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March 29, 2024

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301

Re: UE 435 - PGE Request for a General Rate Revision

Dear Filing Center:

Enclosed for filing in the above-captioned docket is Portland General Electric Company's Response to Oregon Citizens' Utility Board's Motion to Dismiss or Segregate Certain Issues.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "KSB", is written over a light blue rectangular background.

Kim S. Burton
Assistant General Counsel III

KMB:ld

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 435

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

**PORTLAND GENERAL ELECTRIC
COMPANY’S RESPONSE TO OREGON
CITIZENS’ UTILITY BOARD’S
MOTION TO DISMISS OR SEGREGATE
CERTAIN ISSUES**

I. INTRODUCTION

Portland General Electric (PGE or the Company) respectfully submits this response in opposition to the Oregon Citizens’ Utility Board’s (CUB) Motion to Dismiss or Segregate Certain Issues (Motion). PGE has demonstrated on the face of its 2025 general rate case (2025 GRC) filing that (1) the capital investments in battery storage and updating transmission and distribution (T&D) infrastructure driving this case are necessary to meet growing customer demand with clean, reliable resources, and (2) without the requested rate change in 2025, PGE will fall short of recovering its costs to serve customers and earn much less than its authorized return on equity (ROE). PGE filed this case to support the investments necessary to achieve Oregon’s decarbonization mandate, provide resource adequacy, and prepare for and respond to extreme weather events.

CUB’s Motion wrongly claims that PGE filed the 2025 GRC to relitigate issues from its previous rate case, Docket UE 416 (2024 GRC). CUB’s Motion asks the Public Utility Commission of Oregon to exercise its “broad authority” to dismiss this contested case proceeding.¹ CUB does not, however, cite any statute or case that authorizes the Commission to dismiss a properly filed general rate case at its inception before the development of a record and an

¹ Motion at 1 (Mar. 14, 2024).

opportunity for an evidentiary hearing. Nor does CUB identify any factual or procedural deficiency with PGE’s filing that warrants the harsh remedy requested. In the alternative, CUB asks the Commission to segregate certain issues, incorrectly claiming that they “do not bear on the calculation of PGE’s revenue requirement” in the 2025 GRC, and resolve them summarily through the Commission’s open meeting process.² For this aspect of its Motion, CUB relies on an inapplicable statute, ORS 756.528, that allows only for segregation of hearings, not the substitution of the open meeting process for the required contested case process.³

By asking the Commission to dismiss or segregate aspects of this case without any support in Commission-administered laws or practices, CUB’s Motion appears more rhetorical than legitimate. In the media, CUB has admitted that its Motion is “unprecedented,” and that CUB is “asking the Commission to do something they have never done before.”⁴ While CUB filed its Motion purportedly to streamline this case, the effect is the opposite. CUB’s filing requires an already stretched Commission to dedicate time to a Motion to Dismiss devoid of legal support.⁵ In addition, granting the alternative Motion to Segregate would result in more complexity, additional proceedings, and a less accessible and fair process for all parties.

² Motion at 2. CUB cites the Company’s request to increase its ROE as an example of an issue that does not “bear on the calculation of PGE’s revenue requirement,” which demonstrates a fundamental misunderstanding of ratemaking. Setting the components of the Company’s cost of capital, including its ROE, is integral to determining the Company’s revenue requirement.

³ *Id.* at 1.

⁴ Gosia Wozniacka, *Consumer group asks Oregon regulators to dismiss new PGE rate hike request*, THE OREGONIAN (Mar. 14, 2024), <https://www.oregonlive.com/environment/2024/03/consumer-group-asks-oregon-regulators-to-dismiss-new-pge-rate-hike-request.html>.

⁵ The Motion is also untimely. CUB filed its Motion on March 14, 2024, 14 days after PGE filed the 2025 GRC. Under OAR 860-001-0420(3), “[a] motion against an initiating or responsive pleading under OAR 860-001-0400 must be filed within 10 days after the pleading is filed.” According to the definitions under OAR 860-001-0010(5), the word “days” refers to “calendar days unless otherwise noted.” Because OAR 860-001-0420(3) uses the word “days” without qualification, CUB had 10 calendar days to file its Motion.

In the past, parties have worked together to streamline proceedings when circumstances warrant. PGE seeks to collaboratively address CUB’s concerns within the Commission’s normal procedural framework for rate case filings, such as through settlement or a supplemental evidentiary filing.⁶ CUB’s Motion improperly attempts to bypass this framework, however, proposing to treat this rate case differently than any other ever filed with the Commission.

