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August 12, 2025

Via Electronic Filing

Public Utility Commission of Oregon

Attention: Filing Center

P.O. Box 1088

Salem, OR 97308-1088

Re: UM 2273 – Comments on Draft Order

Dear Filing Center:

Enclosed for filing in the above-referenced docket is Portland General Electric Company's (PGE) comments on the Draft Order prepared by the Administrative Hearings Division (AHD) addressing the cost cap provisions set forth in Section 10 of House Bill 2021, which was filed on May 27, 2025.

Please contact Andrew Baker (Andrew.C.Baker@pgn.com) with any questions regarding details of this filing.

Sincerely,

/s/ Jason Salmi Klotz

Jason Salmi Klotz

Senior Manager, Strategy and Planning

PGE Comments on AHD Draft Order addressing cost cap provisions of HB 2021

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I. INTRODUCTION

Portland General Electric Company (PGE) submits these comments on the Administrative Hearings Division's (AHD) Draft Order addressing the cost cap provisions set forth in Section 10 of House Bill (HB) 2021 (2021). PGE appreciates the opportunity to comment on the AHD Draft Order in advance of the Commissioner Workshop on this matter.

Section 10 of HB 2021 (codified as ORS 469A.445, hereinafter "Section 10") articulates a clear legislative intent to be able to limit customer costs related to decarbonization efforts. HB 2021 set ambitious clean energy goals, which continue to be supported by PGE. The law also provided guardrails for affordability and reliability should they become necessary to impose. The guardrail relating to costs, the HB 2021 cost cap, is particularly relevant as the Commission, PGE and other constituents increasingly prioritize customer affordability.¹

PGE notes that the cost cap is fundamentally an affordability mechanism. The cap exists to try and strike the right balance between customer affordability and decarbonization goals. However, a cost cap is only useful if it provides a real opportunity for cost relief and requisite planning certainty for decisions to be made in response. PGE recognizes the fact-intensive and potentially speculative nature of estimating cost caps in future years. A cost cap framework is most beneficial to all parties when the process promotes clarity, transparency and provides forward-looking certainty. To achieve this, a framework around a cost cap must be nimble, responsive to a complicated landscape, and be able to provide relief sufficiently in advance for the relief to be realized. PGE also supports a framework that expedites the Section 10 investigation process so that the purpose of the cost cap is not frustrated.

PGE's comments are divided into four sections, the first three of which are focused on promoting clarity, transparency and certainty in a streamlined cost cap framework. The first section advocates for a clear and streamlined approach to determining what investments will contribute to compliance and how to best forecast these costs. The second section addresses the ambiguity surrounding cost recovery risk that PGE requests the Commission clarify. The third section requests Commission clarity on the treatment of a narrow subset of costs.

The final section of our comments highlights how PGE envisions development of a counterfactual portfolio.

Recognizing the challenging environment in establishing a cost cap framework, PGE believes that the Draft Order needs additional attention to a few critical aspects, particularly

¹ For example, the adoption of House Bill 3179 (2025) relating to cost impacts on residential customers; implementation of House Bill 2475 (2021) relating to addressing differential energy burdens and adoption of income qualified bill discounts; and the doubling of low income bill payment assistance collections through House Bill 3792 (2025).

in relation to the process surrounding forecasting what costs contribute to compliance and their subsequent rate impact.

PGE believes there is an opportunity to address these issues in this docket in a way that ultimately provides the Commission, stakeholders and utilities the requisite benefit of the cost cap.

More broadly, PGE notes that the HB 2021 cost cap is a limited and imperfect mechanism to balance the goals of decarbonization and affordability. As noted in the Draft Order, the costs are included in the cost cap only when a significant justification for a procurement is compliance with Sections 1-15 of HB 2021. However, there are many other utility obligations that materially affect customer costs that are taken for the purpose of meeting clean energy mandates.

PGE believes prioritizing the most cost-effective clean energy actions strikes the balance of decarbonization and affordability goals. PGE hopes that outside of this docket, the Commission facilitates a broader conversation relating to costs and clean energy.

