

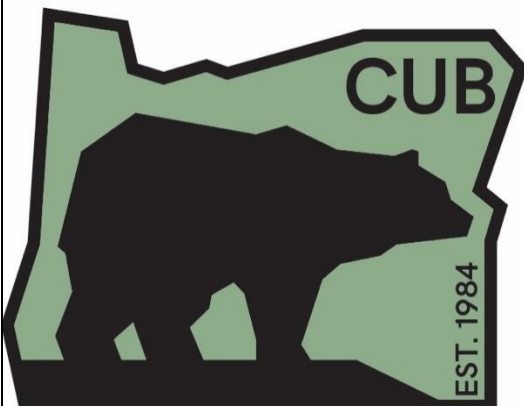
**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 435

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

**CLOSING BRIEF
OF THE
OREGON CITIZENS' UTILITY BOARD**

November 8, 2024



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Statement of the Issues

Move the Rate Effective Date out of the Winter to align with Seaside the in-service date

Customers cannot afford another winter rate increase. And PGE does not *need* another January another rate increase. CUB recommends that if the Commission approves a rate increase for PGE, it set the rate effective date with the June in-service date of the Seaside Battery Project. Not only does this align with traditional ratemaking practices, but it also moves the rate increase out of the winter months to protect residential ratepayers from another unaffordable heating season.

Take a hard look at the balancing of costs between residential and industrial customers

The issue of cost causation and Schedule 90 customers is looming over this rate case. There are several proposals that would shift costs from these large industrial customers onto ratepayers. The Commission should reject these proposals and impermissible cost shifting and instead direct PGE to identify innovative rate design to address cost causation at the same speed in which these large customers are growing.

Improve Transparency of Rate Increases and in Bill Design

It's hard to imagine what should be more public than the rate you're going to pay. PGE should provide unredacted forecasts so customers can budget for the rate increase. Likewise, the bill is where the utility has direct contact with the customer. This should clearly explain the rate.

Address Energy Affordability as a Safety Issue

PGE has the statutory requirement to provide adequate and safe service to its residential customers, even those who struggle to afford its rising costs. The record is clear, in the face of growing disconnections and arrears, particularly what we saw this past spring, that service is not adequate or safe.

Adopt CUB's Rate Shock Mechanism

The Commission should establish a threshold by which to limit rate shock. An established threshold would provide certainty and limit unaffordable winter rate increases. The Commission could then mitigate rates above the threshold on a case-by-case basis.

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Argument

In this Closing Brief, CUB responds to arguments raised by Portland General Electric Company (“PGE” or “the Company”), Staff of the Oregon Public Utility Commission (“Staff”), Verde, NewSun Energy LLC (“NewSun”), Walmart Inc. (“Walmart”), and Alliance of Western Energy Consumers (“AWEC”). This brief adopts CUB’s prior arguments. CUB does not take a position on Issue Nos. 2-8, 10-15, 19-30, 32, 33, 36-39, 41, 42, 51, and 59-61.

Issue No. 1 PGE’s authorized return on equity should be set at a level between 9.2% and 9.4%.

A. The parties do not support an increase to the ROE.

Staff, Verde, AWEC, NewSun, Walmart, and CUB all find that PGE’s proposed return on equity (ROE) of 9.65 % is not just and reasonable.¹ Staff, Verde, AWEC, NewSun, and CUB agree that the ROE should be reduced from its current 9.5 %.² CUB recommends the Commission reduce PGE’s ROE to a level between 9.2% and 9.4%.³ Specifically, if the Commission accepts CUB’s proposal to maintain the rates at their current level in January and raise general rates in June to coincide with the in-service date of Seaside, CUB recommends an ROE of 9.4%. If the Commission rejects CUB’s recommendation, however, then we will once again be in a situation where customers will struggle to pay their winter heating bills after a significant rate hike.⁴ In that situation, to both offer customer’s relief and recognize that back-to-back rate cases reduce investor risk, the Commission should establish the ROE at 9.2%.⁵ These figures are supported by the testimony of Staff and AWEC. Any reduction to ROE, even a reduction from 9.5% to 9.4% sends a message to PGE, and its investors, that there is a limit to Oregon’s ability to absorb cost increases through back-to-back rate filings.⁶

B. The circumstances suggest that a reduced ROE will provide a sufficient return.

¹ See Staff Opening Br. at 3; Verde Opening Br. at 10; AWEC Opening Br. at 9; NewSun Opening Br. at 2; Walmart Opening Br. at 3.

² Staff Opening Br. at 3; Verde Opening Br. at 13; AWEC Opening Br. at 12; NewSun Opening Br. at 3. Walmart argues for an ROE that is equal or less than the current ROE of 9.5 percent. Walmart Opening Br. at 5.

³ CUB/100 Jenks/69.

⁴ *Id.*

⁵ *Id.* at 71.

⁶ *Id.*

Supreme Court precedent, including *Bluefield*, has formed the basis of the Commission’s standards to determine the appropriate rate of return.⁷ In determining whether a return is “reasonably sufficient” the Court in *Bluefield* looked to *Willcox*. In *Willcox* the rate was found to be sufficient. As the Court explained “the investment was held to be safe, returns certain and risk reduced almost to a minimum—as nearly a safe and secure investment as could be imagined in regard to any private manufacturing enterprise.”⁸ By comparison, the rate at issue in *Bluefield* was too low when the Court considered that the rate of return had been low for a long period up to the time leading up to the inquiry.⁹ Here, the circumstances are more similar to *Willcox* than to *Bluefield*. First, in the last 25 months from December 2021 to January 2024, PGE’s rates have increased by 43.8 percent.¹⁰ Second, PGE just received a rate increase last year. Third, with that increase, PGE is earning above its authorized rate of return.¹¹ Finally, PGE commonly makes use of timing mechanisms such as trackers, as it has done here, to match revenue collection to increased costs and reduce lag.¹² In sum, PGE has reduced its investment risk and provided increasing earnings for its investors. Accordingly, the record does not support the increased cost to ratepayers associated with the increase in PGE’s ROE from 9.5% to 9.65%.

⁷ UE 180 et al., *PGE Request for a General Rate Revision*, Order No. 07-015 (2007) (explaining that several decisions by the U.S. Supreme Court form the basis for the Commission's standards for determining an appropriate rate of return including *Duquesne Light Co. v. Barasch*, 488 US 299 (1989); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 US 591 (1944), and *Bluefield*); see also ORS 756.040.

⁸ *Bluefield*, 262 U.S. at 693 (citing *Willcox v. Consolidated Gas Co.*, 212 U.S. 19, 48–50 (1909)).

⁹ *Id.* at 694-695 (noting the decline in the return from 1895 to 1920).

¹⁰ CUB/100, Jenks/4; see also Staff Opening Br. at 1.

¹¹ Q3 2024 Portland General Electric Co. Earnings Call Transcript (Oct. 26, 2024) (“As of the end of Q3, we have forecasted that our full-year 2024 regulated ROE would be above the 9.5% threshold used for the emergency storm deferral earnings test.”) <https://finance.yahoo.com/news/q3-2024-portland-general-electric-085409309.html>

¹² CUB/4A00, Jenks/29.

