



Portland General Electric
121 SW Salmon Street • Portland, OR 97204
portlandgeneral.com

September 29, 2025

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
P.O. Box 1088
Salem, OR 97308-1088

Re: UM 2273 – Reply Comments on Draft Order

Dear Filing Center:

Enclosed for filing in the above-referenced docket is Portland General Electric Company's (PGE) reply 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 the details of this filing.

Sincerely,

/s/ Jason Salmi Klotz

Jason Salmi Klotz
Senior Manager, Strategy and Planning

PGE Reply 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 reply comments to the Administrative Hearings Division (AHD) Draft Order and subsequent Commissioner Workshop addressing the cost cap provisions set forth in Section 10 of House Bill 2021. PGE appreciates the opportunity to provide additional comments on the Draft Order.

In these comments, PGE reiterates support for a clear and workable cost cap framework and streamlined Section 10 investigations. PGE then provides responses to the specific questions presented by the Commission to be addressed in these comments. Finally, we highlight some remaining issues PGE believes still need to be addressed.

II. COMMENTS

1. PGE supports broad goals of clarity and workability

During the August 28th Commissioner Workshop, PGE recognized the shared goal of Commissioners, utilities and stakeholders to create a workable framework for Section 10 investigations that strikes a balance between accurately effectuating the cost cap while recognizing the need for a clear and streamlined process. Fundamentally, the cost cap is a mechanism to balance two critical goals, customer affordability and decarbonization. PGE shares with the Commission a strong commitment to these goals and recognizes the importance in creating a process that helps ensure that the right balance can be struck between them. In the Commissioner Workshop, Commissioners noted that seeking perfection in a cost cap analysis may not be possible and would result in lengthy proceedings that threaten to make the purpose of the cost cap moot. PGE believes clarity is critically important and supports creating a framework that is predictable and easily administrable.

Recognizing that this is a modeling exercise, PGE understands the process of estimating future costs should be fact-intensive yet is inherently difficult to pinpoint with complete accuracy. A cost cap framework is most beneficial to all parties when the process promotes clarity, transparency and provides a high degree of forward-looking confidence. To achieve this, a cost cap framework must be nimble and responsive to a complicated landscape, providing insight sufficiently in advance for timely relief. A prolonged Section 10 investigation has the potential to create unnecessary ambiguities in procurement decisions. PGE supports a framework that promotes a timely and workable Section 10 investigation process.

PGE believes this docket offers an opportunity to establish a clear process for how the Commission will conduct a Section 10 investigation. A streamlined, simplified process is the best way to help the Commission balance decarbonization and affordability goals under HB 2021, providing clarity for all parties to plan and account for the cost cap.

2. Responses to questions presented

Parties have proposed starting section 10 proceedings at various points in the planning and procurement process. Please provide an illustrative timeline for how an IRP/CEP, RFP, and section 10 proceeding would best align.

PGE appreciates the dialogue at the Commissioner’s workshop recognizing the opportunity to streamline a Section 10 filing to align with existing processes.

As PGE noted in our initial comments, there are two distinct questions in a Section 10 investigation, and an investigation can be divided into two parts that reflect these questions. Indeed, the Draft Order notes that “we expect that once a contested case proceeding has been initiated for a cost cap determination, that docket will remain open to facilitate monitoring over time.”¹ Recognizing that once it opens, a Section 10 investigation can remain open, PGE sees value in this occurring so that answers and analysis can occur as information is received. The goal is for a Section 10 investigation to be responsive and to be actionable. The more analysis and fact finding that can occur as information is available helps to achieve this goal.

The first question in a Section 10 investigation is what projects, or portions of projects, are being procured for the purpose of HB 2021 compliance. The second question in a Section 10 investigation is what the cost of these projects are. The first question can be answered through utilization of a utility’s IRP. For example, if an IRP Action Plan calls for 250 MW of clean energy procurement that the counterfactual does not call for, there is a strong presumption that this future procurement is being done for HB 2021 compliance and would count towards the cap. The actual cost of procuring these 250 MW would not be certain, but the driver of this investment (in this case HB 2021 compliance), and the applicability of this project’s costs to the cost cap, would be certain at this time

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.”² 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

¹ Draft Order at 14

² ORS 469A.445(2)(a)

how . . . quickly” a pause can be implemented.³ PGE believes this docket should work to minimize these limitations.