II. COMMENTS

1. The framework of determining what costs contribute to compliance and forecasting their contribution to the cap should be streamlined to greatest extent possible

PGE believes this docket provides an opportunity to establish a clear process for how the Commission envisions a Section 10 filing to proceed. PGE believes parties benefit from a streamlined process with clear expectations and an expedited timeline. A prolonged Section 10 investigation has the potential to create unnecessary ambiguities in procurement decisions. In advance of that discussion, PGE puts forth proposals that we believe can help streamline the process. These issues may also be resolved through a more thorough discussion and proposal of how a Section 10 filing will proceed.

IRP process can be utilized to help determine which future costs contribute to HB 2021 compliance

The Draft Order states that “for an action to be eligible for inclusion in the section 10 cost cap, compliance with sections 1 through 15 of HB 2021 must be a significant purpose of the action...Where HB 2021 compliance is a significant justification...but other drivers exist as well, we will consider the appropriate portion of the cost or investment for inclusion in the cost cap.”²

² AHD UM 2273 Draft Order (May 27, 2025) at 6

PGE appreciates the Draft Order's endorsement of the joint utility proposal to develop a counterfactual portfolio in an IRP as if sections 1-15 of HB 2021 did not exist. The Draft Order notes that a counterfactual portfolio "will be a crucial first step in the analysis to determine which costs and investments should be examined more closely."³ In the subsequent section of these comments, PGE describes the process we envision for creating this counterfactual.

The Draft Order writes that "(t)hese counterfactual portfolios, like the IRP itself, are necessarily high-level projections.," and "while highly persuasive, would not be dispositive evidence that the action should not count towards the HB 2021 cost cap."⁴

Procurement decisions are made in response to an IRP Action Plan. A developed counterfactual should show the difference in procurement decisions being made for HB 2021 compliance purposes compared to procurement decisions that would be made regardless of the existence of HB 2021. The marginal change in procurement decisions will be highlighted through an Action Plan. If the counterfactual portfolio shows that a procurement action would happen regardless, HB 2021 compliance is clearly not a significant driver of the action.

The Draft Order notes that "if we determine that an investment or cost contributes to compliance..., we must also determine what investment or cost it is displacing on a going forward basis- whether those investments or costs it is displacing on a going forward basis... We are meant to include in the cost cap calculation only the difference."⁵ PGE believes that comparing a preferred portfolio to the counterfactual portfolio begins to show this. While it is true that proxy resources identified in an IRP preferred portfolio are not exact costs nor forecasted into customer rates, the IRP does show when future investments are being made because of the significant purpose of HB 2021 compliance.

The Draft Order notes that "a pause in compliance can only come at the end of a Section 10 cost cap proceeding... it cannot be provided in the midst of an IRP proceeding."⁶ PGE believes that this still allows for the opportunity to integrate cost cap proceedings into well-established processes, even as an actual pause in compliance can come only at the end of a Section 10 proceeding.

While a pause in compliance might not be achievable through an IRP process, there is no reason that a Section 10 process cannot exist concurrently. The Section 10 process can be divided into parts. Indeed, the Draft Order notes that "we expect that once a contested

³ *Id.* at 6

⁴ *Id.* at 6

⁵ *Id.* at 7

⁶ *Id.* at 10

case proceeding has been initiated for a cost cap determination, that docket will remain open to facilitate monitoring over time.”⁷

During the IRP acknowledgement process, the Commission could acknowledge the counterfactual, which will help determine whether a future investment or expense in the IRP Action Plan contributes to compliance with Sections 1 to 15 of HB 2021. This initial step of a Section 10 analysis allows for the identification of future investments eligible to be included in the cost cap, which could be projected at this point.