Issue No. 9(b), (d) Compensation

- A. The Commission should adjust PGE's compensation sharing to reflect PGE's mismanagement of its capital costs.**

As discussed in CUB's Opening Brief, the record shows PGE's capital review system lacks proper control over capital spending. Consequently, the costs and risks of this mismanagement are put onto ratepayers. Accordingly, CUB continues to recommend the following split in benefits between shareholders and ratepayers. The combination of these two adjustments would reduce the revenue requirement associated with incentives by \$10.796 million.

(1) The Commission should remove \$3.668 million in PGE's revenue requirement the Company includes to pay for company stock for its employees.

(2) CUB recommends a 75/25 split of annual incentives. The Commission should move the incentive level charged to customers from 50% to 25% by adjusting the test year amount charged to customers from \$14.257 million to \$7.128 million.

Issue Nos. 16, 17, 56 Constable and Seaside Battery Projects.

- A. CUB recommends the rates become effective with the in-service date of the Seaside Battery Project**

It is a better policy to require utilities to generally align their rate cases with the rate effective date of major assets, when those assets do not come online in the middle of winter. CUB urges the Commission to move the rate effective date out of the winter months when bills are high and cold weather can make them dramatically higher. Instead of a January 2 rate effective date, CUB proposes that the Commission to time the rate increase with in-service date of the Seaside Battery Project, that is, when Seaside becomes used and useful.¹³ This proposal was made to accommodate two things: move the rate effective date out of the winter and allow recovery of Seaside without regulatory lag.

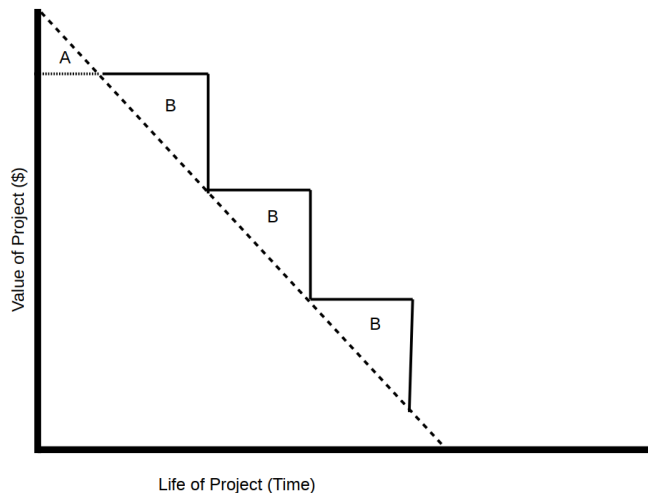
¹³ CUB/400 Jenks/33.

CUB is principally against single-issue ratemaking such as the tracker. Here CUB's support for the Seaside tracker is linked to aligning the rate effective date for the entire case with Seaside's in-service date. If the Commission rejects this proposal, then CUB no longer supports allowing Seaside in rates in June.¹⁴

B. Rate increases are usually timed with large investments such as Seaside, cost recovery for such expenses should be dealt with under traditional ratemaking.

CUB's proposal is in line with traditional rate making practices wherein a utility incurs capital costs and depreciation on plant, subject to regulatory lag, and then bring those costs into a general rate case proceeding for recovery.¹⁵ Due to this risk, regulatory lag provides an incentive for utilities to manage costs between rate cases. ROE is the mechanism that traditionally compensates the utility for this risk while delays in recouping capital investment are absorbed by the utility's authorized earnings. The figure below demonstrates how a utility traditionally recovers the value of a capital investment.

Figure 1: Utility recovery of the value of capital investment with regulatory lag



¹⁴ CUB/400 Jenks/34.

¹⁵ The Commission has defined regulatory lag as “the delay between rate cases and within a rate proceeding where rates remain frozen until a new rate is approved.” *In re PacifiCorp, dba Pacific Power Request for a General Rate Revision*, OPUC Docket No. UE 246, Order No. 12-493 at 15 (Dec. 20, 2012), citing Leonard Saul Goodman, *The Process of Ratemaking* (Vol. I), 44 (Pub. Util. Rpts., Inc. 1998).

In the figure above, the solid stair-stepped line indicates how much the utility recovers in rates. The diagonal dashed line represents the revenue requirement associated with a capital investment. Utility investment recovery declines each month as more plant is depreciated and the return on the undepreciated investment shrinks. This means that a rate case will establish a new revenue requirement for a capital investment but does not capture the decline in the revenue requirement associated with that investment between rate cases. Therefore, while Triangle A is the regulatory lag traditionally borne by the utility, Triangle B is the regulatory lag borne by customers. The points where the solid line intersects with the dashed line indicate the timing of a general rate case. Because utilities control the timing of rate case filings, a utility already has the ability to file a rate case soon after a major capital investment. Correspondingly, the utility can stay out of rate proceedings during periods of non-investment to avoid capturing a decline in revenue requirement associated with depreciation of prior investments.

Here, CUB is proposing a rate effective date aligned with this basic structure. PGE has made investments between UE 416 and this present case.¹⁶ Between these rate cases, PGE incurs regulatory lag getting these new investments into rates. There is also regulatory lag in updating depreciation on prior investments, which is in PGE's interest. PGE is currently earning above its authorized rate of return established in UE 416.¹⁷ That said, at some point regulatory lag of its new investments will overwhelm the regulatory lag of depreciation and PGE can no longer earn its rate of return. This typically occurs after a large investment, such as the Seaside battery. It's at this point, under traditional ratemaking practice, that a utility typically files to increase its rates. Accordingly, CUB recommends it is appropriate that the rate increase when Seaside becomes used and useful in June to retain the

¹⁶ See PGE Opening Br. at 55.

¹⁷ Q3 2024 Portland General Electric Co. Earnings Call Transcript (Oct. 26, 2024) ("As of the end of Q3, we have forecasted that our full-year 2024 regulated ROE would be above the 9.5% threshold used for the emergency storm deferral earnings test.") <https://finance.yahoo.com/news/q3-2024-portland-general-electric-085409309.html>

balance of that regulatory lag. Instead, PGE has filed ahead of its Seaside investment and asked for a tracker that would allow it to avoid bearing any regulatory lag.

PGE argues that CUB’s proposal to align the rate increase proposed in this GRC with the Seaside in-service date rather than January 1st would “intentionally misalign the timing of the benefits received by customers with the prices customers pay.”¹⁸ If a utility can file a ratemaking mechanism, such as tracker or deferral, every time it incurs construction costs or when a capital investment becomes used and useful—but before its next general rate case—its regulatory lag is effectively eliminated but the utility will continue to earn profit under its authorized ROE intended to compensate for that lag. Thus, under PGE’s January 1 rate effective date with a tracker, PGE would improperly benefit by matching revenue collection to increased costs (dollar-for-dollar recovery) of the both the Seaside investment and the Constable investments with no regulatory lag. Customers would pay the price of both assets without benefitting from any regulatory lag or from any continuous depreciating. PGE is proposing an additional rate increase when Seaside comes online, but that rate change does not reflect up to six months of depreciation on either Constable or the other assets in ratebase.¹⁹

CUB recognizes that without a Jan. 1 rate effective date or Constable battery tracker in place, the Company will have to expense some operational costs and that the battery will depreciate before going into rates. CUB notes, however, that this is the concept of regulatory lag inherent in traditional ratemaking described above. PGE’s current rate does not become unreasonable at the stroke of midnight on December 31st; PGE would continue to recover at the current rate established in UE 416

¹⁸ PGE Opening Br. at 160. Note that PGE responds to CUB’s proposal to align rate effective date with the online date for Seaside in Issue 56. *See Id.* at 159-162. PGE alleges that CUB’s recommendation in our position statement conflicts with our testimony. *Id.* at 159-160. CUB’s position on this issue, however, has been consistent. Rather it was the poor drafting of the Joint Issue Statement question 56 language including PGE’s ambiguous reference to “CUB’s proposed tracker to delay the rate effective date” without any reference to Seaside that has caused the confusion.