For all these reasons, the Commission should deny the Motion and resolve all issues in PGE’s 2025 GRC—including the substantive issues CUB prematurely raises in its Motion—on a full record in accordance with Commission law and practice.

II. BACKGROUND

On February 15, 2023, PGE filed its 2024 GRC,⁷ using a 2024 calendar test year to calculate its costs and revenues for rates that would go into effect on January 1, 2024.⁸ PGE sought a general rate increase of \$208.2 million and an increase to net variable power costs (NVPC) of \$129.8 million.⁹ The primary drivers of the 2024 GRC were capital investments, including repowering the Faraday hydro project, upgrades to T&D infrastructure, routine vegetation management, operating cost inflation, and sharply increasing NVPC.¹⁰

With robust participation from Staff and intervenors, including CUB,¹¹ the 2024 GRC was resolved entirely by stipulations, which addressed revenue requirement, rate spread and rate

⁶ The parties have agreed to an early settlement conference the first week of May.

⁷ *In re Portland Gen. Elec. Co., Request for a Gen. Rate Revision; and 2024 Ann. Power Cost Update*, Docket No. UE 416, Advice No. 23-03 (Feb. 15, 2023).

⁸ UE 416, PGE 200 Batzler-Ferchland/3.

⁹ UE 416, Order No. 23-386 at 1 (Oct. 30, 2023).

¹⁰ *Id.*

¹¹ “Staff of the Public Utility Commission of Oregon (Staff), the Alliance of Western Energy Consumers (AWEC), Calpine Energy Solutions, LLC (Calpine Solutions), Community Action Partnership of Oregon (CAPO), Community Energy Project, Oregon Citizens’ Utility Board (CUB), Fred Meyer Stores and Quality Food Centers, Divisions of The Kroger Co. (Fred Meyer), NewSun Energy LLC, (NewSun), Natural Resources Defense Council (NRDC) and the NW Energy Coalition (NVEC), Small Business Utility Advocates (SBUA), and Walmart Inc. participated as parties to this proceeding.” *Id.* at 2.

design, tariff changes, and NVPC. Ultimately, the Commission approved the five stipulations related to general rate issues in Order No. 23-386, producing a base revenue requirement increase of \$174.6 million, or 7.3 percent, 16 percent lower than the Company’s initial filing.¹² The Commission approved the two stipulations related to NVPC and set the final, updated NVPC in Order Nos. 23-424, and 23-476, producing an increase of approximately \$216 million due to continued NVPC cost increases.¹³

Each of the stipulations was explicit that “Except as provided in this Stipulation, no Stipulating Party shall be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding.”¹⁴ Under the Commission’s statutes and rules, PGE is required to file a new case annually to update the largest single driver of the 2024 rate increase, NVPC.¹⁵

A full year after filing PGE’s 2024 GRC, PGE filed its 2025 GRC on February 29, 2024. PGE used a 2025 calendar test year in this case, a completely different test period than that used to set rates in the 2024 GRC.¹⁶ PGE sought a revenue requirement increase of approximately \$202 million.¹⁷ PGE’s 2025 GRC filing included 624 pages of testimony and supporting exhibits. PGE submitted its 2025 GRC in compliance with OAR 860-022-0019, which governs the filing requirements for general rate revisions. No party, including CUB, has lodged objections regarding the 2025 GRC’s compliance with the Commission’s procedural rules.

¹² UE 416, Order No. 23-386 at 1.

¹³ UE 416, Order No. 23-424 (Nov. 6, 2023); UE 416, Order No. 23-476 (Dec. 18, 2023); *see also* UE 416, Staff Report on 2024 Annual Power Cost Update Compliance Filing (Dec. 22, 2023).

¹⁴ *See, e.g.*, UE 416, First Partial Stip. ¶ 9 (Aug. 21, 2023).

¹⁵ *See* ORS 757.609; OAR 860-038-0275.

¹⁶ PGE/200, Batzler-Ferchland/1.

¹⁷ *In re Portland Gen. Elec. Co. Request for a Gen. Rate Revision*, Docket No. UE 435, Exec. Summ. at 2 (Feb. 29, 2024).