ORS 469A.445(2)(a) states that “The commission shall provide parties to the proceeding with the procedural rights described in ORS 756.500 to 756.610, including the opportunity to develop an evidentiary record, conduct discovery, introduce evidence, conduct cross-examination and submit written briefs and oral arguments.”⁸ PGE believes all parties benefit from streamlining this process as much as possible. There is already a robust discovery and comment period for IRPs. While an IRP acknowledgement process and Section 10 processes are distinct, parties would benefit from not duplicating the procedural and evidentiary aspects of these two processes. To the extent parties disagree with any determination made by the Commission in an IRP acknowledgement regarding a counterfactual portfolio, it makes sense to open the Section 10 process and align that investigation as closely to the already open and closely related IRP process as possible. This combined aspect gives service to the Order’s statement that certain “realities limit how . . . quickly” a pause can be implemented.⁹ PGE believes this docket should work to minimize these limitations. As stated earlier, a more robust discussion of the process surrounding Section 10 investigations may help advance the goal of ensuring processes are not duplicative or unnecessarily burdensome.

Opening a Section 10 investigation at this stage has many benefits. In addition to streamlining and speeding up the process, utilizing the IRP as the first part of the cost cap analysis will also give stakeholders and the Commission notice that a utility may be approaching the cap that the Draft Order seeks.

The Draft Order requests that:

“utilities can and should submit section 10 filings when they have information to do so, and add moreover that each utility should monitor the cumulative incremental rate impacts of its existing and planned cost-cap-eligible costs and investments vis-à-vis its projected annual revenue requirements, and notify the Commission and stakeholders

⁷ Draft Order at 14

⁸ ORS 469A.445(2)(a)

⁹ Draft Order at 10

if the utility believes it is approaching the six percent cap for a particular year even if the actions at issue involve planned costs and investments that are not yet certain.”¹⁰

The Order asks the utility to project future revenue requirements and then engage in continual monitoring of compliance costs throughout the procurement process. The Order’s expectation that the utility “can” and “should” initiate a Section 10 filing “when they [the utilities] have the information available to do so” represents a significant shift from the legislative intent.¹¹ This new language places a disproportionate burden on the utility, requiring it to proactively file for a Section 10 investigation and carry the associated risk. As described in more detail below, there are many uncertainties around the scope and associated risk of these obligations. This proposal as currently envisioned is also unworkable as the utility will not know actual costs with certainty until procurement or, until clarity is provided, what actions contribute to compliance costs, especially if there is no Commission action on the IRP counterfactual.

Our proposed approach to parallel the Section 10 filing with the existing Integrated Resource Plan (IRP) review process aligns with the Draft Order’s goals. The IRP and its counterfactual modeling provide a robust, data-rich platform for stakeholders and the Commission to understand how future procurement decisions could potentially exceed the cost cap. This established process is the most effective way to provide all parties with sufficient notice. If stakeholders or the Commission believe a counterfactual does not offer enough information or misjudges the least cost, least-risk procurement paths, the IRP acknowledgement process is a good starting place to ask and answer these questions. The utility planning and procurement process is a transparent process whereby the utility shares information with stakeholders from which a decision to open up an investigation can be made.

Placing this obligation solely with the utility was never contemplated by the original legislation. Section 10 of HB 2021 states that “an electric company...may request that the Public Utility Commission open an investigation,” but creates no obligation for a company to request an investigation.¹² The statute also provides for parties other than the utility to do the same. Furthermore, “the commission may, on its own motion pursuant to ORS 756.515, open a proceeding under this section and direct an electric company to make a filing.”¹³ The Commission and stakeholders have tools available to open an investigation after an IRP process.

By using the IRP to trigger a Section 10 investigation, we can initiate the necessary regulatory review without creating unnecessary delays or uncertainty. This allows for a

¹⁰ Draft Order at 11

¹¹ *Id.* at 11

¹² ORS 469A.445(1)

¹³ ORS 469A.445(6)

timely determination that doesn't jeopardize resource acquisitions in the Request for Proposal (RFP) process or increase costs due to regulatory uncertainty.

