BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 335

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

REPLY BRIEF

OF THE

OREGON CITIZENS' UTILITY BOARD

October 19, 2018

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OF OREGON

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I. INTRODUCTION

A. *Background and Procedural Posture*

Pursuant to Administrative Law Judge (ALJ) Moser's March 20, 2018 Prehearing Conference Memorandum, the Oregon Citizens' Utility Board (CUB) hereby submits its Reply Brief in the above-captioned proceeding. In this Brief, CUB responds to arguments on the remaining issues in this docket raised by Portland General Electric Company (PGE or the Company) in its Opening Brief, filed October 5, 2018.

On February 15, 2018, PGE filed a Request for a General Rate Revision, seeking a 4.78 percent increase to its rates and changes to some terms of service including several policy changes with which CUB takes issue and addresses herein. CUB would like to commend all parties for entering into several good faith settlement negotiations that have led to the resolution of all but five outstanding issues. As PGE notes, the parties have entered into and filed five separate stipulations: one resolving net power cost issues, three

resolving numerous rate and revenue requirement issues, and one that may lead to the resolution of issues associated with PGE's direct access program.[1] Since CUB opposes the direct access settlement, we consider it to be an ongoing live issue as addressed in a separate procedural schedule.[2] PGE's Opening Brief addresses the other four remaining policy issues in this proceeding:

1. The Company's proposed changes to its current decoupling mechanism including removing weather normalization from its Sales Normalization Adjustment (SNA);
2. The Company's proposal to include energy storage associated with renewable resources in tariff Schedule 122, PGE's Renewable Resources Automatic Adjustment Clause (RRAAC or RAC).
3. The Company's request to modify the existing Level III Storm accrual mechanism to allow both negative and positive balances; and
4. The Company's request to revise the normal weather assumption used in load forecasting by moving from a 15-year rolling average of historic temperatures to a trended weather assumption.

These issues have been thoroughly analyzed by all of the parties to this case throughout the proceeding through various rounds of testimony and discovery.[3] CUB has not taken a position on the record regarding the Company's proposal to move to a trended weather assumption in its load forecasting process, and will not do so now. However,

[1] UE 335 – PGE's Opening Brief at 2.
[2] *See* UE 335 – CUB/400/Jenks.
[3] For a full list of unresolved issues and parties' positions on the record, see the UE 335 Unresolved Issues list filed by PGE to this docket on September 10, 2018.

CUB continues to oppose PGE's proposed changes to its current decoupling mechanism, its proposal to unnecessarily expand the RRAAC to include "associated energy storage," and its request to modify its Level III Storm accrual mechanism. CUB has significant concerns related to all three of these proposed changes, and respectfully requests that the Public Utility Commission of Oregon (Commission) reject the Company's proposals. This Brief will address each issue in turn.

B. *Burden of Proof*

In a utility dispute before the Commission, the burden of proof consists of two discrete components—the burden of persuasion and the burden of production.[4] In a utility proceeding, the burden of persuasion and the ultimate burden of producing sufficient evidence to support its claims is always with the utility.[5] Other parties to the proceeding have the burden of producing evidence to support their argument in opposition to the utility's position.[6] In a case in which a utility is requesting a change in rates or a schedule of rates—such as a general rate case—the utility bears the burden of showing that its proposed change will result in rates that are fair, just, and reasonable.[7]

II. ARGUMENT

A. *Decoupling – Policy Based Arguments*

CUB continues to oppose PGE's proposed changes to its decoupling mechanism. PGE first proposes to eliminate the weather normalizing adjustment and shift the risk

[4] *In re Portland General Electric Company Application to Amortize the Boardman Deferral*, OPUC Docket No. UE 196, Order No. 09-046 at 7 (Feb. 5, 2009).
[5] *Id.*
[6] *Id.* at 7-8.
[7] ORS 757.210(1)(a).

associated with weather variability to customers.[8] Second, it proposes to keep the current two percent limiter on decoupling adjustments, but include the ability to carry forward amounts over this cap in a balancing account for subsequent years.[9] Third, PGE proposes to discontinue the Lost Revenue Recovery Adjustment (LRRA).[10] Finally, it proposes to apply the SNA to most large commercial and industrial customer schedules in its system.[11] While the final two proposals do not impact residential customers directly, CUB offers caution related to these changes based upon our knowledge of decoupling.

