 mean that everyone pay the same price per kwh of electricity or flat-load profile
18 users pay less or those with little income pay less. Technical concepts like cost
19 causation obscure the reality that different rates represent different
20 conceptualizations of justice. Is it just to attribute more cost to those with volatile
21 load profiles? Or would it be more just to attribute costs to those with a high base

¹⁵ <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/HB4077>.

¹⁶ https://www.oregon.gov/das/Docs/DEI_Action_Plan_2021.pdf, p. 26

¹⁷ <https://edocs.puc.state.or.us/efdcs/HAH/ue416hah10934.pdf>

1 load? Answering this question will involve some type of moral judgment about whose
2 energy use has priority and whose energy use has more “worth.”

3 Looking at jurisprudence, it seems like “just and reasonable” does not have any
4 particular meaning. Courts cannot strike down any regulatory decisions that are in
5 the “zone of reasonableness,” a decision that has considered the company’s
6 financial interests and existing, and foreseeable public interests.¹⁸ This leaves wide
7 discretion to OPUC. OPUC itself states that “the legislature has expressed no
8 specific process or method the Commission must use to determine the level of just
9 and reasonable rates.”¹⁹

10 We disagree. Just and reasonable clearly indicates the types of considerations
11 that should be made, it asks to consider different theories of justice (i.e. political
12 judgments) and to give reasons within those theories. It also implies certain
13 procedural aspects. Energy justice provides a framework for aiding these
14 considerations. Using this framework is in Oregon’s public interest and helps us
15 determine what’s just and reasonable.

16 For instance, we think that any electricity rate that disconnects households, who
17 cannot afford to pay,²⁰ is neither just nor reasonable. It is so because our theory of
18 justice says we need to consider people’s abilities and resources (in this case
19 income) when determining rates. Furthermore, we think it is not reasonable to

¹⁸ Permian Basin Area Rate Cases, 390 U.S. 747, 792 (1968).

¹⁹ OPUC Order No. 08-487.

²⁰ For instance, because they are spending more than 6% of their income on electricity. But this is as arbitrary as any threshold.

1 deprive someone of basic human necessities simply because of their debts.²¹

2 Reasonable people might come to different conclusions, and PGE has done so. To
3 prevail however, we need to learn why (1) they think this is the right political choice
4 for Oregon, (2) how this is in accordance with Energy Justice factors that are in
5 Oregon's public interest, and (3) what theory of justice supports this reasoning.

6 **PGE's Testimony and Proposed Rates do not Sufficiently Consider**
7 **Environmental Justice**

8 Here is a partial list of issues that are missing or are insufficiently addressed due
9 ignorance of Environmental Justice factors:

- 10 - PGE does not conduct socio-economic analysis of their customer classes.

11 Instead, residential customers are (inaccurately) treated as one homogenous
12 class (with the exception of multi-family). To comprehensively judge, we
13 would need to see such analysis of differential effects (outcomes) on groups
14 of different income, race, etc. for all major policy issues. Uniform policies do
15 not have uniform effects because experience dramatically varies based on
16 what socio-economic group people belong to. For instance, rates and policies
17 do not consider:

- 18 ○ What type of housing stock (e.g. energy efficiency) customers have
19 access to,
20 ○ How much wealth customers inherited from their parents,

²¹ Jean Su, 2021, "Climate, Environmental, and Energy Justice: Integrating Justice into Electricity System Design and Decision-Making," in: Chandra Farley et. al, Advancing Equity in Utility Regulation, Future of Electric Utility Regulation, Report No. 12, US Department of Energy, 2021, <https://escholarship.org/uc/item/1mr715sx>, p. 82-83.

- 1 ○ How much income customers can earn,
 - 2 ○ How many children customers have,
 - 3 ○ How much discrimination customers may experience,
 - 4 ○ Whether customers are renters or owners, and
 - 5 ○ How residential customers' load profiles differ (by income for instance).
- 6 - It appears that the discussion removing inclining black rates is an exception.
- 7 However, this might be a red herring. Indeed, why does PGE think that their
- 8 low-income customers are different from those in all other studies, using on
- 9 average more electricity?²² It seems more likely that usage estimates might
- 10 be biased, for instance because no adjustments for household size have
- 11 been made or people who sign up for the bill discount program are also more
- 12 likely to have high energy bills. More exploration is necessary.

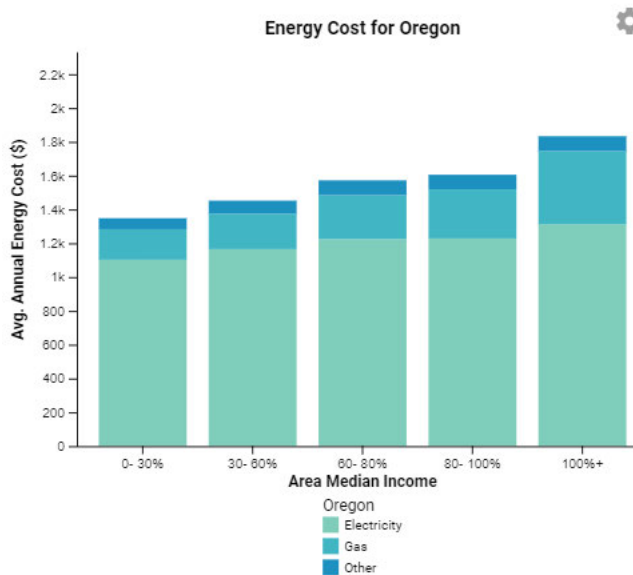


Figure 1: Households with higher income tend to use more energy. Data extracted from: US Department of Energy, 2020, Low-Income Energy Affordability Tool, <https://www.energy.gov/scep/slsc/lead-tool>.