RFP Process should provide cost clarity in Section 10 investigations

The Draft Order states that “we will consider a utility commitment to a project as sufficient to meet the definition of “forecasted costs.”¹⁴ While not fully clear, this seems to indicate that a utility must be at or nearing a signed contract for a cost to count as a ‘forecasted cost.’ If so, this would force a utility into a commitment to exceed the cost cap before a formal cost cap investigation can be completed. As we noted in our earlier comments, this approach does not prohibit us from making an investment that would cause us to exceed the 6% threshold. However, this interpretation still forces a utility into a reactive, rather than proactive, position, where a formal decision on a project's eligibility for the cost cap cannot be made until after the financial commitment has been made. The cost cap would better serve its purpose if decisions on a project's eligibility could be made prior to signing contracts, providing a clearer path for strategic planning.

The proposed framework, particularly paired with the desire for utilities to notify stakeholders when ‘approaching’ the cap, creates an unintended disincentive. It suggests that utilities should operate at the very edge of the 6% cost cap, fostering considerable uncertainty. Consider a scenario where a utility, in an effort to narrowly reach the 6% target, diverges from its acknowledged IRP Action Plan. If a subsequent Section 10 filing then demonstrates the utility remains below the cap, it could be perceived as lacking consistent progress towards its clean energy objectives. Similarly, if a utility is marginally below the 6% threshold but its IRP Action Plan prudently calls for a substantial investment, this could lead to a significant overshooting of the cap in a single year. These potential outcomes seem to conflict with the legislative intent of establishing a 6% cost cap. Critically, a situation where the utility enters contractual negotiations while the result of a Section 10 investigation is unclear will put the utility at a competitive disadvantage for resources. PGE is already losing project opportunities to data centers because our RFP process is too cumbersome. Uncertainty related to the cost cap would add to a developer’s risk and discourage participation in our RFP process.

The Draft Order notes that “while costs of resources at the RFP shortlist stage are known...the timing of the RFP process does not allow for a parallel section 10 proceeding.”¹⁵ While PGE agrees that RFP cost assessments are firmer than IRP forecasts, PGE disagrees that a parallel Section 10 proceeding is not possible, particularly if initiated during the IRP process. After an IRP shows the strong potential to hit the cost cap, and that the first determination in the proceeding, that an investment or cost contributes to compliance, was already established, the Commission could move to determine the actual

¹⁴ Draft Order at 11

¹⁵ *Id.* at 10

or anticipated rate impact for the investment or cost. The Commission must forecast costs to do this. This could be done in parallel to the RFP stage. The final shortlist of an RFP would further validate the IRP findings. This could be a workable substitute for the proposed “committed to” standard.

Clarity of revenue requirement projection needed

Determining what costs count and how to forecast these costs establishes the numerator of the cost cap calculation, however PGE notes that clarity of revenue projection methodology is needed to establish clear expectations of how to calculate the denominator portion. In the AR 669 docket, Staff has taken the position that the Net Present Value of Revenue Requirement (NPVRR) is not a good indicator of near-term costs, and had previously requested utilities provide a plausible range of near-term revenue requirements.¹⁶ PGE requests Staff clarify their position on utilizing NPVRR in this docket. A plausible range of annual revenue requirement, as previously suggested in the AR 669 docket, would be of limited use, as the range could be wide to account for various unknowns, and the low and high end of a projection could render different results in a cost cap proceeding. Emphasizing that these revenue requirement projections would not be utilized in future ratemaking, PGE requests that utilities be provided an opportunity to collaborate and develop a clear methodology for forecasting the denominator of the cost cap, and to propose this to the Commission and stakeholders along with how far in the future these projections could be made. As RFPs often allow bids that will not come online for many years, PGE believes parties should agree on projections that align with this timeframe. The Draft Order’s notice highlights that these projections would not be “binding” on the Commission or the utility. PGE requests that the Draft Order further clarify that these projections are unrelated to and have no bearing on future ratemaking.