¹⁹ Staff’s 13-month average of depreciation expense would fix this, but PGE’s proposal does not include any updated depreciation through the year.

until the UE 435 rate increase in June to coincide the used and useful date of Seaside, PGE’s large investment.

C. PGE’s reference to a “full” revenue requirement is misleading.

PGE next asserts that it will be “financially in new rates without an opportunity to recover its full revenue requirement for 2025.”²⁰ To support this point PGE argues that the “evidence in the record is irrefutable” but then points to an inapposite decision out of New Mexico²¹ rather than the record itself. It’s safe to assume that if PGE was experiencing the financial harm it repeats in briefing, the Company’s would not be promising investors earnings per share to the upper half of its previously forecasted range, or \$3.08 to \$3.18 per share.²²

At this point, PGE is not “lawfully entitled to” collect the revenue for its investment in plant, or any revenues for that matter, outside of the rates the Commission has approved in UE 416.²³ And the Commission set those rates on a forward-looking basis. Even if PGE were earning at or below its rate of return, by arguing that it is entitled to additional compensation beyond its current approved rate for the months of January to June, PGE is asking that ratepayers compensate PGE for its net “loss” for a rate increase that never existed. To this end, PGE’s concept of a benchmark “full” revenue requirement is illusory. The Commission does not guarantee revenue, rather, the Commission’s regulatory obligation is to establish just and reasonable rates that provide the utility an opportunity to earn a reasonable return on a forward-looking basis. The forecasted revenues on the months between the end

²⁰ PGE Opening Br. at 161

²¹ *Id.* (citing *Mountain States Tel. & Tel. Co. v. New Mexico State Corp. Commission*, 563 P.2d 588, 597).

²² Q3 2024 Portland General Electric Co. Earnings Call Transcript (Oct. 26, 2024); *See also Id.* (Based on our current projections, we are forecasting that the earnings at the top of our current range would result in us reaching authorized regulatory ROE levels).

²³ *See* PGE Opening Br. at 162.

of this year and June 2025, which PGE hopes to collect, represent what would otherwise be foreseeable changes in expense between rate cases, the risk of which utilities normally bear.²⁴

D. Delaying the rate effective date from January to June is not unconstitutional

Citing *Bluefield*, PGE further argues CUB’s proposed rate effective date is “unconstitutionally confiscatory.”²⁵ When the question of the Commission’s constitutional boundary is raised, the Supreme Court has explained that the inquiry must involve what is just and reasonable not just to the company and its stockholders but also to the public.²⁶ So too, while the Commission establishes just and reasonable rates by balancing the interests of the utility investor and customers, the Commission must “protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.”²⁷

Of course, a utility is entitled to an opportunity to earn a reasonable rate of return; rates that are set too low to allow this opportunity are confiscatory. Nonetheless a utility must bear the risk that it will be unable to achieve its authorized, reasonable rate of return.²⁸ As the Supreme Court instructed in *Covington*, if the Commission were to delay the rate increase, and consequently, there was a decrease in the expected revenues to be collected from ratepayers, that is not, in itself, a reason why the Company should be allowed to increase rates in January.²⁹ Ratepayers cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends.³⁰

²⁴ See Docket Nos. UM 995, UE 121, UC 578, *In Re PacifiCorp*, Order No. 01-420 at 29 (May 11, 2001).

²⁵ PGE Opening Br. at 161 (citing *Bluefield Water Works & Improvement Co. v. Public Service Commission*, 262 U.S. 679 (1923) (hereinafter, “*Bluefield*”)).

²⁶ *Covington & L. Tpk. Rd. Co. v. Sandford*, 164 U.S. 578, 596 (1896) (“The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public.”).

²⁷ ORS 756.040.

²⁸ Or. Op. Att’y Gen. OP-6076 (1987) (citing *Bd. of Pub. Util. Comm’rs v. New York Tel. Co.*, 271 U.S. 23, 31, (1926)).

²⁹ See *Covington & L. Tpk. Rd. Co. v. Sandford*, 164 U.S. 578, 596.

³⁰ *Id.*

PGE is operating under the just and reasonable rates set in UE 416. It is doing so, and it is able to earn above its authorized rate or return, meaning it has been able to compensate shareholders above that forecasted. While CUB has not found evidence in the record to suggest that from January to June PGE would be earning less than a reasonable return, even if it were, that would not make the rates set in UE 416 confiscatory.

In sum, it is within the Commission’s statutory and constitutional boundaries to delay the rate increase from January to June to align with the in-service date of Seaside.³¹ The Commission has the flexibility to conclude that rates remain just and reasonable even if their delayed collection is projected to result in lower revenues, because the Commission has the flexibility to set the revenue requirement within a reasonable range that anticipates the delay.³² Conditions under which more or less might be allowed are not important in judicial review.³³

E. PGE’s proposed April 1 “compromise” would not result in just and reasonable rates

As an alternative to the January 1st date, PGE has now proposed a “compromise” with an April 1, 2025 rate effective date, but with a higher rate increase for customers that it has put forward in past testimony.³⁴ PGE argues CUB must accept this “compromise.”³⁵ But to suggest, as PGE does, that CUB’s opposition to this proposal is because we want to “avoid implementing just and reasonable

³¹ UG 490, *NW Natural, Request for a General Rate Revision*, Order No. 24359 at 46 (Oct. 25, 2024); *see also* UM 1909 - *Investigation of the Scope of the Commission's Authority to Defer Capital Costs*, Order No. 18-423 (Oct. 29, 2018) (citing *Pacific Northwest Bell Tel. Co. v. Eachus*, 135 Or App 41, 56, 898 P2d 774 (1995)) (The Commission is “not obligated to use any single formula or combination of formulas to determine what are, in each case, just and reasonable rates.”); UE 88 – *In the Matter of the Revised Tariffs Schedules for Electric Service in Oregon Filed By Portland General Electric Company*, Order No. 08-487 at 5 (Sept. 30, 2008) (The Commission sets rates under a comprehensive and flexible regulatory scheme. The legislature has expressed no specific process or method the Commission must use to determine the level of just and reasonable rates, and the Commission has great freedom to determine which of the many possible methods it will use); *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

³² *Id.*

³³ *Hope* at 602.

³⁴ PGE opening br. at 162.