²² For instance: Lazarus Adua et al, 2019, "Modernizing Our Way Out or Digging Ourselves in?," Journal of Environmental Management, Volume 252, <https://doi.org/10.1016/j.jenvman.2019.109659>.

- 1 - PGE testimony sells Time-of-Day (TOD) rates as an opportunity for low-
- 2 income customers to save electricity. However, TOD rates are good for those
- 3 with flexible schedules and new appliances. What type of people usually fall
- 4 into this group?
- 5 - Discussions of cost-causation are overly technical, obfuscating the
- 6 distributional choices that are being made. Indeed, why are other basic
- 7 regulatory principles, which are usually applied to public good provision, not
- 8 considered here? For instance, most income taxes in the US are progressive,
- 9 meaning that those with a higher ability to pay must provide a higher
- 10 proportion of their income towards a public good. Given that electricity is
- 11 regulated as such a public good, it would seem reasonable to apply this
- 12 principle here.
- 13 - Discussion of disconnection. There is insufficient evidence that PGE is doing
- 14 everything possible to avoid disconnection for non-payment. There is no
- 15 discussion of which groups are most affected by disconnection.
- 16 - PGE explains at length that they are trying to mitigate the rate impact.
- 17 However, not all stakeholders contribute equally to these mitigation efforts.
- 18 Instead of asking shareholders to contribute, PGE asks to increase the return
- 19 on equity. Similarly, executives continue to receive increasing compensation.
- 20 - What does PGE think is in Oregon's public interest? The public interest needs
- 21 to be defined and centered more clearly in presentation by the company.
- 22 Fundamentally, rate cases should not be about whether it is reasonable for

1 PGE to do x, but what do the people of Oregon want PGE to do within legally
2 allowable parameters.

3 - PGE's discussion of energy efficiency insufficiently considers how costs and
4 benefits are distributed among different customer groups.

5 Maybe the best argument for stronger consideration of Energy Justice factors is
6 PGE's own writing. Nidhi Thakar, PGE Senior Director of Resource and Regulatory
7 Strategy and External Engagement at PGE at the time and Jake Wise, Demand-
8 Side Partner Liaison at PGE wrote this:

9 *"The unfortunate reality is that the power system today in many*
10 *ways shifts costs from higher-income customers to lower-income*
11 *customers, creating disproportionate burdens on those least able to*
12 *shoulder them. Everyone needs electricity, but the poor pay a higher*
13 *proportion of their income to get it, and typically require more energy*
14 *to achieve the same services—food storage, heating and air*
15 *conditioning, etc.—because they cannot afford efficient housing or*
16 *appliances. [...] We [PGE] must continue our intentional efforts to*
17 *transform the energy system in an inclusive manner that addresses*
18 *historic—and current—disparities."*²³

19 The text goes on to present the same Energy Justice factors, we have
20 highlighted here.

21 **A Short Note on the Relationship to Bonbright's Principles of Public Utility**

22 **Rates**

23 No discussion on this topic is complete without mention of James Bonbright's
24 1961 book, "Principles of Public Utility Rates." We are not familiar with the exact
25 status of this work in the world of public utility regulation today but are aware that

²³ Nidhi Thakar and Jake Wise, "Making More Room at the Table: A Utility Perspective on Energy Equity," in: Chandra Farley et. al, Advancing Equity in Utility Regulation, Future of Electric Utility Regulation, Report No. 12, US Department of Energy, 2021, <https://escholarship.org/uc/item/1mr715sx>, p. 51.

1 this book is considered somewhat of an authority (and frequently cited). Bonbright
2 emphasizes similar issues that we have raised, most clearly the fact that there are
3 trade-offs between “reasonable” principles of how to regulate, and that the resolution
4 of those trade-offs is in the end a political decision for regulators. Because of it’s
5 nuanced nature, support for many positions can be found in the book; one can find
6 sections that support taking affordability seriously, and sections that suggest that this
7 is best left to social policy makers. From our review of the book, we concluded that it
8 needs to come with two warning labels:

- 9 - It derives most of its normative principles from microeconomic theory as well
10 as the field of welfare economics. These disciplines have changed a lot since
11 the 1960s, most importantly, they have become much more empirically
12 driven. Many models of public good provision (maybe Tiebout’s 1956 “Pure
13 Theory of Local Expenditures” most famously) have been found inapplicable
14 to real-world phenomena because assumptions are usually violated. This is
15 underlined by many findings from behavioral economics. The most important
16 takeaway is that we have to actually inquire into customer behavior not simply
17 rely on neo-classical assumptions to “predict” it.
- 18 - The book contains little in terms of rigorous empirical study of what type of
19 regulation leads to the best outcomes, be it the lowest prices, the highest
20 quality, or the highest profit. Empirical evidence is weaved together based on
21 examples and practical considerations.

1 It is our conclusion then that the book provides a good starting point for
2 discussing principles of utility regulation, but it is simply too outdated to be used as
3 evidence for one argument over the other.

4

II. CURRENT EFFORTS TO ADDRESS ENERGY BURDEN ARE INSUFFICIENT

This section shows that PGE's current efforts to address energy burden are insufficient and makes some recommendations on how to make electricity affordable to everyone.

