

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UE 435

4 In the Matter of)
5 PORTLAND GENERAL ELECTRIC) STAFF RESPONSE TO CUB’S MOTION
6 COMPANY,) TO DISMISS OR SEGREGATE CERTAIN
7 Request for General Rate Revision.) ISSUES

8 Rates from Portland General Electric Company (PGE)’s 2023 General Rate Case (2023
9 GRC) became effective on January 1, 2024. On February 29, 2024, PGE filed another GRC
10 seeking another increase to rates and re-raising issues that had been addressed by stipulation in
11 the 2023 GRC.¹ On March 15, 2024, the Oregon Citizens’ Utility Board (CUB) asked the
12 Commission to exercise its authority under ORS 756.040 to dismiss PGE’s GRC filing or in the
13 alternative, segregate certain issues for resolution in a public meeting process. CUB argues
14 dismissal is appropriate “[d]ue to the unnecessary complexity of this proceeding, coupled with
15 the fact that the Public Utility Commission of Oregon (Commission) recently approved a
16 significant rate increase for Portland General Electric Company (PGE or the Company).”² CUB
17 explains that “[r]ather than shifting the burden to Staff and stakeholders to spend significant time
18 and resources to scrutinize the Company’s overly broad and one-sided filing, the Commission
19 should use its authority and discretion to * * * dismiss the proceeding on the grounds that
20 circumstances have not sufficiently changed since PGE’s rates were determined to be just and
21 reasonable just weeks earlier.”³

22 Staff does not disagree with sentiments underlying CUB’s Motion to Dismiss.
23 However, while the Commission’s authority to determine what rates a utility may charge is very

24 ¹ CUB’s Motion to Dismiss of Segregate Certain Issues, p. 1. (March 14, 2024).
25 ² CUB’s Motion to Dismiss or Segregate Certain Issues, p. 1. (March 14, 2024).
26 ³ CUB’s Motion to Dismiss or Segregate Certain Issues, p. 2. (March 14, 2024).

1 broad, its authority over the actual administrative process used to set rates is more circumscribed,
2 because the legislature has adopted a specific process that utilities must use for filing and
3 changing rates.⁴

4 Under ORS 757.205(1), “[e]very public utility shall file with the Public Utility
5 Commission, within a time to be fixed by the commission, schedules which shall be open to
6 public inspection, showing all rates, tolls and charges which it has established and which are in
7 force at the time for any service performed by it within the state, or for any service in connection
8 therewith or performed by any public utility controlled or operated by it.” Under ORS 757.220,
9 the utility may not begin charging under the new tariff until at least thirty days have passed,
10 unless the Commission authorizes the utility to shorten that time for good cause. Whenever a
11 utility files a tariff under ORS 757.205, the Commission has discretion to conduct a hearing to
12 determine whether rates filed are “fair, just and reasonable.” But, when asked to do so by written
13 complaint within 60 days of a tariff filing, the Commission **must** conduct such a hearing unless
14 the proposed rate change is part of an automatic adjustment clause.⁵ If the Commission decides
15 or is required to conduct a hearing, the Public Utility Commission may order the suspension of
16 the rate or schedule of rates for a period of up to nine months beyond the time when such rate or
17 schedule would otherwise go into effect.⁶

18 In this case, the Commission has already suspended PGE’s tariff. Under ORS 757.215, it
19 may do so when it decides or is required to conduct a hearing. Furthermore, ORS 757.210(1)
20 requires the Commission to conduct a hearing on a rate filing upon written complaint filed by the
21 utility, its customer or customers, or any other proper party within 60 days of the utility’s filing.”

22 ⁴ See e.g., *Pacific Northwest Bell Telephone Co. v. Eachus*, 135 Or. App. 41, 48-49 (1995)
23 (Court agreeing that ORS 756.040 and 756.015 provide broad authority that may permit the
24 Commission to declare existing rates are interim rates for purposes of refunds, but finding that
25 “other provisions of the public utility statutes show that PUC’s authority to declare rates to be
interim and subject to refund is circumscribed.”

25 ⁵ ORS 757.210(1).

26 ⁶ ORS 757.215.

1 To the extent the Commission does have authority to dismiss a tariff on a summary basis, it
2 cannot do so when a hearing has been asked for within 60 days of the tariff filing. The deadline
3 for asking for a hearing on PGE’s 2024 GRC is April 29, 2024. It would be inconsistent with the
4 Commission’s statutory mandate to hold a hearing upon a timely request if the Commission
5 summarily dismissed the tariff before the statutory 60-day period ended or when the utility, a
6 customer, or any other proper party has asked the Commission to hold a hearing.

7 Staff agrees with CUB that the Commission has authority to segregate certain issues
8 raised in PGE’s GRC. However, for the reasons discussed above, Staff does not believe the
9 Commission can segregate revenue requirement issues such as Return on Equity (ROE) and
10 employee compensation without potentially running afoul of the statutory process discussed
11 above. The purpose of a hearing held under ORS 757.210 is to allow the Commission “to
12 determine whether the rate or schedule is “fair, just and reasonable.” The issues concerning
13 PGE’s revenue requirement that underlie the proposed rates and spread and design of the rates
14 are not separable from the fundamental question the Commission must resolve in this case.
15 Accordingly, Staff questions whether the Commission has authority to address these issues in a
16 separate proceeding than other related issues.⁷

17 Even if the Commission is authorized to segregate the determination of PGE’s ROE,
18 employee compensation, and the other issues identified by CUB from resolution of remaining
19 issues in PGE’s rate case, Staff recommends the Commission not do so because it would
20 interfere with the Commission’s ability to judge the overall reasonableness of the utility’s rates.
21 As the Oregon Supreme Court explained in its 2014 opinion in *Gearheart v. Public Utility*
22 *Commission of Oregon*, ORS 756.040(1) directs the PUC to examine three key components in
23 ratemaking (1) operating expenses; (2) capital costs, i.e., rate base; and (3) rate of return on the
24 utility’s capital investment and that,

25 _____
26 ⁷ Issues that do not directly impact the revenue requirement or tariff changes proposed in PGE’s
filing would not be inseparable under this reasoning.

1 Taken together, those components are represented in the following formula:
2 $R = E + (V-d)r$, where “R” represents the revenue requirement, “E”
3 represents allowable operating expenses, “V” represents rate base, “d”
4 represents accumulated depreciation, and “r” represents the rate of return. In
5 calculating those components, and in calculating “adequate revenue,” there
6 is no single correct sum, but rather a range of reasonable
7 rates. See Phillips, *The Regulation of Public Utilities* at 173 (“[T]he
8 required earnings of a utility cannot be represented by a specific sum, nor
9 determined by a precise formula.”); PUC Order No. 08–487 at 7 (noting that
10 the Commission uses this “standard ratemaking formula” to determine how
11 much revenue a utility should receive).⁸

12 A process in which the Commission determines the Company’s ROE separately from the other
13 components that go into the calculation of PGE’s rates is inconsistent with the integrated process
14 the Supreme Court described in *Gearhart* for establishing rates that comply with ORS
15 756.040(1).

16 Finally, segregating certain issues and resolving them through a public meeting process
17 would result in an untenable appellate review process, with the Commission’s order in PGE’s
18 rate case subject to review as a contested case and its order regarding ROE, etc., subject to
19 review as an order in a non-contested case.

20 DATED this 29th day of March 2024.

21 Respectfully submitted,

22 ELLEN F. ROSENBLUM
23 Attorney General

24 /s/ *Stephanie Andrus*

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

⁸ *Gearheart v. Public Utility Commission of Oregon*, 326 Or. 216, 221-222 (2014).