Consistent with its Internal Operating Guidelines, the Commission docketed PGE’s 2025 GRC as a contested case.¹⁸ For general rate case filings, the Commission uses the contested case process required by ORS 757.210, which directs the Commission to “conduct a hearing to determine whether the rate or schedule is fair, just and reasonable.”¹⁹ Under this statute and ORS 757.215, the Commission may on its own initiative decide to suspend a rate case for investigation and hearing or set a hearing upon the request of any party within 60 days. In Order No. 24-061, the Commission suspended PGE’s 2025 GRC for nine months “to investigate the propriety and reasonableness of the tariff sheets under ORS 757.210 and 757.215,” indicating that the Commission would conduct a contested case process and hearing on its own initiative.²⁰ The Commission has never required the utility or another party to formally request a hearing under ORS 757.210 after the Commission has issued a suspension order to investigate a rate case and docketed it as a contested case. To eliminate any question here, however, through this filing PGE formally requests a hearing under ORS 757.210 on all issues in its 2025 GRC.

Under the Oregon Administrative Procedures Act (Oregon APA),²¹ two integral components of a contested case are that persons affected by agency action “have fair opportunity to present evidence and argument on the issues raised” and “are able to respond to all evidence and argument offered by other parties.”²² In contested cases, the Oregon APA requires final orders to be based upon the evidentiary record.²³

¹⁸ *In re Pub. Util. Comm’n of Or., Update of Internal Operating Guidelines*, Docket No. UM 2055, Order No. 20-065, App. A at 17–18 (Mar. 3, 2020) (“The Commission uses contested case procedures to address a wide variety of issues. These cases utilize trial-like proceedings and range from individual consumer complaints and **general rate case proceedings** to generic industry investigations.”) (emphasis added).

¹⁹ See ORS 757.210(1)(a).

²⁰ UE 435, Order No. 24-061 (Mar.5, 2024).

²¹ See ORS 183.310(2)(a).

²² UM 2055, Order No. 20-065, App. A at 17–18 (Mar. 3, 2020).

²³ *Id.* at 18.

In approving the general rate case stipulations in the 2024 GRC, the Commission recognized the challenges now facing the Commission, PGE, and PGE’s customers when it stated that,

“[i]n adopting these stipulations, which comprehensively resolved numerous issues and both general rate and the annual change to NVPC, we acknowledge the magnitude of these changes occurring at the same time. The cost drivers in this case demonstrate both the volatility of a strained system and the extensive up-front cost of transformation.”²⁴

The Commission recognized the challenges of being “asked to decarbonize the system with significant community benefit, and to provide substantial low-income support while ensuring many new investments are made to harden the system and mitigate risks associated with wildfires and other natural disasters.”²⁵ As the Commission pointed out, to achieve these objectives “while keeping rates reasonable in a time of historic inflation and market price volatility will require creativity, compromise, and potentially difficult choices. PGE and all stakeholders must recognize that we intend to be proactive about this central challenge to utility oversight.”²⁶

PGE was mindful of this direction as it prepared the 2025 GRC, as reflected in the following:

- Approximately seventy-five percent of this case is comprised of new capital investments, primarily in battery storage and T&D upgrades. CUB’s Motion concedes the reasonableness of PGE filing a proceeding “to modestly update costs for investments that will be used and useful during the UE 435 test year.”²⁷ In other words, CUB does not contest PGE’s ability to seek recovery of new capital investments, the costs of which constitute the bulk of the 2025 GRC filing.
- To reduce cost pressure on customers, PGE has taken extensive measures to pursue government funding options. In 2023, PGE was awarded over \$300 million in grants,

²⁴ UE 416, Order No. 23-386 at 14 (Oct. 30, 2023).

²⁵ *Id.* at 14–15.

²⁶ *Id.* at 15.

²⁷ Motion at 9.

and this year, PGE will continue to apply for federal funding.²⁸ As of January 12, 2024, PGE has submitted seven grant applications or concept papers totaling \$335 million in requests for Department of Energy funding.²⁹