Energy Burden and Affordability

Rates need to be designed to keep electricity accessible and affordable to differentially situated customers. Any approach falling short of giving consumers electricity for free, will have to operationalize affordability in some way. One common way is energy burden. An array of energy affordability advocates have established that spending 6% of household income on energy (a 6% "energy burden") constitutes a threshold for affordability of energy costs.²⁴ The 6% energy burden was established by considering that households should spend no more than 30% of their incomes on all costs of housing, and energy should comprise no more than 1/5 of total housing costs. While this measure is imperfect, not analyzing the situation of a household holistically, it does take into account income and usage. The latter is important because low-income households tend to live in houses with worse efficiency characteristics. In the following, we will refer to customers as energy burdened if they spend more than 6% of their gross income on electricity. Affordability, in turn, is a situation where no one is energy burdened.

Arriving at Affordable Electricity

²⁴ Marilyn Ann Brown et al., 2020, "Low-Income Energy Affordability: Conclusions from a Literature Review," US Department of Energy, <https://www.osti.gov/biblio/1607178>.

1 Ideally, PGE would design their rates to keep any non-excessive home use
2 affordable to all customers, including those with low incomes. A rate case would
3 consider affordability as an important criteria when distributing the revenue
4 requirement across different types of customers. Unfortunately, such an analysis is
5 missing here. Residential customers are mostly treated as a homogenous group. No
6 comprehensive assessment of affordability was conducted, as PGE states in
7 response to OPUC DR 441: “We do not currently conduct bill impacts based on
8 demographic data [...]”

9 Any revision to rates must include a low-income needs assessment and an effort
10 to keep rates affordable. PGE points at their bill discount program as such an effort,
11 but, as we discuss below, this effort is insufficient. PGE already has all the data
12 necessary to make this assessment. According to OPUC DR 437, PGE collects third
13 party data on household income for all customers. Using this in combination with
14 current billing data would allow PGE to assess (1) how many customers face
15 unaffordable bills, (2) how that would change with the proposed rate increase. This
16 analysis can be done additionally with the bill discount data, where customers self-
17 attested their income. The demographic data available here can be used to further
18 look at affordability for different racial and ethnic groups.

19 While we do not have this data, we suspect the finding will be that there is a
20 serious affordability problem. This means, a serious redesign of how the revenue
21 requirement is distributed across different types of customers is necessary.

22 **Assessing Current Efforts**

1 Without access to customer income data, we need to use US Census Bureau
 2 data from PGE's service territory to assess affordability. Data from the American
 3 Community Survey collects information on income and energy bills. The caveat is
 4 that this analysis is not specific to PGE customers, but all residents of a geographic
 5 unit. For the best approximation, we have focused on the five counties that are
 6 virtually completely served by PGE: Clackamas County, Marion County, Multnomah
 7 County, Washington County, and Yamhill County.

8 Census data generally bins income category based on a percentage of the
 9 Federal Poverty Level (FPL). Many state programs, including PGE's bill discount
 10 program uses State Median Income percentage (SMI) to define low-income. The
 11 table below provides an overview of this classification scheme. As you can see,
 12 200% of FPL and 60% of SMI are somewhat comparable. Comparisons to electricity
 13 bills are complicated by the fact that poverty is defined by household size, but PGE
 14 has not made household size available in the billing data.

	60% of SMI²⁵	200% of FPL	45% of SMI	150% of FPL	30% of SMI	100% of FPL²⁶	50% of FPL
1 person HH	\$31,265	\$29,160	\$23,449	\$21,870	\$15,633	\$14,580	\$7,290.0
2 person HH	\$40,885	\$39,440	\$30,664	\$29,580	\$20,443	\$19,720	\$9,860.0
3 person HH	\$50,505	\$49,720	\$37,879	\$37,290	\$25,253	\$24,860	\$12,430.0
4 person HH	\$60,126	\$60,000	\$45,095	\$45,000	\$30,063	\$30,000	\$15,000.0
5 person HH	\$69,746	\$70,280	\$52,310	\$52,710	\$34,873	\$35,140	\$17,570.0

15 *Figure 2: Comparison of FPL and SMI in 2023.*

²⁵ US Department of Health and Human Services, 2023, "LIHEAP Eligibility Guidelines," https://www.acf.hhs.gov/sites/default/files/documents/ocs/COMM_LIHEAP_Att1SMITable_FY2023.pdf.

²⁶ US Department of Health and Human Services, "Poverty Guidelines," <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

1 Figure 3 compiles some statistics on energy burden, based on the American
 2 Community Survey Data aggregated by Fisher, Sheehan & Colton.²⁷ The first thing
 3 we can see is a large misalignment of the bill discount program. A customer
 4 between 200% of FPL (60% of SMI) and 150% of FPL (45% of SMI) is not energy-
 5 burdened but receives a discount of 15%. The average household below 50% of
 6 FPL - there 44,175 such households in the five-county area - requires a discount of
 7 73% but only receives 25%. The 54,530 households between 100% of FPL and 50%
 8 of FPL on average require a 50% discount but only receive 25%.

	Below 200% of FPL (cp 60% of SMI)	Below 200% of FPL (cp. 60% of SMI) above 150% of FPL	Below 150% of FPL (cp. 45% of SMI), above 100% of FPL	Below 100% of FPL (cp. 30% of SMI), above 50% of FPL	Below 50% of FPL
Households	228,853	67,201	62,947	54,530	44,175
Average Income	\$22,312	\$35,165	\$24,995	\$14,988	\$7,976
Cumulative Affordability Gap ²⁸	\$124,378,584	--	\$18,637,830	\$48,274,142	\$57,433,988
Average Discount Required	--	--	10.1%	49.5%	73.0%
Current Discount Offered	15%-25%	15%	20%	25%	25%

Figure 3: Energy Burden in the Five County Area

10 This tells us – the actual discount rates, just considering income, are not
 11 sufficient to relieve energy burden. Some discounts are going to the “wrong” people,
 12 while other discounts are not high enough. The system does not work, leaving at

²⁷ Energy Equity Project Planning Tool, 2023, https://rahulab.shinyapps.io/EEP_planning_tool/.