Staff of the Public Utility Commission of Oregon (Staff) aligns with CUB in opposing PGE's proposed changes to its decoupling mechanism.[12] CUB agrees with Staff and Albertsons that the proposed changes represent an unnecessary and inappropriate shift of risk from shareholders to customers.[13] PGE's changes do not further the Commission's goals, will lead to additional volatility in customer bills, represent a significant change in Commission policy, and represent an illegal carve out to the Commission's longstanding prohibition on retroactive ratemaking.[14]

PGE continues to argue that its proposed changes advance the policy goals of decoupling and more accurately reflect costs in customer prices.[15] Despite opposition from several parties to the contrary, PGE also continues to assert that its proposed decoupling changes—specifically its proposal to include weather-related variations in its

[8] UE 335 – PGE's Opening Brief at 9; UE 335 – CUB/300/Gehrke – Jenks/3.
[9] UE 335 – PGE/2400/Macfarlane – Goodspeed/3.
[10] *Id*.
[11] *Id*.
[12] *Id.*
[13] *Id.*; UE 335 – PGE's Opening Brief at 8; UE 335 – CUB/200/Gehrke – Jenks/16.
[14] UE 335 – CUB/200/Gehrke – Jenks/16.
[15] UE 335 – PGE's Opening Brief at 8.

mechanism—do not shift risk to customers.[16] CUB continues to find this argument bizarre.[17] In a fully litigated docket—PGE's own UE 197—the Commission found that decoupling shifted risk from shareholders to customers.[18] Shareholders currently bear the risk of weather-related fluctuations in retail sales. The Company is proposing to shift that risk onto customers. As CUB will detail, policy reasons dictate that this is inappropriate, and legal reasons dictate that this is impermissible.

CUB notes, again, that all of PGE's proposed changes are unnecessary because the Company's decoupling mechanism has functioned as designed for years.[19] Decoupling grew out of an informal Commission investigation that began in 1989.[20] The intent was to allow utilities to recover revenues lost through the implementation of conservation to remove the disincentive for utilities to invest in energy efficiency.[21] PGE's mechanism has enabled it to make robust investments in energy efficiency while retaining its ability to meet its authorized, regulated revenue requirement. This benefits both the Company and customers. Weather normalized decoupling has been an option for Oregon's electric utilities since the early 1990s, and has successfully eliminated the energy efficiency disincentive. There is not a problem that needs to be fixed. The Company's proposed changes are not needed, and have the potential to set unwieldy and damaging precedent if granted by the Commission.

[16] UE 335 – CUB/300/Gehrke – Jenks/7.
[17] *Id*.
[18] *Id*. at 6.
[19] UE 335 – CUB/200/Gehrke – Jenks/23-24.
[20] *Id*. at 20.
[21] *Id*. citing *in re the Investigation into Electric Utility Incentives for Acquisition of Conservation Resources*, OPUC Docket No. UM 409, Order No. 92-1673 (Nov. 23, 1992).

1. *Proposal to discontinue the LRRA and expand the SNA to large customers*

As outlined in its testimony, as long as decoupling variances continue to be recovered from the class of customers that caused the variation, this change will not affect residential customers. In testimony, CUB did offer some caution, however, due to our expertise on decoupling. The current LRRA targets revenue lost due to energy efficiency programs, but a decoupling mechanism would include revenue lost to an economic downturn. The impact of a severe recession on industrial loads can be very significant.[22]

2. *Proposal to retain the two percent limiter but include amounts beyond it in a rollover balancing account*

PGE argues allowing balances over the two percent cap to be carried forward is a reasonable balance between shareholders and customers.[23] According to PGE, if its weather-related decoupling proposal is adopted, it will be more likely that the two percent limit could be reached in a given year.[24] CUB agrees with Staff that allowing balances to carry forward will harm customers.[25] To CUB, this proposal is directly linked to the Company's request to include weather-related variations in its decoupling mechanism. PGE's attempt here is to further mitigate its risk associated with natural weather variations on shareholders and shift them to customers. If weather-related decoupling is adopted—which it should not be—PGE could effectively continue to recover lost revenues due to weather variations that could be carried forward indefinitely with no cap or time limit. This has tremendous potential to lead to inequitable outcomes. PGE is

[22] UE 335 – CUB/300/Gehrke – Jenks/11-12.
[23] UE 335 – PGE's Opening Brief at 8.
[24] *Id.*
[25] *Id.*

attempting to inappropriately broaden the terms of a mechanism designed to eliminate the disincentive for conservation to enable it to recover cost variations that shareholders have historically been responsible for. This would make for poor policy and even poorer ratemaking. The Commission should deny the Company's request.