- Despite the need for new investments and initiatives to meet the challenges of load growth, decarbonization, extreme weather, and wildfire risk, the Company has maintained its employee count year-over-year and does not seek to adjust its workforce numbers in this case. Furthermore, PGE has reduced its labor expense by approximately \$11.7 million to account for vacancies and/or unfilled positions.
- PGE seeks a conservative increase to its return on equity (ROE) of 25 basis points, from 9.50 percent to 9.75 percent, which reflects higher costs in the capital markets and is consistent with the recent median and average ROE allowed for vertically integrated electric utilities.³⁰ This proposed change in ROE accounts for just 6 percent of the revenue requirement increase for base rates.³¹
- PGE has adjusted the revenue requirement to reflect the following reductions: (1) removing 100 percent of forecasted Officer incentive costs and 50 percent of all non-Officer forecasted incentive compensation costs, (2) removing 50 percent of all layers of Directors and Officers liability insurance costs, (3) removing approximately 50 percent of meals and entertainment costs based on 2023 expenditures, and (4) reducing approximately \$3.7 million in incurred property insurance costs from 2023 to 2025.³²
- To reduce the frequency of rate cases, PGE proposed an Investment Recovery Mechanism (IRM). The IRM would allow PGE to recover certain investments related to safety, reliability, and resilience outside of a general rate case and account for depreciation for the assets included in the IRM.³³

III. RESPONSE IN OPPOSITION TO MOTION TO DISMISS

A. CUB Cites the Wrong Legal Standard for a Motion to Dismiss.

The Commission's administrative rules along with the Oregon Rules of Civil Procedure govern motion practice before the Commission.³⁴ When the Commission considers a motion to

²⁸ PGE/100, Pope-Sims/26–27.

²⁹ PGE/100, Pope-Sims/27.

³⁰ PGE/600, Figueroa-Liddle/17–18.

³¹ The change in ROE represents approximately \$13 million of the proposed \$202 million revenue requirement increase.

³² PGE/200, Batzler-Ferchland/5–6.

³³ PGE/400, Bekkedahl-Felton/16–18.

³⁴ See OAR 860-001-0000(1).

dismiss, “all factual allegations are assumed to be true, and construed in a light most favorable to the nonmoving party.”³⁵ In ruling on a motion to dismiss, the Commission “assume[s] the truth of all well-pleaded facts and give[s] the nonmoving party the benefit of all favorable inferences that may be drawn from those facts.”³⁶ CUB wrongly claims that its Motion should be governed by the “just and reasonable” standard.³⁷ While the Commission will ultimately judge the substance of PGE’s 2025 GRC based on a full evidentiary record under the “just and reasonable” standard, that is not the standard applicable to CUB’s Motion, which seeks to dismiss the 2025 GRC before the taking of evidence and a hearing.

B. There is No Basis for Dismissing PGE’s 2025 GRC on the Face of the Filing.

Accepting all factual allegations in PGE’s 2025 GRC as true, PGE has clearly met the standard for seeking a general rate increase. First, PGE’s filing demonstrates that a rate increase is necessary to ensure just, reasonable, and sufficient rates. Without the requested rate change, PGE would have a revenue requirement deficiency of \$202 million in 2025,³⁸ and would earn an ROE of only 5.29 percent, well below the currently authorized ROE of 9.5 percent or PGE’s requested ROE of 9.75 percent.³⁹

Second, contrary to CUB’s claims, PGE’s 2025 GRC is not an improper “repeat” of its 2024 GRC because the two rate cases rely on entirely different, non-overlapping test years. Thus, by definition, the two cases request recovery of different costs. For example, over the last several years, capital markets have been volatile with a steep upward cost trajectory. When PGE filed its

³⁵ *In re the Complaint of Portland Gen. Elec. Co. against Dayton Solar I LLC, Tygh Valley Solar I LLC, Wasco Solar I LLC, Fort Rock Solar II, LLC, Alfalfa Solar I LLC, and Harney Solar I LLC, Pursuant to ORS 756.500*, Docket No. UM 2151, Order No. 21-210 at 3 (June 25, 2021).

³⁶ *In re PacifiCorp, dba Pacific Power, Application to Reduce the Qualifying Facility Cont. Term and Lower the Qualifying Facility Standard Cont. Eligibility Cap*, Docket No. UM 1734, Order No. 15-209 at 4 (July 7, 2015).

³⁷ Motion at 4–5.

³⁸ PGE/100, Pope-Sims/29.

³⁹ PGE/200, Batzler-Ferchland/4.

2024 GRC on February 15, 2023, the ten-year federal fund rate was 3.81 percent.⁴⁰ When PGE filed its 2025 GRC on February 29, 2024, that rate had increased to 4.25 percent.⁴¹ In contrast, when the Commission originally approved a 9.5 percent ROE for PGE in December 2017 in docket UE 319,⁴² the ten-year federal fund rate was 2.38 percent.⁴³ Average utility ROEs are increasing to reflect changes in capital costs, with 2022 and 2023 averages of 9.75 percent and 9.80 percent, respectively.⁴⁴ PGE’s request for a 9.75 ROE in this case is based on new capital market cost data, new modeling results, and sustained increases in annual utility ROE averages.