²⁸ This number is slightly different from the sum of the row because it is calculated from individual level data.

1 least 100,000 households energy burden and that is assuming 100% enrollment in
2 the bill discount program.

3 This analysis does not consider usage, which varies along many variables,
4 many of them hard to influence for the low-income household (e.g. inefficient
5 appliances). To develop a measure that takes into actual usage (not from billing
6 data), we can calculate the affordability gap from individual level census data. For
7 each respondent, this sums up the amount of their energy bill that is above 6%, i.e.
8 their shortfall of income. For instance, the average household at between 200% of
9 FPL and 150% of FPL might not be energy-burdened, but some of them are. This is
10 counted in this analysis. Of course, there might be people above 200% of FPL that
11 are energy-burdened, but this is not considered here.

12 In the five-county area, there is an affordability gap of \$124.4 million, reaching
13 from \$7.1 million in Yamhill county to \$50.9 million in Multnomah county. This is
14 shown in Figure 4. About 22.5% of those eligible are served by assistance
15 programs, reaching from 11% in Marion County to 23.8 % in Washington County.²⁹
16 This is much better than LIHEAP/OEAP alone (which is a subset of IQBD enrollees),
17 which state-wide reaches about 12-15% of those eligible. But it's far from serving all
18 that are energy burdened.

19 We tried to compare the affordability gap to current efforts monetarily. If we subtract
20 the amount that is currently provided through IQBD and LIHEAP/OEAP, there still is
21 a large remaining gap of \$96.9 million. Of course, this is an imperfect number

²⁹ This is based on January 23 data because that was the last month available as .csv instead of as .pdf.

1 because it disregards efforts by other utilities in the area. But even if we assume the
 2 largest other utility in this service territory, NW Natural, spent amounts similar to
 3 PGE on
 4 their discount program, the gap would only shrink to \$84.2 million.

	Households 200% FPL ³⁰	Affordability Gap ³¹	IQBD Enrollees ³²	PGE Assistance through IQBD ³³	LIHEAP/OEAP Benefits ³⁴	Remaining Gap \$/People ³⁵
Multnomah County	97,177	\$50,889,787	21,473	\$5,333,196	\$6,377,040	\$39,179,551 75,704
Clackamas County	30,477	\$16,344,859	8,254	\$2,043,042	\$1,947,295	\$12,354,522 22,223
Washington County	48,034	\$25,497,875	11,446	\$2,801,180	\$3,414,867	\$19,281,828 36,588
Yamhill County	11,064	\$7,148,609	1,462	\$357,872	\$580,744	\$6,209,993 9,602
Marion County	42,101	\$24,497,454	9,000	\$2,193,150	\$2,452,005	\$19,852,299 ³⁶ 33,101
Total	228,853	\$124,378,584	51,635	\$12,728,441	\$14,771,951	\$96,878,193 177,218

Figure 4: Affordability Gap and Current Assistance

6 This table also highlight the enrollment gap. A successful program must classify
 7 most customers correctly. Currently, around 177,218 customers are incorrectly not
 8 enrolled in the bill discount program. The simple truth is: with current efforts this
 9 program will never achieve 100%; the higher the level, the more effort any additional

³⁰ Energy Equity Project Planning Tool, 2023, https://rahulab.shinyapps.io/EEP_planning_tool/.

³¹ Ibid.

³² End of January 2023.

³³ May 2022- April 2023, Calculation based on Docket No. RE 195. County/tier percentage is relatively stable but we averaged Nov 22, Dec 22, Jan 23. We excluded 125 customers from Polk County or with no Zip Code.

³⁴ Data from FY 2020 to control for the temporary pandemic increases. Oregon Housing and Community Services, 2023, https://public.tableau.com/app/profile/oregon.housing.and.community.services/viz/EnergyDashboard_16117046261640/LandingPage.

³⁵ All LIHEAP/OEAP clients are automatically enrolled in IQBD.

³⁶ Data is only available by Community Action Agency not county. This data is for PGE customers at Mid-Willamette Community Action.

1 increase will require. The only way forward is more creative ways to boost
2 enrollment. Those are ways that don't rely on the efforts of energy-burdened
3 households to learn and enroll in this program themselves. Instead, PGE should
4 automatically enroll most of eligible customers.

5 So far, we have mostly dealt with averages. However, a program that is good for
6 the average customer, has the potential of being mismatched for everyone who is
7 not average. We have seen that current discounts are too low for those with the
8 lowest incomes. Below, we show that the discounts are especially insufficient for
9 non-average customers.

10 We cannot develop programs just based on the average customer. Most
11 customers are not average. The graph below plots the density of all electric heat
12 customers' bills (in monthly \$) based on the billing data from OPUC DR 325. We can
13 see: a program that helps the median customer might be too generous for the