3. *Proposal to include weather-related variations in decoupling*

Throughout this proceeding, CUB has maintained strong opposition to the Company's proposal to include weather-related variations in its decoupling mechanism.[26] Beyond the aforementioned discussion of shifting risk to customers, granting the Company's proposal would lead to additional volatility in customer bills, would represent a significant change in Commission policy, and represents inappropriate and illegal retroactive ratemaking.[27] According to the Company, its proposal "would benefit both PGE and customers because the current weather adjustment burdens customers with increased weather risk."[28] PGE argues that this burden exists because sometimes weather conditions can lead to over-recovery of costs, and sometimes they can lead to under-recovery of costs.[29] CUB disagrees with PGE's characterization that weather risk is a "burden" to customers because the risk of weather variation has always resided with shareholders—and appropriately so.[30] PGE lists the effects of weather as one of its main risk factors in its Annual Report.[31] Shareholders have purchased stock knowing that weather variation affects the Company's earnings.[32]

[26] UE 335 – CUB/200, CUB/300.
[27] UE 335 – CUB/200/Gehrke – Jenks/15-16.
[28] UE 335 – PGE's Opening Brief at 9.
[29] UE 335 – CUB/200/Gehrke – Jenks/16.
[30] *Id*.
[31] *Id*. at 18.
[32] *Id*.

PGE also takes issue with CUB's point that weather decoupling increases the volatility of customer bills. According to PGE, while weather does cause changes in customer bills, weather-related decoupling—if approved—would temper those changes.[33] CUB takes issue with this assertion. PGE's narrow view fails to take into consideration that the surcharge placed on a customer's future bill due to prior mild weather could greatly increase volatility if that future month was abnormally hot or cold.[34] Therefore, while customers still face the volatility in bills caused by changes in weather, this volatility would increase because of the retroactive charge or credit.[35] In effect, by shifting weather risk from shareholders to customers, PGE is reducing its earnings volatility but increasing the volatility in customer bills. In other words, its proposal inappropriately shifts this volatility risk from shareholders—where it has traditionally remained—to customers.

4. *PGE's additional policy arguments in favor of weather-related decoupling are easily dismissed*

PGE is correct in stating that CUB's principal opposition to its weather-related decoupling proposal is that it constitutes inappropriate retroactive ratemaking.[36] As the Company notes, PGE's proposal in this case is indeed differentiated from real-time programs such as NW Natural's WARM program that "adjusts bills in real time and does not require retroactive ratemaking[.]"[37] In an apparent attempt to sidestep this insurmountable legal hurdle and unconvincingly liken its proposal to the NW Natural's

[33] UE 335 – PGE's Opening Brief at 9.
[34] UE 335 – CUB/200/Gehrke – Jenks/19.
[35] *Id.*
[36] UE 335 – PGE's Opening Brief at 12.
[37] *Id.*, citing UE 335 – CUB/200/Gehrke – Jenks/22.

WARM program, PGE notes that its "goal is to [eventually] provide decoupling adjustments on the monthly bill to which the adjustment is based."[38] PGE notes that it could not have this system in place in 2019, but plans to make adjustments in the next few years to "alleviate CUB's concerns."[39] CUB appreciates the Company's willingness to tailor its programs within the contours of Oregon's prohibition against retroactive ratemaking. Unfortunately for the Company, however, there is a difference between future theoretical plans and its current proposal. PGE should bring its real-time weather adjustment proposal forward when it is fully baked for stakeholders and Staff to adequately review it. The Commission should not approve PGE's decoupling proposal here based upon future expectations.