³⁵ PGE opening br. at 162.

rates”³⁶ is short sighted. While CUB appreciates that the Company is working to move the rate increase outside of the winter months, CUB has consistently also been concerned this rate increase, which comes on the coattails of an 18% rate increase last winter, is unaffordable. Proposing a higher rate four months out does not address this concern.

Additionally, it cannot be said that this “compromise” would result in just and reasonable rates. What PGE has proposed with this “compromise” is essentially another embedded tracker, though this one isn’t tied to any concrete and unique capital expense like a battery but is instead tied to the revenue from January through March that PGE believes it is *entitled* to receive. As the court in *Bluefield* explained, however, “the company may not insist as a matter of constitutional right that past losses be made up by rates to be applied in the present and future.”³⁷

F. PGE’s “compromise” implicates the rule against retroactive ratemaking

Additionally, it’s possible that this “compromise” is unlawful retroactive ratemaking. To be clear, CUB is not questioning the Commission’s authority to set the revenue requirements within a reasonable range that anticipates a later rate effective date.³⁸ Rather CUB is concerned that PGE’s proposal implicates the rule against retroactive ratemaking. Generally, the rule against retroactive ratemaking prohibits incorporation of past losses in future rates.³⁹ Moreover, the attorney general has stated that “ratepayers’ constitutional rights may be violated if ratepayers are required to pay in the future a surcharge for services they used under lawful rates.”⁴⁰ As the Attorney general explained, “[t]he ratepayer has paid for and received service. Then, after the transaction is done, the ratepayer

³⁶ PGE opening br. at 162.

³⁷ *Bluefield*, 262 U.S. at 695

³⁸ UG 490, Order No. 24-359 (Oct. 25, 2024); *See also American Can Co. v. Davis*, 28 Or App 207, 216, 559 P2d 898 (1977) (granting the Commission the broadest authority, commensurate with that of the legislature itself, for the exercise of the Commission’s regulatory function).

³⁹ Or. Op. Att’y Gen. OP-6076 (1987).

⁴⁰ Or. Op. Att’y Gen. OP-6076 (1987).

must pay more without receiving any more service.”⁴¹ Under PGE’s “compromise,” between January and April 1, the lawful rates would be those the Commission approved in UE 416. By asking for a higher rate in exchange for taking a delay until April, PGE is asking to recover a surcharge for services customers used from January to March under the lawful rates set in UE 416. Suggesting a violation of customers’ constitutional rights. While there is an exception to retroactive ratemaking using a deferral, there are limits to when a deferral is allowed ⁴². PGE has not requested a deferral and has not shown that weather normalized forecasts of expenses at issue in a general rate case represent “identifiable utility expenses” or how rate changes in April and then in June, instead of January and June minimizes rate changes, or how charging customers in the fall for expenses in the Spring matches benefits and costs. PGE is not entitled to a rate increase at the end of the statutory suspension period.

G. PGE is not entitled to a rate increase at the end of the statutory suspension period.

Under ORS 757.215 the Commission may suspend a utility’s rate request during the rate case proceeding. At the end of the suspension period, the Commission must, based on the evidence of this case, establish rates that are just and reasonable.⁴³ PGE suggests that since the Company filed its tariff on February 29, 2024, the law does not permit a rate effective date beyond January 1, 2025.⁴⁴ But the statute is not a limit of the Commission’s authority to set the rate effective date, rather it provides respite to review the rate filing. In providing the Commission with this authority, the Oregon legislature saw that it served the public interest to allow the Commission time to inspect the filing and

⁴¹ Id (citing *In re Cent. Vermont Public Service Corp.*, 473 A2d 1155, 1158 (1984)). This also raises issues of intergonial equity, because it would mask the cost of service and result in future ratepayers paying for a service provided to other customers in the past. Or. Op. Att’y Gen. OP-6076 (1987).

⁴² ORS 757.259, identifiable utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.

⁴³ CUB/100 Jenks/67.

⁴⁴ PGE Opening Br. at 160.

gather the public’s views on the proposed rate before making a decision.⁴⁵ Thus ORS 757.215 establishes the Commission’s statutory deadline to issue a rate order, but the Commission cannot set the rate effective date on that same statutory deadline if doing so would result in rates that are not just and reasonable.⁴⁶

Issue No. 18. What amortization period and treatment should apply to ITCs for Constable and Seaside?

Staff and CUB agree “the ITCs should be amortized over the life of each battery energy storage system to reduce intergenerational equity concerns that arise from frontloading the ITC amortization.”⁴⁷ As a result, CUB supports opting out of ITC normalization for the sale of ITCs and to return the sale value to customers over the life of the asset, but financed against rate base as AWEC proposes.⁴⁸ PGE was able to articulate this combination of CUB’s preferences in its reply testimony, where rate base of the asset is reduced by the remaining ITC balance that is unused.⁴⁹ A twentieth of this (since the life of the asset is 20 years) is used to reduce current operating expenses, representing the present benefit to customers.⁵⁰

While CUB’s recommendation means a tradeoff between savings over the long term and rate pressure in the near term, there is no guarantee that the rate increases we are seeing today will abate

⁴⁵ *Fields v. Davis*, 31 Or. App. 607, 613, 571 P.2d 511, 515 (1977) (In discussing the purpose of the statute, the court explained, “[i]f the Commissioner is to fulfill his statutory duty of representing the customers ... he must have the opportunity to gather the views of the public on rate matters”).

⁴⁶ See ORS 757.210(1)(a) (“Whenever any public utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission’s own initiative, after reasonable notice, conduct a hearing to determine whether the rate or schedule is fair, just and reasonable. ... The commission may not authorize a rate or schedule of rates that is not fair, just and reasonable.”).

⁴⁷ Staff Opening Br. at 36. (Walmart, Verde, and NewSun did not take a position on this issue).

⁴⁸ CUB/500/2-3.

⁴⁹ See PGE/1301 Batzler – Meeks. While the ITC amount after sale here is estimated using 30% of gross plant and a subsequent 10% reduction to account for after sale value because the actual amount is still unknown, CUB expects the actual amount to be treated similarly as this estimate.

⁵⁰ *Id.*

within the next five years. Rather, it's likely to see PGE's capital expenditures rapidly increasing in rate base, creating long term high costs for customers.⁵¹ The ITC for standalone energy storage technology, introduced through the Inflation Reduction Act (IRA), is a policy tool to support the financing of battery storage such as Constable and Seaside.⁵² If we blow through these credits in the first five years of the life of the asset, as AWEC proposes, ratepayers will pay the full costs of Constable and Seaside by 2030.⁵³ This would be on top of PGE's other capital investments placed into rate base over the next five years. Alternatively, by amortizing the ITC over the life of the asset, as Staff and CUB propose, the Commission can ameliorate the long-term impacts of the compounding capital costs.

Issue No. 31 PGE must address the allocation of costs associated with the growing high-tech industry.