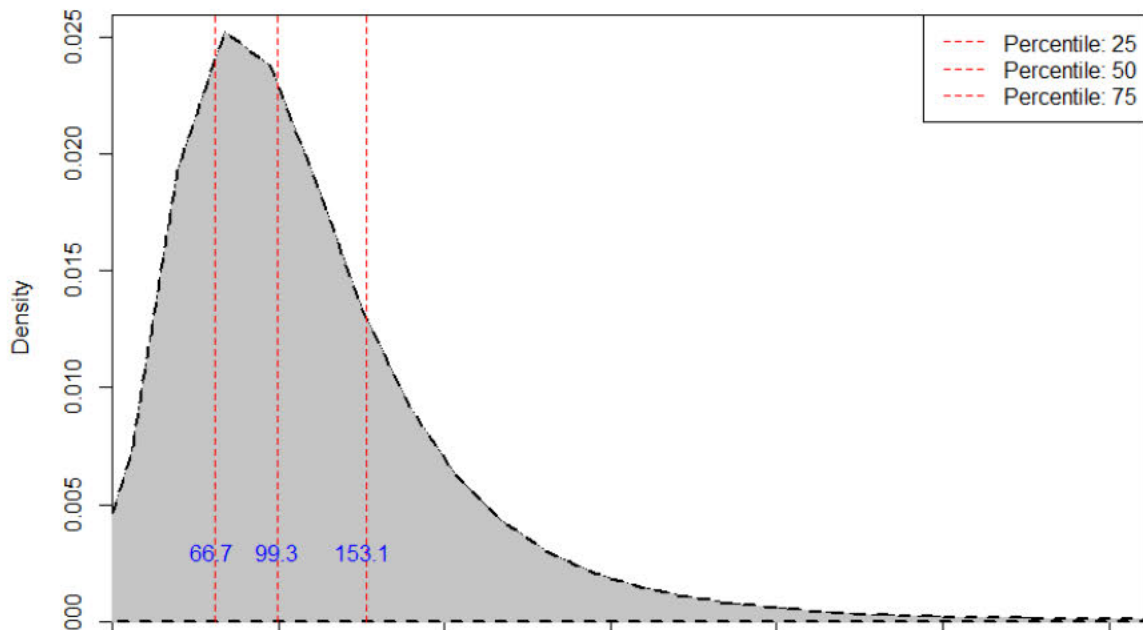


Figure 5: Density of Monthly Bills for Electric Heat Customers, Percentiles in \$/month.

1 customer at the 25th percentile, and insufficient for the customer at the 75th
2 percentile.

3 Let's make a few more concrete examples of the current bill discount program at
4 different levels of FPL. We again analyzed the customer data from OPUC DR 325,
5 restricting it only to those classified as users of electric heat. For every month, we
6 calculated median, 25th percentile, and 75th percentile bills, and summed them up for
7 the 12-month period. We then compared available household income, affordable
8 bills at 6% of household income, bill discount, and potentially missing assistance.
9 We assume that the usage numbers represent a 2-person household, and adjust a 1
10 person bill at 80% and 3-person household at 120% since the dataset unfortunately
11 does not include household size. The result is somewhat messy and probably not
12 generalizable. However, it does illustrate the many ways in which the program is
13 insufficient for those with lower incomes and those with above average electricity
14 usage.

1 For the median energy user with electric heat at 50% of FPL, the discount
 2 program is insufficient. In the five-county area, there are 44,175 households with
 3 incomes below that threshold. Annually, a one-person household is about \$296
 4 short, a two-person household is \$325 short, and a three-person household is \$355
 5 short.

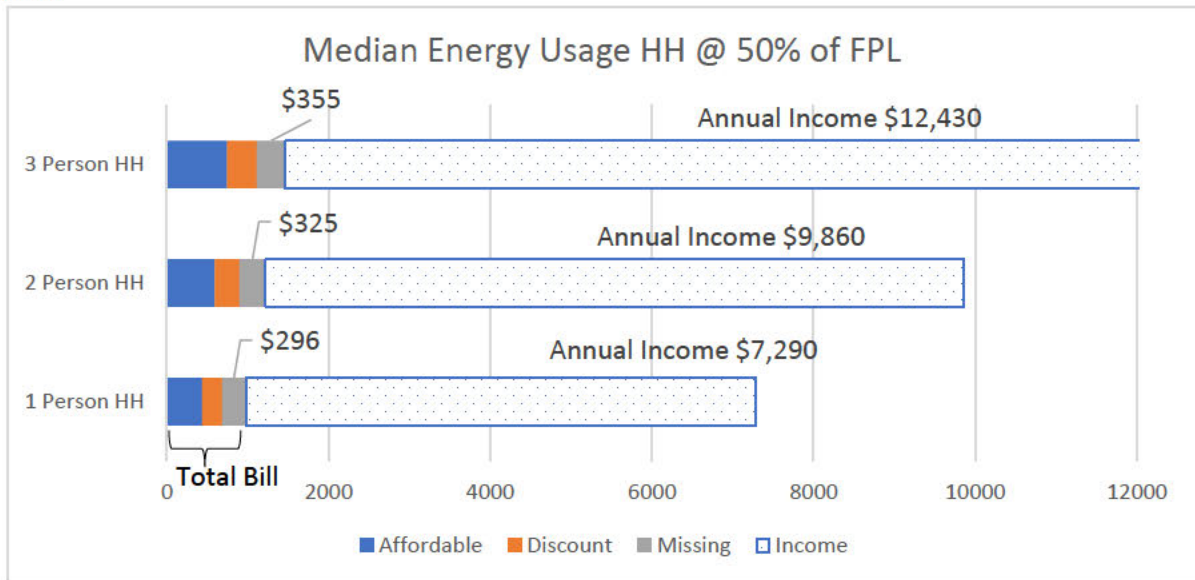
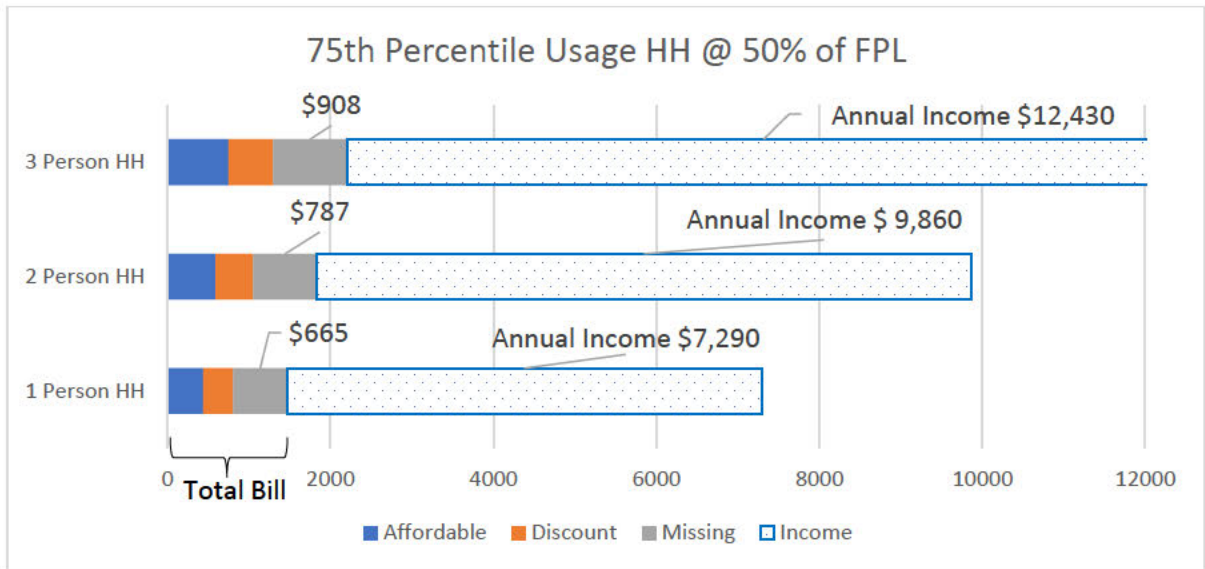