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. During the IRP acknowledgement process, the Commission could acknowledge the counterfactual, which would benchmark whether future investments or expenses in the IRP Action Plan are for the purpose of contributing to compliance with Sections 1 to 15 of HB 2021. Unless a utility proposes changes to the acknowledged Action Plan, a Section 10 investigation should continue to utilize the assumptions made in the acknowledged IRP.

The second question in a Section 10 investigation is what the cost of a project is. If the procurement has already been determined at the IRP stage to count towards the cap, the cost of this procurement should be certain enough at the FSL stage to be actionable.

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.”⁴ 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 a utility shows in an IRP that projects needed to be procured for HB 2021 compliance will create a strong potential for the utility to hit the cost cap, and that the first Section 10 question, whether the proposed procurement is for the purposes of compliance, was already established, the Commission could move to determine the actual or anticipated rate impact for the investment or cost. The Commission must forecast costs to do this. This can 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.

Doing this also gives the Commission more ability to effectively balance the goals of affordability and decarbonization. For example, if a Section 10 investigation determines that a utility’s cost of HB 2021 compliance is currently 5.8%, the utility is not exempt from compliance and will still need to show continual progress of meeting HB 2021 emission standards. In this example, the utility issues an RFP, and the three top projects, all needed to meet HB 2021 goals, each have a 1.5% anticipated rate impact. Without an existing parallel Section 10 investigation, a utility may be expected to pursue all 3 projects, as the utility has not yet reached 6% and is not exempt from compliance.

Alternatively, if a parallel Section 10 investigation exists that has already determined what projects count towards compliance, the Commission might say that a utility should pursue no more than one of the projects for HB 2021 compliance. Here, the Commission is proactively balancing affordability and decarbonization goals by ensuring the utility does not greatly exceed the cost cap. PGE notes that following a decision to negotiate or execute an agreement, there is still a possibility that a project fails to meet COD. PGE believes that if the Commission directs the utility to seek only one project to ensure the cap is not greatly exceeded,

³ Draft Order at 10

⁴*Id.*

the utility is presumptively still in compliance with HB 2021, even if the project develops viability issues and does not meet COD. As described in more detail below, a utility could then still decide whether the additional projects are nonetheless prudent. PGE has not viewed the cost cap as a prohibition on acquisition, but a relief from the requirement for compliance.

Recognizing that no forecast is perfect and that any increase in the level of detail required to support a section 10 determination comes at the expense of more lengthy proceedings, what evidence would be appropriate in a section 10 proceeding with respect to (a) costs that have already been incurred and (b) new expenditures?

This question could be interpreted to be asking two potential but distinct questions. First, what evidence is needed to determine what investments, or what portion of investments, are contributing to compliance with HB 2021? Second, what evidence is needed to determine the actual or anticipated costs of these investments? Both of these questions exist for investments that have already occurred and for new expenditures.

For the first question, costs can be divided into procurements existing before the development of a counterfactual portfolio and procurements after development of this portfolio. Future utility IRPs will include development of a counterfactual portfolio developed 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.” PGE believes that for investments made prior to the development of this counterfactual portfolio, a Section 10 investigation should look for a reasonable proxy to a counterfactual portfolio, and work to develop a reasonable framework and percentage attribution of costs for these projects.

PGE notes that HB 2021 is a significant driver of our resource needs, although load growth also plays an important role. In PGE’s 2023 CEP/IRP Update, PGE included a reliability needs only scenario, along with sensitivities that assume certain contract extensions. PGE believes the Commission should work to utilize existing analysis to help develop a framework for the proportion of the costs of investments made prior to development of the counterfactual portfolio that should be included in the cap. While not a perfect substitute for a counterfactual portfolio, PGE believes analyzing these portfolios with other existing analysis and information would be a fair benchmark to begin discussions in a Section 10 investigation about what proportion of need in recent RFPs are attributable to compliance with HB 2021.