As discussed in the Opening Brief, CUB continues to recommend that the Commission direct PGE to bring its “new innovative rate design” and “rate structures”⁵⁴ to a workshop and share them with stakeholders. If these new innovative designs and structures do not address the allocation of costs associated with data centers, the Commission should again order the Company to address cost allocation of data center costs. In its Opening Brief, Staff agrees with CUB. Staff believes the current marginal cost study framework does not adequately model the costs imposed by an extremely larger customer with an inflexible load.⁵⁵ CUB shares Staff's concern that PGE has not identified

⁵¹ See CUB/740 (PGE CEP & IRP Roundtable 24-3 (July 11, 2024) showing load and resource updates).

⁵² See 26 U.S. Code § 48(a)(3)(A)(ix).

⁵³ See AWEC Opening Br. at 27.

⁵⁴ See PGE/2100 Ferchland-Liddle/11.

⁵⁵ See Staff Opening Br. at 55.

distribution and transmission investments needed to serve new, very large loads as a marginal cost to serve the load.⁵⁶

Issue No. 34 The Commission should not adopt PGE’s increase to the residential basic charge.

CUB continues to recommend that the Commission reject PGE’s proposal to increase the residential basic charge. PGE argues the proposal will have a neutral impact on customers’ bills because the \$2 increase to residential customers will be offset by a .25 cent/kWh decrease to the volumetric charge.⁵⁷ This argument fails to consider the price signal an increase to the basic charge makes on customer’s decision to invest in energy efficiency and weatherization. A household that uses 900 kWh a month for winter heating, for example, but upgrades to a heat pump that is three times more efficient, saves more than \$100 in a winter month.⁵⁸ As the record demonstrates, increases to the basic charge discourage this kind of energy efficiency investment, ultimately increasing customer costs.⁵⁹ A rate design that incentivizes energy efficiency and weatherization is the correct way to help customers with winter heating, not charging customers an additional \$2 they can’t take any measures to avoid.

⁵⁶ *Id.*

⁵⁷ See PGE Opening Br. at 113 (citing PGE/3100, Macfarlane-Pleasant/4).

⁵⁸ This is using 2024 base rates.

⁵⁹ See CUB/500 Tran/5-7.

Issue No. 35 PGE has not established that its proposed revisions to the load following credit for Schedule 90 are warranted.

Rate credits are a common regulatory tool used to compensate customers for the value they add to a utility's system.⁶⁰ But, as with any rate request, the utility has the burden to justify the credit. The question on whether a credit is justified is two-fold.⁶¹

(1) First, the Commission asks whether the utility can quantify the benefits the customer receiving the credit provides to the other customers on the system.⁶²

(2) Second the Commission asks is what is an accurate quantification of the value provided.⁶³

For the following reasons, PGE has not met this two-part test.

H. The flat load profile of these large industrial customers does not provide flexibility when PGE uses intermittent resources to meet peak demand.

According to PGE and AWEC, qualifying Schedule 90 customers provide "flexibility value" that benefits other customers on the system. PGE and AWEC thus argue that these qualifying Schedule 90 customers should be paid for this flexibility through a load following credit. Under PGE's proposed change, the Company would not need to deploy its flexibility resources -- whether that be a peaking unit, a market purchase, or using a battery -- when the load goes up or down (to follow the load up or down) to support the qualifying Schedule 90 customers because, although they have material load during that peak demand, the load shape of these customers is flat.⁶⁴ But this assumption is faulty. It is this very load shape and high demand that makes these customers inflexible.⁶⁵ They

⁶⁰ See UE 170, *In the Matter of PACIFIC POWER & LIGHT (dba PacifiCorp) Request for a General Rate Increase in the Company's Oregon Annual Revenues (Klamath River Basin Irrigator Rates)*, Order No. 06-172 at 15 (April 12, 2006).

⁶¹ See *Id.* (discussing the concept of providing rate credits to upstream water users in the Klamath Basin).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ PGE Opening Br. at 115; AWEC Opening Br. at 44.

⁶⁵ See *e.g.*, PGE Opening Br. at 116 (PGE explains Schedule 90 customers cannot shift their load to respond to price signals used with Time of Use rates).

must have constant supply 24/7. In effect, they are always operating at peak demand. And, because the basic generation is increasingly supplied by intermittent resources,⁶⁶ PGE must constantly balance the difference between supply and demand. Variability between supply and demand looks the same whether it is caused by variation in customer loads or variation in utility generation. A flat load with intermittent generation is as much a problem as variable load with base load generation. The consistency and stability of Schedule 90's load does not provide a flexibility benefit, without the consistency and stability of the generation that enables it. In essence, the challenge is not "load following", but "supply following" and these flat large loads do not help with this.

I. AWEC admits this "flexibility value" is highly speculative

The LFC is based on a price that is assigned to each unit of energy used to compensate Schedule 90.⁶⁷ Thus the proxy price used impacts the total cost of the LFC. To illustrate, PGE's current proposal increases the price by more than 4 times, and the result of that is a transfer payment that triples. Therefore, it is extremely important that the correct price proxy is reasonable and rigorously determined. As witness Kaufman points out, however, PGE's proxy price is "highly speculative."⁶⁸ It's also important to remember that this is not a mere update to the value of the credit, but a dramatic change to how flexibility is measured.⁶⁹ PGE initially based the flexibility value metric on the costs the Company avoids for ancillary services between flat load and variable load in the day ahead, hour ahead and real time energy markets.⁷⁰ PGE now proposes to measure "flexibility value"

⁶⁶ LC 80, PGE 2023 IRP at 128, available at <https://portlandgeneral.com/about/who-we-are/resource-planning/combined-cep-and-irp>.

⁶⁷ CUB/504 Tran/2.

⁶⁸ AWEC/ 400 Kaufman/ 11 (explaining that the ability to measure this value rests on two "critical assumptions" that is how expensive day ahead market capacity resources are, and the amount of 4-hour battery capacity added to PGE's system. PGE's simulation to determine the price of the LFC only used the first 100 MW, which will result in the highest flexibility value. But additional MW will have a lower value. PGE's LFC, however is static, it does not change with the addition of batteries into the simulation).

⁶⁹ CUB/ 500 Tran/16.

⁷⁰ CUB/ 500 Tran/15

using the new “flexibility adequacy” metric.⁷¹ But PGE admits that it is still learning how to model flexibility adequacy of a region increasingly reliant on variable resources.⁷²

J. The record does not support using a 4-hour battery as a proxy for the LFC cost

Staff and CUB agree that the record does not support using the flexibility value of a 4-hour battery as a proxy for this cost.⁷³ The correct credit would be one that most accurately reflects the value the Schedule 90 customer provides to other customer classes, even if the most appropriate analogue to use is an soon-to-be outdated carbon emitting resource.⁷⁴ PGE is using the battery cost as a proxy based on its flexibility value analysis but this analysis looked at a variety of proxy resource scenarios to provide that flexibility to the system.⁷⁵ It’s not clear why PGE elected to use the battery as a proxy.

Simulations aside, PGE is more likely using the market, or peakers, or hydro resources for this load following. While basic energy generation is increasingly becoming intermittent, load following inherently involves dispatch. Hydropower works well to meet the load following because you can crank it up and down quite easily, but solar and wind don’t. Gas peakers and market purchases can also do this — as can batteries but PGE has limited battery capacity -- in 10 years it might rely primarily on batteries, but it doesn’t today.