PGE correctly states that Cascade and Avista currently have Commission-approved weather-related decoupling programs.[40] As PGE notes and CUB has detailed in testimony, those stipulated agreements to which CUB was a signatory directed Cascade and Avista to work toward a WARM-like real-time mechanism.[41] Cascade and Avista's weather-related decoupling mechanisms were expected to be limited, and CUB negotiated those mechanisms as part of a larger negotiated settlement.[42] Further, as PGE notes, at the time CUB supported these agreements we were admittedly unaware of the legal impediments associated with weather-related decoupling.[43] CUB will expand upon these legal issues in the next section of this Brief. As we are now aware, we have taken a

[38] UE 335 – PGE's Opening Brief at 12.
[39] *Id.*
[40] *Id.*
[41] UE 335 – CUB/200/Gehrke – Jenks/22.
[42] *Id.*
[43] UE 335 – PGE's Opening Brief at 13.

consistent stance against weather-related decoupling in both Cascade and NW Natural's most recent rate cases.[44] CUB's prior support of Cascade and Avista's mechanisms should not be taken as tacit endorsement in this proceeding. PGE's decoupling proposal is unsupportable from both a policy and legal perspective.

B. *Decoupling – Legal Arguments*

In Oregon, there is a general prohibition against retroactive ratemaking, which can loosely be defined as charging ratepayers today for costs incurred in the past that are unrelated to current service.[45] Oregon's prohibition stems from a 1987 Attorney General opinion to Charles Davis—the then-acting Oregon Public Utility Commissioner—on the subject.[46] Attorney General Dave Frohnmayer's message was clear—"retroactive ratemaking orders are absolutely impermissible *unless they are expressly authorized by the legislature* and do not violate the Oregon and United States Constitutions."[47] This opinion governs the scope of permissible retroactive ratemaking to this day.

The Attorney General's opinion led to legislation and, eventually, a new statute—the ORS 757.259 deferral statute—which allows for retroactive ratemaking in limited, clearly delineated circumstances.[48] Weather-related revenue adjustments (*i.e.*, decoupling) are not expressly authorized in any legislative or statutory grounds. Therefore, they are impermissible and illegal in Oregon.

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[44] *See* UG 347 – CUB/100/Gehrke/13 *and* UG 344 – CUB/100/Jenks – Gehrke/29.
[45] Or. Op. Atty. Gen. OP-6076 (Or. A.G.), 1987 WL 278316. *See* UG 344/CUB Exhibit 120. *See also State ex rel Util. Consumers Council v. P.S.C.*, 585 SW2d 41, 59 (Mo. 1979) (Retroactive ratemaking is "the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established.").
[46] Or. Op. Atty. Gen. OP-6076 (Or. A.G.), 1987 WL 278316.
[47] *Id*. Emphasis added.
[48] UE 335 – CUB/200/Gehrke – Jenks/23.

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1. *There is no statutory or legislative authority to support revenue decoupling for weather*

ORS 757.259 allows for deferred accounting as a limited exception to the broad prohibition against retroactive ratemaking. ORS 757.259(2)(d) specifically allows for retroactive ratemaking when decoupling decreases utility revenues related to *energy conservation* programs, which is further allowed under ORS 757.262.[49] Because there is no corresponding carve out for weather-related decoupling, taken together with the broad prohibition against retroactive ratemaking, it is clear that there it has no legal basis. The statutory construction maxim *expression unius est exlusio alterius* (the expression of one is the exclusion of another) is widely followed in Oregon statutory and case law.[50] ORS 174.010 provides further guidance that under the general rule for statutory construction, courts are prohibited from inserting in a statute was has been omitted.[51] That is to say, since there is a specific carve out in the deferral statute for energy conservation decoupling—but not weather-related decoupling—there is no statutory or legal basis for weather-related decoupling. Therefore, it is illegal.

Further, in the 1987 opinion, the Attorney General was especially critical of lost revenue mechanisms and revenue adjustment clauses, going so far as to call them "evil."[52] Decoupling, sometimes called revenue decoupling, is a lost revenue adjustment.