Future costs can be analyzed the same way by utilizing the counterfactual portfolio. For these projected expenditures, a Section 10 investigation should look at the counterfactual portfolio in comparison to the IRP’s preferred portfolio and Action Plan, and a similar proportional attribution analysis should be applied. For this analysis, PGE believes simplicity and administrability are key.

For the cost cap to be effective, its attribution should be based on the proportion of resources needed for HB 2021 compliance as identified in the IRP Action Plan and compared against the counterfactual portfolio. For instance, if a comparison between the two determines that 60% of the megawatts are for compliance,

then 60% of the resulting procurement costs should count toward the cap. This method streamlines the process by attributing costs across all projects unless a specific project was acquired exclusively for a reliability or compliance need. Additionally, if the preferred portfolio requires procuring resources ahead of schedule relative to the counterfactual to meet HB 2021 deadlines, the marginal cost of this accelerated procurement should also be included in the cost cap.

The second question, what evidence is needed to determine the dollar number of costs, is more straightforward. Costs that have already been incurred should be considered as the actual cost. To the extent that the costs of past commitments are still subject to certain unknowns, the best current estimate should be used in a Section 10 investigation. If this estimate changes, any future determinations made in a Section 10 investigation should utilize the most updated cost info.

As discussed in more detail above, costs of new expenditures should be reasonably certain at the FSL stage of the RFP. A Section 10 investigation should utilize these cost assumptions to make efficient and actionable decisions.

How should the Commission address power costs, which often represent roughly 50% of the annual revenue requirement, in developing projected annual revenue requirements for use as the denominator of the cost cap calculation?

As with the other components of a Section 10 investigation, PGE believes creating a predictable and workable framework best provides the ability for a Section 10 investigation to balance affordability and decarbonization needs. To that end, near-term power cost forecasts should be used to lend confidence to future revenue requirements.

In developing a projection for the revenue requirement in a Section 10 investigation, the Commission can begin with the most recently established revenue requirement. To account for the growth in power costs, the Commission should consider a few different methodologies, further described below.

- One option could be to utilize recent historical changes to power costs to account for and project potential future growth.
- Another option could incorporate short-term power cost forecasts and use the recent rate of inflation as a modifier.

PGE believes estimating an average recent growth rate of power costs may be the most aligned with reasonably predicting what future revenue requirement will be, understanding that no prediction forecast will be perfect. To ensure the workability of the cost cap, PGE believes there is a need for Section 10 investigation decision-making from the Commission far enough in advance that forecasted revenue requirement estimates can be inclusive of the length of time from an RFP FSL to the COD of a project.

From any of the above methods this forecasted power cost would become part of the sum of the total system revenue requirement forecast. Then the revenue requirement of an anticipated or actual project would be

added to the projected total revenue requirement, creating a revenue requirement forecast for a future year relevant for a Section 10 investigation.

Furthermore, PGE believes that replacing the net variable power cost benefits of thermal resources should presumptively count towards the cap in a Section 10 investigation.

In light of the opportunity for significant complexity when determining the numerator and denominator, should the Commission adopt simplifying assumptions to make timely section 10 determinations more feasible? Which elements of the calculation could benefit from simplifying assumptions while allowing the Commission to effectively achieve the balance between climate goals and affordability articulated in the legislation?

PGE supports the Commission adopting simplifying assumptions that help make timely section 10 determinations more feasible. As discussed above, simplifying assumptions for power cost growth and more generally for revenue requirement projections will help achieve this goal. Also discussed above, simplifying assumptions relating to the evidence of costs occurred and anticipated are valuable. PGE also believes clear forecasting around depreciation and clear expectations around aligning the forecasted denominator to forecasted costs will help streamline the process. To the extent the Commission can develop an approachable methodology for determining the numerator and denominator all parties and customers would benefit. A Section 10 investigation running in parallel to IRPs and RFPs that utilizes these simplifying assumptions could create a streamlined and workable framework for implementation of the cost cap.