Third, CUB’s general concerns about rate affordability—concerns which PGE carefully considered in preparing this rate case—do not provide a legal basis for dismissal. The Commission has previously made clear that it does not consider rate shock and affordability in the first stage of ratemaking, which is setting a utility’s revenue requirement.⁴⁵

Fourth, the 2024 GRC was resolved by stipulations that apply only to that case and do not preclude PGE from filing a subsequent rate case or seeking Commission direction on the future treatment of settled issues.

Fifth, CUB has not asserted the presence of any procedural deficiencies under OAR 860-022-0019, which governs rate case filings.

⁴⁰ FRED, *Market Yield on U.S. Treasury Securities at 10-Year Constant Maturity Quoted on an Investment Basis (DGS10)*, FED. RSRV. BANK OF ST. LOUIS, <https://fred.stlouisfed.org/series/DGS10>, cited at PGE/600, Figueroa-Liddle/26 n.25.

⁴¹ *Id.*

⁴² *In re Portland Gen. Elec. Co., Request for Gen. Rate Revision*, Docket No. UE 319, Order No. 17-511 (Dec. 21, 2017).

⁴³ FRED, *Market Yield on U.S. Treasury Securities at 10-Year Constant Maturity Quoted on an Investment Basis (DGS10)*, FED. RSRV. BANK OF ST. LOUIS, <https://fred.stlouisfed.org/series/DGS10>, cited at PGE, 600/Figueroa-Liddle/26 n.25

⁴⁴ PGE/600, Figueroa-Liddle/18 n.9.

⁴⁵ *In re Portland Gen. Elec. Co.’s Proposal to Restructure and Reprice Its Servs. in Accordance with the Provisions of SB 1149*, Docket No. UE 115, Order No. 01-988 at 4–5 (Nov. 20, 2001) (rejecting the argument that “regardless of the prudence of the utility’s expenditures, rate increases that cause rate shock are not just and reasonable”).

CUB’s Motion is improperly predicated on disputed facts which the Commission must assume in PGE’s favor—including the central issue of whether 2025 GRC filing would result in rates that are just and reasonable. Because there is no legal basis for dismissing the 2025 GRC at this early juncture, the Commission should deny the Motion.

C. CUB Fails to Cite Any Legal Authority Supporting Its Motion.

CUB argues that the Company is not entitled to pursue the 2025 GRC because the Commission recently concluded the 2024 GRC.⁴⁶ CUB asserts that the 2025 GRC should be dismissed based on “the grounds that circumstances have not sufficiently changed since PGE’s rates were determined to be just and reasonable just weeks earlier” and that “PGE has failed to meet its burden to demonstrate that its existing rates are unjust and unreasonable.”⁴⁷

The Commission has *never* dismissed a general rate case filing on the basis that it was filed too soon after the preceding rate case and could not, therefore, result in just and reasonable rates.⁴⁸ While CUB claims that the Commission may exercise its “broad authority to dismiss this proceeding,” and asks the Commission to exercise its “discretion” to do so,⁴⁹ these claims are entirely unsupported.

⁴⁶ Motion at 6.

⁴⁷ *Id.* at 2, 6.

⁴⁸ The only instance in which the Commission has ever placed limitations on a party’s ability to relitigate rate case issues is related to cost of capital. In Order No. 16-109 in Dockets UG 288 and UM 1753, the Commission acknowledged that “[b]ecause the ROE adopted in this decision was contested by the parties, in the event Avista files another general rate case within six months from the date of this order, any party proposing a different ROE will have the burden of producing evidence of a material change in the markets, a change in circumstances, or some other good cause to justify an adjustment to this adopted ROE.” *In re Avista Corp., dba Avista Utils. Request for a Gen. Rate Revision (UG 288) and Application for Authorization to Defer Expenses or Revenues Related to the Natural Gas Decoupling Mechanism (UM 1753)*, Docket Nos. UG 288 and UM 1753, Order No. 16-109 at 10 n.8 (Mar. 15, 2016). The Commission included a similar direction in a prehearing conference order in a PacifiCorp rate case. *See In re PacifiCorp, dba Pacific Power, Request for a Gen. Rate Revision*, Docket No. UE 217, Prehearing Conference Report at 2 (Mar. 18, 2010). In those cases, the Commission discouraged relitigation of cost of capital where the cost of capital was fully litigated in the recent past. This limitation does not apply here because PGE’s cost of capital was settled in the 2024 GRC, not litigated. As noted above, PGE has also shown that the capital markets have continued to change, and costs and average utility ROEs have continued to increase since the 2024 GRC.