[49] ORS 757.259(2)(d). Emphasis added.
[50] *State ex rel. City of Powers v. Coos County Airport Dist.*, 119 P.3d 225, 231 (Or. App. 2005); *see also Roseburg Forest Products v. Wilson*, 821 P.2d 426 (Or. App. 1991) ("Inclusion of specific matters in statute implies legislative intent to exclude matters not mentioned.").
[51] ORS 174.010; *see also State v. Linn*, 885 P.2d 721 (Or. App. 1994).
[52] Or. Op. Atty. Gen. OP-6076 (Or. A.G.), 1987 WL 278316 at 14 ("[A] 'revenue adjustment clause' would violate the rule against retroactive ratemaking. Revenue adjustments are the precise evil against which the rule against retroactive ratemaking protects.").

Given that the Attorney General's opinion created a broad prohibition against retroactive ratemaking unless explicitly allowed by the legislature—and the fact that the legislature enacted statutes to allow for deferrals in limited circumstances including revenue adjustments for conservation (but not weather)—weather-related decoupling has no statutory or legislative authority in Oregon.

PGE's bald assertion that its current decoupling is permissible in Oregon because it is allowable under the deferral statute is unavailing when applied in the context of weather-related decoupling.[53] As mentioned, CUB does not dispute that revenue decoupling for conservation purposes is allowable under ORS 757.259(2)(d). However, PGE offers zero evidence or support to verify its assertion that weather-related decoupling is allowable under the deferral statute.[54] PGE erroneously classifies CUB's argument as one based in policy rather than in law.[55] While there are many policy-related reasons not to employ weather-related decoupling that have been elucidated upon in this brief, the fact remains that weather-related decoupling has no firm legal footing in Oregon statutes or legislation.

CUB's legal argument is straightforward. There is a broad prohibition on retroactive ratemaking in Oregon. Revenue adjustment clauses such as decoupling fall within that prohibition. However, there is a statutory carve out to allow for decoupling in limited, conservation-related circumstances to achieve the desirable public policy goal of bolstering energy efficiency programs. There is no such carve out for weather-related

[53] UE 335 – PGE's Opening Brief at 10.
[54] *Id*. at 11.
[55] *Id*.

decoupling mechanisms. Therefore, CUB respectfully requests that the Commission deny PGE's request, as CUB believes it has no legal basis to do so.

2. *Additional legal considerations dictate that PGE's request for weather-related decoupling be denied*

The Attorney General's opinion also touches on the underpinnings for Oregon's broad prohibition on retroactive ratemaking. As part of its core duty, the Commission must protect the public from "unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates."[56] In the case of weather, there is little doubt a warm winter will reduce electric sales revenues and reduce Company earnings. However, taking those lost earnings and applying them to the following year's bills constitutes inappropriate retroactive ratemaking. While this is allowable in the context of conservation-related revenue decoupling practices, there is no similar statutory language to provide for weather-related decoupling. To do so would allow the utility to over-recover its profits in one year explicitly to make up for under-recovery in a prior year. This decreases the utility's duty to operate efficiently, and is the first reason that the Attorney General saw revenue adjustment clauses as an "unjust and unreasonable exaction."[57]

The second reason is that "a revenue adjustment would result in ratepayers paying an additional charge for past service if the forecasted revenues were not achieved" and "[i]f, on the other hand, forecasted revenues were exceeded, the utility would be required to refund past profits to ratepayers without just compensation to the utility."[58] This

[56] ORS 756.040 (1).
[57] Or. Op. Atty. Gen. OP-6076 (Or. A.G.), 1987 WL 278316.
[58] *Id.*

creates a relationship whereby either customers or utilities are being injured on a given year which is directly in conflict with traditional ratemaking principles.

3. *PGE's reference to the Washington Utilities and Transportation Commission (WUTC) case is unpersuasive and unnecessarily complicates the record*

In support of its proposal to include weather-related variations in its decoupling mechanism, PGE cites to an example at the WUTC in which a different state's Commission found that a utility's decoupling proposal did not constitute retroactive ratemaking.[59] Needless to say, the decisions of out-of-state utility Commissions have absolutely no influence over the decision-making and authority of the Oregon Commission. Further, this order was rendered in 1991, only a few years after the Oregon 1987 Attorney General opinion. Around that time, state Commissions were clearly struggling with the boundaries presented by the rule against retroactive ratemaking and its general applicability. As discussed herein, Oregon's Attorney General opinion provides the framework for applying the rule against retroactive ratemaking in this state. Since there is no legislative or statutory authority to allow for weather-related decoupling, PGE's request should be denied.