Figure 6: Median Energy Usage HH @ 50% of FPL

6 Things look very different if we check for 25th percentile energy users (no
 7 Figure). Here we find that a one-person household is only short \$31 annually, while
 8 a two-person household is receiving a discount that is \$7 too large, and a three-
 9 person household is receiving a discount that is \$43 too large. We can say, for this
 10 group that for whatever reason uses very little energy, the program is about right.

11 If we check for 75th percentile energy users, things look more dire. In every
 12 category, bills are extremely unaffordable, between two to three times compared to
 13 median users.



1
2
3
4
5
6
7

Figure 7: 75th Percentile Usage HH @ 50% of FPL

We can complicate things by looking at those with higher incomes. Households just above the Federal Poverty Level, with 31% of SMI who receive a 20% discount. As can be seen in Figure 8, normal and low users are not energy-burdened anymore, receiving a discount that gets them substantially below the 6% threshold. At the same time, higher users are about \$200 short annually.

	1 person HH	2 person HH	3 person HH
25th Percentile Use	-\$470	-\$644	-\$817
Median Use	-\$187	-\$289	-\$392
75th Percentile Use	\$207	\$203	\$198

These

Figure 8: Energy Users at 31% of SMI, Affordability Gap. calculations only consider

11 income and use. Of course, in real life things are much more complicated. You can
 12 imagine a relatively frugal one-person households at 100% of FPL who is receiving a
 13 good deal on rent saying, "I am paying 10% of my income on energy, that seems
 14 reasonable." On the other hand, there are many households that according to the

1 above calculations are not energy-burdened, but still can't afford their energy bill.
2 This could be someone with high medical debts, child support payments, or other
3 debts. Anyone without a financial cushion can, due to bad choices or bad luck, end
4 up in a situation where basically any energy bill is unaffordable. On the one hand,
5 energy prices cannot substitute for appropriate social policy to protect from the risks
6 of life. On the other hand, energy is a basic essential that we shouldn't withhold from
7 people except in very extreme circumstances. This suggests a radical redesign of
8 rates around the concept of affordability and avoiding disconnection.

9 **Impacts of the Rate Increase**

10 The rate increase will exacerbate issues of affordability. By how much?
11 Approximately by the size of the rate increase. Customers that are currently not
12 energy-burdened will become energy burdened. PGE testimony on this issue is
13 misleading. Specifically, it suggests that the bill discount program was adopted to
14 mitigate the impact of the rate increase.³⁷ This is untrue. The program was adopted
15 to address existing energy burden not future energy burden. Low-income customers
16 are not somehow exempt from the rate increase through the program. They will see
17 a proportional increase. That's just basic math. Of course, individual results will vary
18 because the rate increase is differentially distributed by housing type and usage (so
19 the actual low-income increase might be a few percent – not percentage points –
20 lower). Current exhibits presented by PGE provide insufficient evidence that the

³⁷ UE 416, PGE, 100, Pope – Simis / 15; UE 416, PGE, 1300 Macfarlane – Pleasant / 14.
Response to OPUC DR 445.

1 proposed rate increase will not increase the number of customer with energy burden
2 and the total amount of energy burden.

Current Bill	Bill with 25% discount	New bill with 16% increase	New bill with 25% discount	Bill Increase with discount
\$100	\$75	\$116	\$87	16%

3 *Figure 9: A generic bill discount does not mitigate a rate increase*

4 The impact of the rate increase is easily described but hard to calculate:

- 5 - For every household that is already energy-burdened, any increase in rates
6 will translate dollar for dollar in an increase in energy burden. A rough back of
7 the envelope calculation with the affordability gap data would suggest an
8 increase of the gap by something like \$40 million.
- 9 - Every household that currently has an energy burdened between 5.17% and
10 5.99% will cross the threshold to 6%. This number could be calculated with
11 Census Bureau data.
- 12 - The rate increase will be partially mitigated by rising incomes. This would
13 require a forecast of 2024 incomes.