Does ORS 469A.445 call for the Commission to issue an exemption that prevents a utility's projected obligatory compliance costs from reaching 6% of its projected revenue requirement for a year, or that relieves the utility from further compliance obligations once its projected compliance costs have reached or exceeded 6% of its projected revenue requirement for that year?

PGE does not believe ORS 469A.445 calls for the Commission to issue an exemption that “prevents” compliance costs from reaching 6%. However, PGE also believes that statute does not necessarily restrict exemption from compliance until “projected” compliance costs have reached or exceeded the 6% threshold. PGE believes the statute creates a middle ground between these two that is more flexible and responsive to specific circumstances.

ORS 469A.445 states that when the cost cap conditions are met, the “commission shall provide an exemption from further compliance with the requirements of sections 1 to 15 of this 2021 Act.” To be clear, an “exemption” from compliance is not a “prevention” from compliance. It simply means that a utility is exempted from the statutory obligation of compliance. PGE can envision instances where continuing to

procure projects for HB 2021 compliance is prudent, regardless of whether short term compliance with sections 1 to 15 is exempted.

An illustrative example helps to highlight this point. In this example, as the result of a Section 10 investigation, the Commission exempts a utility from HB 2021 compliance for the years 2035 and 2036. However, a utility RFP brings a particularly cost competitive project that will help meet still existing compliance requirements that exist in the years 2037 and beyond. The utility is not “prevented” from procuring a project while there is a pause in compliance. The utility still has future compliance obligations. Just as PGE is considering 2030 HB 2021 compliance in procurements in 2025, we will continue to consider future compliance requirements in procurement decisions.

If a particularly compelling project contributes to future compliance, the utility may find it prudent to act and procure the project. A “prevention” from compliance in this situation would not be in the best interest of customers, as customers would miss out on this attractive project, and the utility may end up needing to procure a far less attractive project in the near term to meet the still existing future compliance obligations. PGE believes we will be held to a prudency standard if making investments that further increase compliance costs of HB 2021 above 6%, even if a short-term exemption from compliance exists.

On the other side, the cost cap framework should be structured to allow for exemptions when forecasted costs are anticipated to reach 6%. HB 2021 states that “Upon determining that an investment or cost of an electric company contributes to compliance with sections 1 to 15 of this 2021 Act, the commission shall determine the actual or anticipated rate impact...⁵ PGE highlights that the statute then notes an exemption will be given “(u)pon a determination that the actual or anticipated cumulative rate impact... exceeds six percent.”⁶ As described in more detail above, PGE believes that the “anticipated” cumulative rate impact can be determined at the final shortlist (FSL) stage of an RFP. PGE believes allowing this determination of an “anticipated” rate impact allows for a flexible and nuanced discussion in a Section 10 investigation that can in part occur during an RFP FSL period. This approach creates the greatest clarity and is in the best interest of customers.

3. Unresolved Issues

PGE also notes that, in addition to the questions presented and discussed at the Commissioner Workshop, there remain unanswered questions that may affect how the cost cap will be implemented. Specifically, PGE notes that implementation of the POWER Act and the FAIR Act could have significant implications for the cost cap that the Commission should consider.

PGE further believes that cost recovery clarity is critically important as a utility potentially engages in procurement activities while an ongoing Section 10 investigation occurs. HB 2021 says that “a determination by the Commission made under this section shall have no effect on and may not be used

⁵ ORS 469A.445(3)

⁶ *Id.*

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.120.⁷

PGE believes the Draft Order's framework and its assertion of no cost recovery implications could be clarified. As discussed in our initial comments, certain language in the Draft Order creates ambiguity around cost recovery risk. While a streamlined Section 10 investigation would help clarify much of this ambiguity, PGE still 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, outside of the Commission's prudence determinations PGE also requests confirmation that Staff believes cost recovery is not restricted by any part of a Section 10 filing or investigation.

III. CONCLUSION

PGE appreciates the productive dialogue at the Commissioner Workshop and the desire to create a meaningful and workable cost cap. PGE looks forward to the Commissioner's Order and to engage constructively with Staff and stakeholders as we work to balance affordability and decarbonization goals.

⁷ ORS 469A.445(5)