C. *PGE's proposal to include energy storage projects in the RRAAC*

PGE is proposing to modify the language in its Schedule 122 RAC to include energy storage in addition to renewable resources.[60] CUB continues to oppose this modification, but notes that our position on the issue has shifted since our last round of testimony. While we continue to believe Schedule 122 should not be modified to include

[59] UE 335 – PGE's Opening Brief at 11, citing Docket No. UE-901183-T, Third Supplemental Order (Apr. 10, 1991) at 10.
[60] UE 335 – PGE's Opening Brief at 13-14.

"associated energy storage," ORS 469A.120 allows for the establishment of an automatic adjustment clause. CUB believes the word "associated" should be defined at a later date. Our pivot is due to an apparent change in position from PGE. PGE is correct in stating that Senate Bill 1547, codified as ORS 469A.120 provides, in pertinent part:

> The Public Utility Commission shall establish an automatic adjustment clause as defined in ORS 757.210 or another method that allows timely recovery of costs prudently incurred by an electric company to construct or otherwise acquire facilities that generate electricity from renewable energy sources and for, costs related to associated electricity transmission and *costs related to associated energy storage.* [emphasis added]

In its Reply Testimony, PGE requested "that the Commission clarify that energy storage used to integrate renewables on a utility's system qualifies as 'associated energy storage.'"[61] CUB was very concerned that the Company was asking the Commission to read into the legislature's intent and define "associated energy storage" broadly enough to include any storage that helps integrate renewables.[62] Natural gas peaker plants help integrate renewables—they should certainly not be subject to recovery in the RRAAC or a similar mechanism. To CUB, that the reason "associated storage" was included in the law was the expectation that renewables would be combined with on-site storage to add value to a renewable investment.[63] Because such a project is not currently being proposed, CUB does not believe that there is any reason to modify the RRAAC.

However, in subsequent testimony and in its opening brief, PGE now states that it is "not, in this rate case, asking Parties to pre-determine whether an investment meets the

[61] UE 335 – PGE/2400/Macfarlane – Goodspeed/11.
[62] UE 335 – CUB/300/Gehrke – Jenks/15.
[63] UE 335 – CUB/200/Gehrke – Jenks/13-14.

requirement of 'associated energy storage.'"[64] Thus, PGE agrees with AWEC's position that the term "associated" be defined at a later date, such as when an energy storage project is included in a SB 1547-authorized automatic adjustment clause or in AR 610, the Renewable Portfolio Standard (RPS) rulemaking docket.[65] While CUB believes that the legislature intended to include future renewable combined with storage projects (i.e. projects directly tied to storage), CUB agrees with both PGE and AWEC that there is no need to precisely define "associated" at this time.

CUB continues to believe that the Schedule 122 RAC should not be expanded to include "associated energy storage." As discussed earlier in testimony, including storage in the RAC could have negative implications that affect the cost cap used to calculate RPS compliance.[66] If storage is included in the RAC, it could lead to storage projects having to fit with renewables under the cost cap. This would increase the likelihood that the cost cap will be hit and the RPS requirements will be suspended. The impetus for the RRAAC was clearly not to hit the cost cap and suspend further investment in renewables.[67]

In its surrebuttal testimony, PGE addressed CUB's concern regarding storage's interplay with the RRAAC and the RPS cost cap. PGE noted that associated energy storage is not a cost of compliance with the RPS and as such, is not a part of the cost cap calculation.[68] PGE stated it would consider creating a new automatic adjustment clause

[64] UE 335 – PGE's Opening Brief at 14 citing UE 335 – PGE/2900/Macfarlane – Goodspeed/13.
[65] UE 335 – PGE's Opening Brief at 14.
[66] UE 335 – CUB/200/Gehrke – Jenks/14.
[67] *Id*.
[68] UE 335 – PGE/2900/Macfarlane – Goodspeed/14.

schedule for "associated energy storage."[69] While that is certainly an option, CUB continues to believe that it can be considered at a later date when a renewable combined with storage project is actually proposed.

In sum, CUB recommends that the Commission reject PGE and AWEC's proposal to expand the RAC to include "associated energy storage." CUB, AWEC, and PGE appear to be in agreement that "associated" must be defined, and that this proceeding is not the correct venue to do so. CUB believes the legislature's intent in using the word "associated" is that the storage implicated be used for purposes beyond merely integrating renewables – it is intended to represent a renewable combined with storage project.