Retroactivity not considered

The Draft Order does not contemplate how to account for past investment decisions. While the Draft Order’s proposal that for an action to be included, compliance must be a significant purpose of the action is certainly the standard applied to all investment decisions, PGE believes there needs to be a clearer framework for applying this standard. PGE has made investment decisions since HB 2021 became law but in advance of the development of any counterfactual portfolio. If a stakeholder initiated a Section 10 proceeding, the process to determine what past investments were made with HB 2021 being a significant purpose would be imprecise. The Draft Order believes future counterfactual portfolios will be highly persuasive and implies these will be the benchmark on which cost cap discussions will begin. PGE requests clarity on how the Commission plans to retroactively consider these investments. PGE suggests that utilities be provided

¹⁶ Staff’s AR 669 Response to Comments (July 2, 2025) at 10

an opportunity to propose a method on how to account for these previously incurred costs for discussion in this docket.

2. PGE seeks greater clarity on cost recovery risk

HB 2021 says that “a determination by the Commission made under this section shall have no effect on and may not be used as collateral or presumptive evidence in any other proceeding that determines rate recovery of the investment or cost, including in a general rate case or in a proceeding under ORS 469A.120.”¹⁷

While a Commission's determination that a cost qualifies for inclusion in the cost cap doesn't directly impact a future prudence determination, this distinction leads to significant confusion. A key question arises: if the process does not allow for the IRP to be a sufficient method to notify stakeholders that we may be approaching the cap, and if a utility doesn't otherwise notify stakeholders when it believes it has reached the cost cap, could this lack of action negatively affect a later prudence review? A significant question arises regarding prudence: If a utility is granted an exemption, yet still takes action to meet HB 2021 goals when a counterfactual portfolio indicates a different least-cost, least-risk path, how can this not be a factor in a prudence review? This raises a broader issue for Section 10 proceedings: must a utility simply procure the lowest-cost resources, disregarding impending mandates, other clean energy priorities, resources procured due to projected growth, or its larger business strategy such as affordability? Furthermore, if a cost cap exemption is granted for, say, 2030 but not for 2031, there might be scenarios where procurement decisions remain largely unchanged. Requiring a utility to justify continued investments for future clean energy mandates in a year when stakeholders have been granted an exemption (and thus expect lower costs) introduces new risks and burdens for the utility.

PGE believes the Order's framework and its assertion of no cost recovery implications require further discussion. PGE requests confirmation that the Commission and Staff agree with the plain reading of the statute, and that there are no cost recovery limitations for an asset for which a utility has entered into a contract before a utility is no longer above the cost cap. PGE also requests confirmation that Staff believes cost recovery is not restricted by any part of a Section 10 filing or investigation.

3. Applicability of certain cost categories is unclear in Draft Order

PGE requests clarity on the Draft Order's treatment of certain costs.

¹⁷ ORS 469A.445(5)

The Draft Order highlights that while Section 10 "does not explicitly refer to "incremental" costs, it is not possible to determine the "actual or anticipated rate impact for the investment or cost" without reference to the cost of the non-HB 2021-compliant alternative that would otherwise have been included in rates...if we determine that an investment or cost contributes to compliance...we must also determine what investment or cost it is displacing on a going forward basis...We are meant to include in the cost cap calculation only the difference."¹⁸

PGE notes that while certain investments, in their totality, are made for reasons other than compliance with Sections 1-15 of HB 2021, any incremental costs associated with these investments should count towards the cost cap. While cost-effective energy efficiency investments made for purpose other than HB 2021 compliance do not count towards the cap, any incremental investments in energy efficiency do count. Similarly, while small scale renewable (SSR) obligations exist outside of Sections 1-15 of HB 2021, there may be incremental SSR obligations that are relevant. If there is an increase in nameplate generator capacity, and the increase is for the purpose of HB 2021 compliance, the incremental SSR obligations are also incurred for the purpose of HB 2021 compliance and should count towards the cap.

PGE asserts that these types of incremental costs can be shown in a counterfactual portfolio. For instance, if the preferred portfolio recommends procuring non-cost-effective energy efficiency for the purpose of HB 2021 compliance, the incremental costs should be included in the cap.