⁴⁹ Motion at 1–2.

The only Commission precedent CUB points to in its Motion, Order No. 00-091 in docket UE 111, does not support CUB's Motion.⁵⁰ In that case, the Commission *denied* a motion to dismiss PacifiCorp's general rate filing and rejected the argument that "because of PacifiCorp's flawed test year data, the Commission [could not] establish that the proposed rates [were] fair and reasonable as required by ORS 756.040(1)."⁵¹ The Commission found that the motion "fail[ed] to establish that the inclusion of a historic test year invalidate[d] the filing."⁵² Similar to the Commission's conclusion in Order No. 00-091, the Commission should deny CUB's Motion to Dismiss because CUB has not pointed to any factor that legally invalidates the 2025 GRC.

Additionally, CUB's reference to precedent from the Washington Utilities and Transportation Commission (WUTC) is completely inapposite.⁵³ In that case, the WUTC denied a rate increase based on a full evidentiary record, which included several rounds of testimony and a hearing. This case does not support CUB's position that the Commission has the authority to dismiss the 2025 GRC at the outset based on CUB's bare and disputed allegation that the case is unlikely to lead to rates that are just and reasonable.

Lastly, CUB claims it is offering its Motion in the spirit of advancing a constructive dialogue.⁵⁴ PGE appreciates CUB's overture and is open to suggestions on how to streamline this case. CUB's Motion diverts resources to unnecessary litigation, however, and impedes rather than advances dialogue on CUB's underlying concerns.

⁵⁰ Motion at 4–5 (citing *In re the Revised Tariff Schedules Applicable to Elec. Serv. Filed by PacifiCorp.*, Docket No. UE 111, Order No. 00-091 (Feb. 14, 2000)).

⁵¹ UE 111, Order No. 00-091 at 1 (Feb. 14, 2000).

⁵² *Id.* at 2.

⁵³ Motion at 5 (citing *Wash. Utils. & Transp. Comm'n v. Avista Corp. d/b/a Avista Utils.*, Dockets UE-160228/UG-160229, Order 06 (Dec. 15, 2016)).

⁵⁴ Motion at 3.

IV. RESPONSE IN OPPOSITION TO MOTION TO SEGREGATE

PGE’s 2025 GRC, like virtually all past and present rate cases filed before the Commission, consists of updates to costs and revenues, along with several regulatory policy issues, all of which have an impact on rates. PGE’s rate updates and policy-based requests all relate to PGE’s ability to provide safe, reliable, and affordable service in the test year. It is administratively efficient for the Commission and the parties to evaluate these in a single docket, rather than split the issues into multiple proceedings as CUB proposes. Segregating issues into several different dockets does not streamline this proceeding, but instead contributes to additional complexity and requires parties in the 2025 GRC to monitor and participate in multiple dockets for their positions to be considered.

CUB requests the Commission to segregate certain issues “that do not bear on the calculation of PGE’s revenue requirement,” have “already been examined in prior rate cases,” or are “fundamentally imbalanced and are therefore unlikely to lead to just and reasonable rates.”⁵⁵ Relying on ORS 756.528, CUB asks for select issues to be removed from the main proceeding, thereby “allowing them to be addressed in a separate process, like a public meeting.”⁵⁶ CUB seeks to segregate the following issues: (1) ROE; (2) inclusion of storage in the Renewable Adjustment Clause; (3) wages; (4) the basic customer charge; (5) the establishment of an Investment Recovery Mechanism or IRM; and (6) the request for a tracker for the Seaside battery storage project, which has an in-service date of mid-2025.⁵⁷

Under ORS 756.528, “[a]t any time before the conclusion of the taking of evidence in a proceeding, the Public Utility Commission may segregate the issues involved and order separate

⁵⁵ Motion at 2, 9.

⁵⁶ *Id.* at 10.