CUB recognizes that the Commission may want to shift from modeling generation with fossil fuel resources to modeling with emissions-free resources in light of the requirements of HB 2021. Indeed, within the marginal cost study, there has been agreement to move away from peakers to

⁷¹ CUB/ 500 Tran/15; *see also* LC 80, PGE 2023 IRP at 128 (defining Flexibility adequacy as “A MW number that represents the magnitude of fast-acting dispatchable resources needed to meet the operational flexibility needs of the system and ensure system reliability.”).

⁷² See LC 80, PGE 2023 IRP at 128.

⁷³ Staff Opening Br. at 58.

⁷⁴ CUB/ 500 Tran/ 15; *see also* Staff/ 200 Scala/ 36.

⁷⁵ See AWEC/ 400 Kaufman/ 11 (citing Blue Marble Analytics, Flexibility Studies, at 3 and 13 (Nov 2022)).

batteries for capacity.⁷⁶ But that is looking at the costs on the margin, not actual embedded costs and load following is done with the embedded system. If the Commission is going to allow PGE to keep charging for the LFC, that charge should reflect actual costs.

K. The LFC is designed to incent data center growth into PGE’s service territory.

The qualifications to receive the LFC compensation – large and consistent load, are essential characteristics of a data center.⁷⁷ In effect, the LFC acts like a tax break to attract data centers into PGE’s service territory at the expense of other customers. While there is currently only one customer that qualifies to receive this credit,⁷⁸ and that customer may not be a data center, there could be more data center customers that move to PGE’s service territory to take advantage of this “tax break” style crediting system. According to an October 14, 2024, article published in *The Oregonian*, data centers already account for 11% of Oregon’s electricity consumption, which is more than twice as much as all the homes in Portland.⁷⁹ As acting director of the Commission stated, “[o]ur regulatory structures weren’t designed for this scale of large customer growth.”⁸⁰ The coming wave of data center demand “is not something we’ve seen over the last decades” which means the Commission still needs to re-examine its approach to this data center and huge industrial customer growth.⁸¹ The proposed cost revision is already exorbitant – four times the current LFC price.⁸² When more data center customers move in to take advantage of the LFC payments, the costs of the credit could become untenable for the other customers.

⁷⁶ See PGE /2000 Macfarlane - Pleasant/17

⁷⁷ See PGE/900 Macfarlane - Pleasant/17.

⁷⁸ Staff/200/36

⁷⁹ Mike Rogoway, *Oregon’s data centers want a lot more electricity. Who’s going to pay? It could be you*, *The Oregonian* (Oct. 13, 2024).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² PGE Opening Br. at 115 (“PGE is proposing to update and increase the load following/integration price from 1.13 mills/kWh to 4.89 mills/kWh.”).

In sum, the record does not support the load following credit revision that PGE proposes. CUB would further agree with Staff's recommendation that the Commission find there is insufficient rationale to support the existence LFC at all.⁸³

Issue Nos. 40, 63-65. Transparent Rate Increases and Bill Design

A. The Commission should impose a disallowance to the billing costs to reflect the diminished billing service residential customers receive.

Bill design describes the layout and information that is contained on the customer's bill.⁸⁴ Good bill design shows more than just what charges are due and when.⁸⁵ From a customer basis, good bill design provides clear information, so customers understand the charges that they are being asked to pay.⁸⁶ This information should be sufficient to allow residential customer to weigh those costs against alternatives, whether that means switching to a different billing schedule, enrolling in a utility's renewable development fund, or investing in energy efficiency improvements.⁸⁷

CUB has testified as to the ways that PGE's bill design is insufficient and the ways in which it could be improved.⁸⁸ CUB also testified that PGE's poor bill design exacerbated the rate shock of the already steep rate hike in January. As a result, CUB has proposed a 20% disallowance, or \$8,451,698, to be applied against basic charge, which is where billing costs are collected.⁸⁹

PGE argues that CUB's proposal is unnecessary because there is billing information on its website.⁹⁰ PGE also claims that its bills comply with Commission regulations and are tested with

⁸³ Staff Opening Br. at 58. (Walmart, Verde, and NewSun did not take a position on this issue).

⁸⁴ CUB/ 100 Jenks/15.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *See Id.* at 15-24.

⁸⁹ CUB/400 Jenks/14. The billing cost for residential customers is \$42,258,489. CUB/100 Jenks/25.

⁹⁰ PGE Opening Br. at 139.

customer focus groups.⁹¹ PGE does not cite to anything in the record to support these claims. Even assuming PGE has tested its bill design with customers, without access to the results or feedback it's not possible to assess the veracity of the Company's statement. Notably, PGE does not say that customers approve of the design or find it helpful. On the other hand, CUB has put evidence into the record of customer frustration and dissatisfaction with the Company's bill design.⁹² Following the recent bill increase in January 2024, Customers told CUB they were angry because they believed that PGE, the Commission, and CUB were all misleading them as to the size of the increase.⁹³ CUB heard from reporters, and even PGE, that they were receiving similar calls.⁹⁴

While PGE argues that CUB's proposal is unnecessary, it took witness Jenks going through his own bill with a fine-tooth comb to uncover how the Company arrived at the 18% increase.⁹⁵ In fact, PGE itself recognized the difficulty of interpreting its bill design. But rather than fix that design, it released video online to explain the layout of the bill.⁹⁶ The bill is where the utility has direct contact with the customer. The customer should not have to go online to understand their bill. While CUB appreciates that the Company has now included this information on its website, putting this information online, rather than fixing the issue at the source, may continue to confuse customers and

⁹¹ PGE Opening Br. at 139.

⁹² CUB/100 Jenks/15 (By the middle of January 2024, PGE customers were beginning to receive bills that reflected both the higher rates put into effect January 1 and the cold weather event. Trying to understand why their bill was so high, some customers tried to calculate the increase in their rates. Due to PGE's bill design they believed the rate increase they received was much higher than what was being reported. On social media and in calls to our office, CUB was finding that there were many customers who insisted that their bills increased by significantly more than 18%.... Customers were angry because they believed that PGE, the PUC, and CUB were all misleading them as to the size of the increase.”).

⁹³ *Id.* at 15.

⁹⁴ *Id.* at 17.

⁹⁵ *Id.* at 17-21. (Deducing that “in a year such as the current one, where rates were reset in January through a general rate increase, there is no difference between the [net variable power costs (NVPC)] set in the GRC and the NVPC set in the [annual update tariff (AUT)]. This means that [Jenk's] bill reflected a charge for Schedule 125 in December, but in January there no longer was a charge for it. And it was this item, removal of a charge related to NVPC variance that brought the overall bill down from the 28.9% reflected by the Energy Charges on the bill to 18% as announced by PGE and the PUC”).