14 To show that the current proposal is just and reasonable, PGE must make a
15 good faith effort to calculate these numbers.

16 **Distributional Concerns with Current Rates**

17 So far, we have only focused on affordability concerns. However, there are
18 equally important distributional considerations. From an affordability perspective,
19 most discounts for those over 100% of FPL are “unnecessary.” Not so from a
20 distributional perspective. As we mentioned before, US public policy generally
21 recognizes that common goods should be financed according to ability to pay. For

1 instance, a single adult earning under \$11,000 in 2023 will pay a marginal federal
2 income tax rate of 10%, while incomes above \$578,126 are taxed at 37%. From this
3 perspective, slightly progressive electricity rates make sense. However, the principle
4 suggests that progressivity should not stop at 60% of SMI.

5 Distributional analysis must go beyond residential customers – after all, the
6 energy systems and PGE have more stakeholders than residential customers. There
7 is enough money among customer and other stakeholders that no one needs to
8 forgo electricity because of inability to pay. In 2022, the total compensation of 5
9 PGE’s named executive officers was \$11.3 million.³⁸ Nobody needs that much
10 money – in fact, we would argue there is no good reason for anyone to make more
11 than \$500,000 annually. Anything above that points at a problem in the market that
12 can be fixed with rules. If PGE executives would accept this, the energy affordability
13 gap could be lowered by \$8.8 million. This would show actual commitment to Energy
14 Justice, which PGE is theoretically committed to.

15 Shareholder contributions are another issue to be considered here. Determining
16 a reasonable return on equity solely based on comparison to other utilities is
17 somewhat circular. Reasonable returns must include consideration of distributional
18 questions. Let’s be honest – investing in PGE is a safe bet. Nobody can afford to let
19 it fail, and the buck will always stop with ratepayers. Hence, we suggest, PGE could
20 use some of its \$233 million in profit (2022) for relieving energy burden instead of
21 dividends (around \$174 million in 2022). In 2022, Actual Return on Equity was

³⁸ PGE, 2023 Proxy Statement, p. 71, <https://investors.portlandgeneral.com/static-files/39b7e31a-6e8f-431a-836e-5d2890bf30ee>.

1 8.34%.³⁹ This is way too high for a very low risk investment, especially considering
2 that most low-income customers earn little or no interest on their savings, if they
3 have any.

4 An additional issue in the cost recovery of the bill discount program is the
5 distribution between customer classes (Schedule 118). This was insufficiently
6 addressed the establishment of this schedule. Currently, contributions are capped at
7 \$1000 per customer. We think that mega customers, like Intel, Kroger, and Walmart,
8 should contribute more to keeping electricity affordable.

9 **Principles for Just and Reasonable Rates**

10 Based on this analysis, CAPO suggest the following modifications to current rate
11 schedules:

- 12 - Rates must generally leave customers not energy-burdened considering their
13 use and income. PGE already knows income (self-attestation) and usage of
14 low-income customers enrolling in assistance. The level of discount should be
15 calculated to keep a customer under 6% of energy burden.
- 16 - In the same way PGE currently enrolls all customers in the correct customer
17 class, the company must enroll all those eligible in assistance programs.
18 There is simply no way to achieve 100% of enrollment through self-enrollment
19 and re-enrollment every two years. PGE must explore more creative options,
20 like for instance enrolling based on statistical criteria like census tract or
21 housing stock.

³⁹ PGE's Regulated Results of Operations for 2022,
<https://edocs.puc.state.or.us/efdocs/HAQ/re119haq162735.pdf>.

- 1 - PGE should adopt a maximum disconnection rate performance metric. If
2 disconnections rise above that rate, disconnections should be halted until new
3 approaches can be put into place to prevent excessive disconnections.
- 4 - There should be programs in place to protect customers in crisis from
5 disconnection regardless of their income. Programs like LIHEAP were
6 originally designed for that purpose but have come address both insufficiently:
7 households in crisis above the income guidelines cannot receive help. Most
8 households that are energy-burdened chronically are excluded due to funding
9 limitations.
- 10 - Rates should be generally progressive, analogous to taxations, reflecting
11 households varying ability to contribute to the public good. Specifically, this
12 includes: contributions from executives and shareholder; larger contributions
13 from commercial and industrial customers, as well as larger contributions
14 from residential customers with higher incomes.

III. ACHIEVING PROCEDURAL JUSTICE

1
2 Rate case proceeding at the OPUC are not set up in ways that encourage
3 effective and meaningful public participation. Public comments, while technically part
4 of the record, are rarely considered in settlement conferences. Furthermore,
5 according to insiders, they are virtually irrelevant to Commissioner decisions. This is
6 not a surprise. The public hearing in this case was not set up to create an informed
7 public that is able to make substantive contributions to the case. Testimony is
8 generally framed around costs: “rates are too high,” not about specific issues like,
9 rates are too high because the revenue requirement should be calculated differently,
10 costs need to be allocated differently across customer classes, or these capital
11 investments are unnecessary. There is insufficient guidance to the public for how to
12 engage with the substantive issues of the case. The public hearing also did not allow
13 the public to ask questions of PGE or engage with intervenors. As a result, the public
14 is flying in the dark at these hearings, while utility and regulators can tell themselves
15 that the testimony is “ill-informed” and can be ignored.