⁵⁷ *Id.* at 10–14. CUB also suggests procedures for addressing PGE’s proposal to revisit the design of its PCAM in a joint filing with other utilities, which is not part of the 2025 GRC. CUB’s discussion of the PCAM is outside the scope of this case, and in advance of the joint utility filing, it is premature for the Commission to address procedures for handling the filing.

hearings thereon at such times and places as the commission may prescribe.”⁵⁸ Although CUB cites ORS 756.528 as support, the statute does not authorize the relief that CUB seeks. ORS 756.528 authorizes the Commission to order separate hearings, but it does not authorize the Commission to eliminate hearings, which is at the heart of CUB’s request to segregate issues and have them resolved at a Commission public meeting.

A hearing in a contested case fundamentally differs from a public meeting. Hearings are an integral part of the contested case process, during which “the parties formally introduce into the record prefiled testimony, and witnesses are sworn-in and made available for examination by Commissioners and the [Administrative Law Judge (ALJ)], and cross-examination by other parties.”⁵⁹ Under the Oregon APA, final orders in contested cases must be based upon the evidentiary record, which consists of “testimony received into evidence, a transcript of the hearing, evidence officially noticed, and offers of proof.”⁶⁰

In contrast, there is no evidentiary hearing when a matter is handled through the Commission’s open meeting process. “The Commission conducts open meetings under the Public Meetings Law codified at ORS 192.610 *et seq.*”⁶¹ In general, the law requires that “(1) the meetings and decisions of public bodies be open to the public; (2) the public has notice of the meetings; and (3) the meetings are accessible to persons wishing to attend.”⁶²

CUB’s Motion proposes to remove the procedural safeguards of the contested case process (for all parties) by asking the Commission to apply non-contested case processes to certain issues in the 2025 GRC. CUB’s proposal violates ORS 757.210 and the Oregon APA, which require a

⁵⁸ ORS 756.528.

⁵⁹ UM 2055, Order No. 20-065, App. A at 21 (Mar. 3, 2020).

⁶⁰ *Id.* at 18.

⁶¹ *Id.* at 6.

⁶² *Id.*

contested case process for general rate case requests. CUB argues that the issues it seeks to segregate are not necessary to setting revenue requirement, but this is inaccurate. For example, CUB asks the Commission to segregate the requests to increase ROE and wages, both of which directly bear on the calculation of revenue requirement.

CUB argues that some of the issues it seeks to segregate have already been examined and decided in prior rate cases, but that assertion is misleading. Select issues that CUB highlights were the subject of prior rate case settlements, but none of those settlements included a “permanent” resolution of any of the issues, thereby allowing all parties to litigate resolved issues in future proceedings.⁶³ This is consistent with the principle that a current Commission cannot bind a future Commission, so the Commission may review an issue in a future rate case even if it was decided in a previous rate case.⁶⁴ The ratemaking process, by definition, involves revisiting and updating the utility’s costs, revenues, rate spread, rate design, and rate-related policies for a new test period.⁶⁵

CUB also argues that “the issues are fundamentally imbalanced and therefore unlikely to lead to just and reasonable rates.”⁶⁶ PGE vigorously disputes this allegation. While CUB is free to attempt to prove this point through testimony and at hearing, CUB’s unsupported claim cannot

⁶³ See, e.g., *In re Portland Gen. Elec. Co., Request for a Gen. Rate Revision*, Docket No. UE 416, Order No. 23-424, Seventh Partial Stip. at 2 (“The stipulating parties state that this agreement applies only to the 2024 NVPC and is not considered precedential.”); Order No. 23-386, Third Partial Stip. at 2 (“The removal of the forecasted cost representative of this contract from this AUT cycle is not precedential as to prudence of these types of agreements and PGE reserves the right to propose to include this type of agreement in future proceedings.”).

⁶⁴ See ORS 756.568.

⁶⁵ See *In re Portland Gen. Elec. Co. Request for a Gen. Rate Revision and Request for a Gen. Rate Revision relating to the Port Westward Plant*, Docket Nos. UE 180/184, Order No. 07-454 (Oct. 22, 2007) (In determining whether to adjust rates, the Commission “must view costs and revenues holistically and in a manner consistent with establishing a test year for ratemaking purposes, by estimating future ‘normal’ levels of operating costs and revenues. When using historic data, this requires removing abnormal events and amounts not expected to recur and including the effect of known changes in data that are expected to persist into the future, as well as making regulatory adjustments to recognize Commission orders and policies.”)