⁹⁶ *Id.* at 21-22. *See* PGE, “Understanding My Bill”, available at <https://portlandgeneral.com/help/help-topics/understanding-my-bill>.

ignores technology barriers. Moreover, this issue goes beyond understanding the January bill increase. The actual unit price of a kilowatt hour of electricity is not shown. This makes it difficult for a customer to make an informed decision about their electricity spending and is vital given the State's recent policy shift to electrify households and incentivize heat pumps.⁹⁷

Nonetheless, PGE argues that CUB's proposal is a "generalized and unsubstantiated assertion" citing a 2009 order that rejected a general reduction to the revenue requirement.⁹⁸ The reasoning in that order is not applicable here. In that case, CUB was requesting a general reduction in O&M expenses to reduce the revenue requirement.⁹⁹ In contrast, here CUB has made a specific disallowance request for billing costs to reflect the diminished billing service customers receive.¹⁰⁰ This service has two purposes: first, the bill allows the utility to tell the customer what that customer owes, so the utility can recover the cost of its service from the customer. Second, the bill provides customers with valuable information about their usage and the prices that they are paying for the utility's service. As currently designed, PGE's bills meet that first purpose, but not the second.¹⁰¹ Just as a Commission may adopt a recommended 20% disallowance for poor vegetation management, for example, CUB has recommended a 20% disallowance for poor billing services.

L. In the alternative, the Commission should require an improved design

That said, CUB recognizes that the goal of this disallowance is not to impose a penalty *per se* or reduce the revenue requirement, but to actually change the bill design for the benefit of customers. CUB recognizes that Company may be willing to work with CUB and stakeholders to

⁹⁷ CUB/100 Jenks/ 22-23.

⁹⁸ PGE Opening Br. at 140 (citing UE 197, Order No. 09-020 at 6 (Jan. 22, 2009)).

⁹⁹ See UE 197, Order No. 09-020 at 6 (Jan. 22, 2009).

¹⁰⁰ CUB/100 Jenks/ 23-24.

¹⁰¹ *Id.*

improve the bill design based on CUB's recommendations in testimony.¹⁰² Accordingly, as an alternative to the disallowance, CUB recommends that the Commission direct PGE to provide the total bill with the total fixed costs (\$/month), total usage charges (cents/kwh) and total taxes and fees listed by a set date prior to the rate effective date in this proceeding. This information should be part of both the paper bill and online bill pay. To the extent that PGE argues this information could be confusing or difficult to convey,¹⁰³ CUB reminds that the *existing* bill design is confusing. And that good bill design is part of a utility's obligation to serve. The Company is a large, sophisticated entity that has a duty to provide a service to its customers, it should be able to clearly explain the charges for that service in its customers' bills.

M. PGE should make public its updated rate increases by customer class.

Similar to CUB's concerns above, CUB recommends that when PGE updates forecasted rates in bench requests, MONET runs, or other filings, the forecasted rate increase to classes of customers should be provided without redaction.¹⁰⁴ Last year the Commission asked the Company to provide regular updates that forecast the January rate change inclusive of all rate schedules.¹⁰⁵ Throughout much of last fall, however, PGE heavily redacted these updates.¹⁰⁶ While the amounts were known, the redactions prevented CUB from sharing this information with customers so customers could take action and prepare for larger bills.¹⁰⁷ Prior to making the request in this rate case, CUB tried to reason with the Company, explaining that customers need

¹⁰² See CUB/100 Jenks/ 23-24; CUB/400 Jenks/12; see also PGE/1200 Sheeran - Wise/38.

¹⁰³ See PGE Opening Br. at 141.

¹⁰⁴ CUB/100 Jenks/28 (Issue No. 63 in Joint Issues List). For example, CUB is recommending that the AUT guidelines require that MONET updates include rate projects and urges the Commission to require that bench requests about the total projected increase that is coming from all the ratemaking mechanisms be listed in a non-redacted format and updated monthly

¹⁰⁵ *Id.* at 25.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 28.

this information to budget for the rate increase.¹⁰⁸ PGE refused and argued that its best projections on the January rate increase were confidential because it was preliminary and might not reflect the final actual increase.¹⁰⁹

In its Opening Brief, PGE again argues that sharing the increases prior to approval of the rate can be confusing if final rates differ from the forecast.¹¹⁰ This concern over confusion, however, has not stopped PGE from adjusting its proposal in its testimony, or from posting on its own website its new request before the Commission approves the rate.¹¹¹ Notably, this is even more confusing because the 8.6% shown in the figure below is the *overall* increase, and not what residential customers could expect to pay.

Figure 2: Notice on PGE website of 2025 rate adjustment.¹¹²



Similarly, PGE has complained that the media is inaccurately reporting on its rate increase.¹¹³ The Company claims its “goal is to ensure that all parties have access to accurate and comprehensive information to inform their decisions” and argues this inaccuracy in the news jeopardizes “the integrity of the process.”¹¹⁴ But then the Company refuses to make this

¹⁰⁸ See CUB/100 Jenks/25.

¹⁰⁹ CUB/100 Jenks/ 26-27.

¹¹⁰ PGE Opening Br. at 140.

¹¹¹ See <https://portlandgeneral.com/2025-rate-case> (last accessed Nov. 5, 2024 at 3:45 pm).

¹¹² <https://portlandgeneral.com/2025-rate-case> (last accessed Nov. 5, 2024 at 3:45 pm).

¹¹³ PGE / 2100 Ferchland - Liddle / 13.

¹¹⁴ *Id.*

information public, arguing to do so would also “undermine the integrity of the Commission review process.”¹¹⁵ Hiding the information will not stop the media outlets or customers from trying to understand what the rate impact will be. CUB agrees that the reporting should be accurate, and the way to do that is to make that information public. PGE may want to avoid repeated news stories saying rates are going to go up significantly, but those stories and their accuracy are important to prepare customers for higher bills.¹¹⁶

While PGE argues this information should remain confidential, it’s hard to imagine what should be more public than the rate you’re going to pay. Preliminary information is commonly made public. It’s done so with the knowledge and understanding that it might not reflect the final results. Accordingly, CUB recommends that the Commission require the Company to make the forecast rate by customer class available publicly.

Issue Nos. 43-48, 50, 52-54. Affordability, Income Qualified Bill Discount and other Environmental Justice Issues

N. The utility is statutorily required to provide adequate and safe service to avoid dangerous shut offs.

It is a sad reality that disconnections are leading to dire situations, including death.¹¹⁷ In Arizona, 72-year-old Stephanie Pullman died after her power was shut off in on a 107-degree July day, leaving her without air conditioning.¹¹⁸ Ms. Pullman, who lived on less than \$1000/month in Social

¹¹⁵ PGE Opening Br. at 140.

¹¹⁶ CUB/100 Jenks/ 26.

¹¹⁷ Olivia B. Wein and Charlie Harak, *Protecting Seriously Ill Consumers from Utility Disconnections: What States Can Do to Save Lives Now*, National Consumer Law Center, 5 (Feb. 2021).

¹¹⁸ Anita Snow, *Utilities companies to halt electricity cutoffs after AZ woman died from heat extreme*, USA Today (July 25, 2023), <https://www.usatoday.com/story/news/nation/2023/07/25/arizona-power-companies-disconnect-rules-change-extreme-heat/70462535007/>.