16 Unfortunately, there is no middle ground of participation. One can either make a
17 short public statement or participate in a technical and obscure proceeding that is
18 unheard of outside the world of utility regulation. Financial, legal, and technical
19 barriers limit public engagement in such evidentiary processes, particularly when
20 considering the number of concurrent cases before the OPUC at any point in time.⁴⁰

⁴⁰ For an overview of these issues, see: Heather Payne, 2019, “Private Utility Regulators,” *Environmental Law*, 50 (999), <https://ssrn.com/abstract=3464300>; Ruhan Nagra, Jeanne Bergman, and Jasmine Graham, 2022, “Regulatory Theater: How Investor-owned Utilities and Captured Oversight Agencies Perpetuate Environmental Racism,” 25 *CUNY Law Review* 355, <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1548&context=clr>.

1 The average customer can hardly participate except through such groups as the
2 Citizens' Utility Board (CUB). CUB generally brings an economic/legal perspective of
3 getting a fair deal for residential customers, which is an improvement, but not
4 sufficient. Low-income, Black, Indigenous and other people of color (BIPOC), and
5 historically marginalized customers lack a direct path to engage in this particular
6 case. While intervenor funding for environmental justice organization is a good step
7 in the right direction, it is insufficient. For one, the amount of money available is
8 easily used up just by hiring a competent attorney for representation. But more
9 importantly, contested cases are not set up in a way that encourages different types
10 of expertise to be considered:

- 11 - General Rate Case Notices are written in obscure ways that don't highlight
12 the political issues being considered.
- 13 - Path-dependency. The whole system of schedules and policies is rarely
14 questioned. Instead, only PGE's proposed changes are discussed. The
15 revenue requirement is just a permutation of current spending – not a holistic
16 assessment of what efficient, reliable, and affordable utility service costs. As a
17 result, rates rarely go down and radical changes are hardly contemplated.
- 18 - Transparency. Most issues are resolved in settlement conferences that are
19 closed to the public and are conducted by lawyers. This violates transparency
20 principles of democratic governance. In terms of settlement conferences, it is
21 also important to note that the interests of participating intervenors DO NOT
22 constitute the public interest. Furthermore, much of discovery is kept
23 confidential to protect proprietary business information. As a regulated

1 monopoly business, PGE should have no reason to keep information from
2 “competitors.”

3 - Information Asymmetry. Documents are written to be only understandable to
4 economists/accountants and others trained in utility regulation. Case records
5 are so extensive that separating the important from the unimportant is hardly
6 possible without a dedicated professional staff.

7 - Narrow Perspective. Political issues are commonly obfuscated as technical
8 issues. Perspectives from other disciplines, for instance sociology,
9 ethnography, or political science, are rarely considered. Experiences of those
10 with the lowest incomes are not represented at the table, while the largest
11 customers are represented individually.

12 There are options for OPUC to embrace procedural justice in this proceeding
13 and to require procedural justice in its final order.

14 Foremost, OPUC should organize as part of the contested case, a middle
15 ground of engagement, where the well-educated public without specific utility
16 expertise can engage with the issues (and value judgements) that are raised by a
17 rate case. This could look like a series of workshops where public participants are
18 first educated about basic principles of utility regulation. OPUC and utility staff could
19 then collaborate on presenting the issues and proposed solutions of the rate case.
20 Workshop participants would get a chance to question PGE staff, who would be
21 required to respond. Only in the end would workshop participants give their now
22 well-informed testimony on the issues of the rate case, which then would be

1 considered by OPUC staff in settlement conferences, and Commissioners in final
2 decisions.

3 This would require quite a bit of effort, but, we think, lead to results that are more
4 in line with the public interest (instead of backroom deals of intervenors). To make
5 an example of the type of activity envisioned, take something like a marginal cost
6 study. As a non-expert, I might be able to read those documents, but not assess
7 their reasonableness or alternatives. However, as a social scientist, I do know that
8 there is no such thing as the “objectively” correct way to estimate marginal costs,
9 and that marginal costs are not the only acceptable, and value-neutral way of
10 distributing costs across customer classes. In such a proposed workshop, OPUC
11 staff would explain the current marginal cost study, especially the assumptions being
12 made, and the value judgements implied. Issues would be discussed conceptually,
13 not technically. After gaining some understanding, participants could ask PGE staff
14 questions about how and why they proceeded how they did. At the end, participants
15 would be able to voice actual opinions on the marginal cost study that are well-
16 informed, adding new perspectives.

17 Another issue that should be addressed is settlement conferences. At a
18 minimum, those should be public proceedings, so the public can know who did what
19 and how. Even better would be to do away with them completely. This would allow
20 the Utility Commissioners to more clearly rise to their political authority and political
21 responsibility. Instead of approving settled issues, they would be issuing decisions
22 from scratch. This would emphasize the point that each party in the proceeding has
23 their own parochial interests. While this is good information for a decision, only

1 Commissioners have been authorized by the legislature to decide what is in
2 Oregon's public interest.

3 A further modification to be made would be to require PGE to conduct
4 stakeholder engagement before filing its next rate case and reflect those stakeholder
5 concern in the next rate case.

6 Looking beyond this case, more issues of substantive public interest should be
7 resolved in "mega-dockets" or rulemaking. For instance, advocates and the larger
8 public won't be able to contribute to every rate case for every utility. But the larger
9 public can (more) easily participate in proceedings that set general rules for rate
10 cases. OPUC could open a proceeding to refine in rules to which degree just and
11 reasonable rates must consider affordability concerns and what is expected of
12 utilities in rate cases. In the end, a public that is constantly mobilized and involved in
13 all important political issues is impossible. It is better to set up the system in a way
14 that enshrines in rules and automatically considers important public values.

15