Draft Order needs clearer integration with RPS

There is no indication in the legislation that the legislature intended to exclude Renewable Portfolio Standard (RPS) costs. The legislation simply states there were no modifications to the RPS. RPS serves as a crucial policy backstop. If the utility identifies that the cost of HB 2021 compliance exceeds the cost cap, and the Commission agrees and institutes a pause, the utility would still be obligated to comply with the RPS. HB 2021 does not explicitly exclude RPS compliance costs, and indeed incremental HB 2021 compliance costs should be included where warranted.

Crucially, if RPS compliance costs also contribute to HB 2021 compliance, a utility should have the discretion to include them when directly relevant. We agree we should exclude compliance costs if those costs relate solely to RECs. However, this distinction underscores the need for a nuanced approach, not an outright exclusion and by relation exclusion of other policy or compliance costs inherent in system planning and cost recovery.

Furthermore, while the Commission has created a separate recovery mechanism for RPS compliance (which also has a cost cap), this does not preclude the two caps from being

¹⁸ Draft Order at 7

intended by the legislature to work together, potentially in a nested fashion. Multiple years of Renewable Adjustment Clause (RAC) filings demonstrate that PGE can comply with the RPS without consistently reaching the RPS cost cap. This history suggests that the two caps can indeed work in conjunction to assure renewable energy development, meeting two important and very related goals: GHG reduction and/or renewable energy development that directly results in GHG reductions.

Power Act and cost allocation

In the 2025 Legislative Session, the Oregon Legislature passed HB 3546, known informally as the “Power Act.” The Power Act requires an allocation of “the costs of serving the class of retail electricity consumers that are large energy use facilities to the class in a manner that is equal or proportional to the costs of serving the class,” or to “directly assign the costs of serving a retail electricity consumer that is a large energy use facility to the retail electricity consumer.”¹⁹ Section 5 of the Power Act states that “The Public Utility Commission shall require an electric company that is providing electricity service to a retail electricity consumer that is a large energy use facility to enter into a contract with the retail electricity consumer that covers the provision of the electricity service, including, as applicable, transmission, distribution, energy, capacity or ancillary electricity services.”²⁰

Additionally, passage of HB 3179 relating to residential rates and the adoption of a direction to the Commission to work on performance-based ratemaking may have additional implications for the application of the cost cap. The Legislature has enacted many policies relating to electric utilities since the passage of HB 2021. PGE believes that the passage of these laws may create significant considerations related to the cost cap that should be contemplated by the Commission.

4. Development of counterfactual

PGE uses a suite of tools and inputs in the IRP to develop the Preferred Portfolio. For the counterfactual we would use the same models and inputs but change the constraints in our capacity expansion model, with respect to portfolio construction. In this scenario, Sections 1 through 15 of HB 2021 are removed for the counterfactual, removing the applicable carbon targets and CEP requirements. Notably, there are still several other laws which constrain portfolio construction, including Renewable Portfolio Standards, a prohibition on building new gas, coal, or nuclear plants in Oregon, along with energy efficiency and small-scale renewable requirements. We would remove the HB 2021 specific requirements from our capacity expansion model, while retaining other legal requirements.

PGE would use the results of this counterfactual portfolio to develop a counterfactual action plan, which would allow us to quantify the actions that PGE is taking specifically for HB 2021

¹⁹ Enrolled House Bill 3546 (HB 3546-B) at 1

²⁰ *Id.* at 2

compliance. This would allow us to distinguish those costs from investments made for RPS compliance, reliability, or other reasons. We are also exploring the development of a proxy for an out-of-state thermal contract or build, which may be cost-effective in the absence of Sections 1-15 of HB 2021.

III. CONCLUSION

As described above, the Draft Order creates ambiguity around applicable costs and cost recovery risks. As a result, our procurement process would face additional barriers and delays that don't benefit PGE or our customers. The process should be streamlined to the greatest extent possible.

PGE looks forward to a robust discussion of these issues at the Commissioner Workshop.