⁶⁶ Motion at 9.

serve as support for its Motion. For example, CUB inaccurately describes the IRM and concludes it is imbalanced.⁶⁷ As noted above, PGE designed the IRM to reduce the frequency of rate cases even with the need for extensive T&D investments in the future.⁶⁸ By allowing recovery for essential capital investments related to meeting safety and reliability standards outside of rate cases, the Commission can encourage savings in O&M and other base rate costs (including ROE, wages, and other costs that CUB challenges in its Motion) by extending the intervals between rate cases.⁶⁹ While CUB implies that this proposal is far-reaching and unprecedented, the Commission has approved a similar mechanism for natural gas utilities.⁷⁰ CUB also complains about PGE’s proposal for a tracker for the Seaside battery storage project scheduled to come online mid-2025.⁷¹ But the use of a tracker could delay or forestall the next rate case filing, an outcome that aligns with CUB’s interest in reducing the frequency of such filings.

V. RESPONSE TO CUB’S REQUEST TO HEAR MOTION AT PUBLIC MEETING

In a contested case, the ALJ is authorized to adjudicate motions and normally does so on a written record.⁷² If a party does not agree with ALJ’s decision, they may seek Commission certification.⁷³ However, CUB “requests that the Commission consider the merits of this Motion at an upcoming public meeting, rather than issuing a ruling through the Administrative Hearings Division.”⁷⁴

⁶⁷ Motion at 12–13.

⁶⁸ PGE/400, Bekkedahl-Felton/16.

⁶⁹ *Id.* at 18.

⁷⁰ *See In re Pub. Util. Comm’n of Or., Investigation into Recovery of Safety Costs by Natural Gas Utils.*, Docket No. UM 1722, Order No. 17-084 (Mar. 6, 2017).

⁷¹ Motion at 13–14.

⁷² UM 2055, Order No. 20-065, App. A at 19 (Mar. 3, 2020).

⁷³ *See* OAR 860-001-0110.

⁷⁴ Motion at 3.

Hearing this motion at a public meeting instead of within the contested case process already set for this case would be prejudicial to the parties and would not allow for full development of the record. As explained above, contested cases rely on an evidentiary record, and deciding this motion outside of the record violates procedural guidelines.

CUB's request could be construed as seeking oral argument on the Motion within this contested case docket. As explained in this response, however, CUB's Motion lacks any basis in Commission law or practice. In a case such as this, there is no justification for providing the extraordinary treatment CUB requests, bypassing the ALJ and holding an oral argument directly before the Commission.

VI. RESPONSE TO ENERGY ADVOCATES' COMMENTS IN SUPPORT OF CUB'S MOTION

On March 22, 2024, various organizations identifying themselves as Energy Advocates jointly submitted comments supporting CUB's Motion. PGE shares the Energy Advocates' concerns about the economic challenges facing our customers "at a time when our communities are feeling the pain of price increases across the economy while wages are not keeping up."⁷⁵ PGE has been mindful of the financial challenges facing customers and has worked to manage our operating costs. In the 2025 GRC, where over 75 percent of requested revenue supports capital projects, PGE is not seeking an increase in employment levels.

Of the 30 pending rate cases in the country for electric vertically integrated utilities, PGE's ROE request is the lowest. As S&P Global pointed out, "PGE said it is requesting the 9.75% ROE due to customer affordability considerations, though the ROE witness in the case supported a range

⁷⁵ See Comments from Energy Advocates at 2 (Mar. 22, 2024).

of 10.25% to 11.25%, based on several cost-of-capital estimation models.”⁷⁶ Between 2013 and 2019, price changes for PGE customers only varied within a three percent range after adjusting for inflation. Following the COVID-19 Pandemic, PGE delayed filing a general rate case until filing a partial year 2022 GRC.

As a local utility that has served customers for over a century, PGE has deep connections to the community and wants to engage with stakeholders and work with parties. However, discussions about cost drivers, the reasonableness of PGE’s revenue requirement request, and whether rates are just and reasonable should occur through the workshops, settlement conferences, testimony, discovery, briefing, and the hearing process of a contested case, not in motion practice or in the media.

VII. CONCLUSION

Based on the foregoing, PGE respectfully requests that the Commission deny CUB’s Motion and permit all aspects of the 2025 GRC to move forward under the Commission’s normal contested case procedures.

Respectfully submitted this 29th day of March 2024.

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⁷⁶ See [Brian Collins et al.](#), *Major energy utility cases in progress in the US, Quarterly update on pending rate cases*, S&P GLOBAL COMMODITY INSIGHTS, March 20, 2024, at 6.