D. *Level III Storm Accrual Mechanism*

CUB continues to oppose the Company's request to modify its existing Level III Storm accrual mechanism to allow negative as well as positive balances.[70] Staff and AWEC join CUB's opposition for varying reasons.[71] Currently, PGE accrues $2.6 million for Level III storm restoration costs, and the current mechanism allows positive, unspent balances to carry forward to future years.[72] For ratemaking purposes, a present value ten year rolling average of Level III storm costs is used to forecast the Company's Level III storm expense.[73] Negative balances are currently not allowed to be carried outside of the calendar year.[74] The Company proposes to allow the storm accrual account

[69] *Id.*
[70] UE 335 – PGE's Opening Brief at 2.
[71] UE 335 – CUB/300/Gehrke – Jenks/13.
[72] UE 335 – PGE's Opening Brief at 4.
[73] UE 335 – CUB/300/Gehrke – Jenks/13.
[74] UE 335 – PGE's Opening Brief at 4.

to have a negative balance when costs exceed the balance in the account.[75] CUB believes the Company has not provided sufficient evidence—nor made a sufficient argument—to justify this extraordinary ratemaking treatment.[76]

PGE argues allowing negative balances in the account allows proper recovery and normalizes the irregular nature of the storm costs in customer prices.[77] PGE believes modifying the mechanism is necessary because the occurrence of major storm varies from year to year and these storms are beyond the Company's control.[78] The Company argues it is critical to get service to customers restored when their service is disrupted by storm damage.[79] Major storms are indeed unpredictable by nature, and PGE has not provided any evidence that more frequent and severe storms will impact its service territory in the future.[80] CUB does not dispute that it is critical for the Company to restore service during major storm events. However, the Company has clearly been able to do so with the current mechanism, and has been unable to articulate any particularized injury to shareholders under the current methodology.

CUB continues to agree with Staff that a modified storm balancing account would "provide no incentive for PGE to prudently manage [its] costs."[81] PGE pushes back on this argument, stating that all costs in the storm account will be subject to a prudence review, and this oversight apparently obviates the need to preemptively manage costs.[82]

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[75] *Id.*
[76] UE 335 – CUB/300/Gehrke – Jenks/14.
[77] UE 335 – PGE's Opening Brief at 4.
[78] *Id.*
[79] *Id.*
[80] UE 335 – CUB/300/Gehrke – Jenks/14.
[81] UE 335 – Staff/700/Moore/7.
[82] UE 335 – PGE's Opening Brief at 6.

CUB believes the current accrual mechanism should be maintained because it incentivizes the utility to manage its costs. While these costs are indeed subject to prudence review, CUB is admittedly not an expert in scrutinizing storm O&M and union labor costs for prudence. Storm recovery periods are a very dynamic time for a utility, and it is foreseeable that any and all costs used to get service back up may be construed as prudent. To CUB, it is important to keep the mechanism as is in order for PGE to retain the requisite incentive to control costs in these extenuating circumstances.

III. CONCLUSION

The remaining policy issues in this proceeding, if granted by the Commission, would provide tremendous upside for PGE and its shareholders with no attendant articulable benefit for the Company's customers. PGE seeks to shift weather risk to customers through an inappropriate and illegal change to its decoupling mechanism. It seeks to ensure that it is guaranteed dollar for dollar recovery for theoretical future energy storage projects whose prudence has not even begun to be analyzed. Finally, it seeks to modify its storm accrual mechanism in a manner that gives it no incentive to control costs, while pushing recovery of said costs onto its captive ratepayers. CUB continues to believe the Company's requests are a varied blend of inappropriate, unnecessary, premature, and illegal. For the foregoing reasons, CUB respectfully urges the Commission to:

- Reject PGE's request to modify its decoupling mechanism;
- Reject PGE and AWEC's proposal to include "associated energy storage" in the RAC and order parties to define "associated" at a later date—such

as when the Company brings a renewables combined with storage proposal forward; and

- Reject PGE's proposed changed to its Level III Storm accrual mechanism.

Dated this 19th day of October, 2018.

Respectfully submitted,

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