Security,¹¹⁹ had just made a partial payment on her past-due bill of \$176, with only \$51 remaining when she was shut off.¹²⁰ This reality is not isolated in Arizona.¹²¹

PGE reports disconnecting customers with similar account balances to Pullman's.¹²² This year, PGE disconnected nearly 15,000 households within only the first five months.¹²³ This is roughly a 3,000-household increase from the prior year for this same time period.¹²⁴ This year's current disconnection numbers come not only after the winter heating season but are directly correlated to PGE's 18% rate increase effective January 1st, 2024.

It's not just the disconnection itself that is harmful, it's also the threat of disconnection. As the National Consumer Law Center reports, low-income customers often forgo necessities like food or medical attention or incur high-cost debt to avoid disconnection or to reinstate service.¹²⁵ This means that the no-interest debt of utility service becomes high-interest debt through payday loans and interest

¹¹⁹ Elizabeth Whitman, *On 107-Degree Day, APS Cut Power to Stephanie Pullman's Home. She Didn't Live: In 2018, APS cut off power to customers more than 110,000 times*, Phoenix New Times (June 13, 2019).

¹²⁰ *Id.*

¹²¹ See also *Utility Bill Unpaid, Senior Froze To Death*, CBS News (Jan. 26, 2009), <https://www.cbsnews.com/news/utility-bill-unpaid-senior-froze-to-death/> ("A 93-year-old man froze to death inside his home just days after the municipal power company restricted his use of electricity because of unpaid bills, officials said. Marvin E. Schur died "a slow, painful death," said Kanu Virani, Oakland County's deputy chief medical examiner, who performed the autopsy."); see also Carma Hassan, *A New Jersey Woman on Oxygen Dies After the Power Company Shuts Off Her Electricity*, CNN, July 10, 2018, <https://www.cnn.com/2018/07/09/health/new-jersey-woman-dies-oxygen-trnd/index.html> (A New Jersey grandmother who depended on an electric-powered oxygen tank to breathe died hours after power was cut off to her home, two days after her son made a \$500 payment to the electric company.)

¹²² See UM 2211- *Joint Utility Comments on Staff's Residential Arrearage and Disconnection Assessment*, 3 (Oct. 9, 2024) (PGE sends disconnection notices when a customer bill is \$100 or higher, and disconnects customers when their bill is \$200 or higher).

¹²³ CUB/300 Wochele-Jenks/19, 26.

¹²⁴ *Id.*

¹²⁵ See CUB/100/Jenks/7, CUB/102, and CUB/103; see also CUB/600 Wochele - Jenks/5 (citing National Consumer Law Center, "[t]he goal should be to reduce the frequency of both disconnections and disconnection notices, while also improving overall rates of utility revenue collection by educating customers about all available assistance." See Anna Kowanko and Charlie Harak, *More Can and Must Be Done to Prevent Utility Consumers from Losing Service Due to Mounting COVID-Driven Arrearages in Massachusetts and Other States*, National Consumer Law Center, 4 (Nov. 2021), available at https://www.nclc.org/wp-content/uploads/2022/10/Rpt_More_Covid_Util_Arrearage_Svc.pdf); see also John Howat, John T. Colgan, Wendy Gerlitz, Melanie Santiago-Mosier and Karl R. Rábago, *Reversing Energy System Inequity: Urgency and Opportunity During the Clean Energy Transition*, 3 (2022), available at <https://www.nclc.org/wp-content/uploads/2022/08/report-reversing-energy-system-inequity.pdf>.

and fees for unpaid credit cards.¹²⁶ Keep in mind that an IQBD customer’s average monthly PGE bill for the first four months of 2024, was still \$135 post discount.¹²⁷ While energy assistance payments are available, February 2024 marked a record high for residential past due balance—over \$26 million.¹²⁸ Being enrolled in the IQBD program, receiving other energy assistance, or having a medical certificate does not stop a shutoff.¹²⁹

Oregon law requires that utilities provide “adequate and safe service, equipment, and facilities.”¹³⁰ In other words, not only must the utility ensure its equipment and facilities’ infrastructure is safely maintained and working, but the *service itself* must also be adequate and safe, where the term service “is used in its broadest and most inclusive sense.”¹³¹ Indeed, the United States Supreme Court has stated that “utility service is a necessity of modern life” and that its discontinuance, for “even short periods of time may threaten health and safety”.¹³² PGE has the statutory requirement to provide adequate and safe service to its residential customers, even those who struggle to afford its rising costs. As the record demonstrates, however, many customers are losing that service or struggling to afford it. This is not safe.

PGE argues that changes to this service are unnecessary, that the number of disconnections and the dollar amount of past due bills (recall the \$26 million as noted above) is a “perceived crisis”.¹³³ It’s argued against changes to its disconnection and arrearages policies.¹³⁴ It’s argued it

¹²⁶ See CUB/600 Wochele - Jenks/5 While Oregon has a cap on payday loan fees, unlicensed payday lenders still operate in Oregon. See Oregon Division of Financial Regulation, “PayDay Loans”, available at <https://dfr.oregon.gov/financial/loans/personal/payday/Pages/index.aspx>

¹²⁷ CUB/300 Wochele-Jenks/20 (citing CUB/306 – PGE Response to OPUC DR 307, attach. A).

¹²⁸ Staff/200 Scala/24.

¹²⁹ CUB/600 Wochele - Jenks/9-10 (“This year, PGE disconnected 577 more residential customers receiving energy assistance and PGE customers with medical certificates were disconnected for non-payment more than double than were last year.”).

¹³⁰ ORS 757.020.

¹³¹ ORS 756.010(10)

¹³² *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18 (1978).

¹³³ PGE/2300/Sheeran – Latu – Newman/5.

¹³⁴ PGE Opening Br. at 144.

doesn't need to make additional changes to IQBD.¹³⁵ And it's argued against changing the bill design to help people understand the service they are paying for.¹³⁶ Nonetheless, the record demonstrates that the Company's existing policies are not providing adequate and safe service to residential customers. For example, at present, the Company does not have a current arrearage management program (AMP) or arrearage forgiveness program.¹³⁷ Just as a breaker interrupts a short on the circuit, a customer-centered AMP is a safety device to stop a customer from losing power for non-payment. And as discussed below and in testimony, additional programmatic and service-based safety measures, such as targeted assistance for residential customers with incomes in the 61-100% SMI range (who can also be energy burdened), EBA-supported changes to IQBD, and changes to billing procedures would help customers avoid arrears in the first place.

CUB recognizes that the Company wants disconnections to be a last resort¹³⁸ and has various devices in place, including Time Payment Arrangements (TPAs),¹³⁹ IQBD, and energy assistance referrals to help.¹⁴⁰ Recall, however, that as of January 1 of this year PGE enhanced its IQBD with more targeted tiers; nonetheless disconnections and arrears increased, including for those receiving energy assistance and those with medical certificates.¹⁴¹ The record is clear, in the face of growing disconnections, particularly what we saw this past spring, PGE's existing tools are not sufficient to maintain adequate and safe service.

¹³⁵ PGE Opening Br. at 143.

¹³⁶ *Id.* at 139.

¹³⁷ CUB/300 Wochele-Jenks/25.

¹³⁸ *See* CUB/309.

¹³⁹ *See* CUB/307 – PGE Response to CUB DR 104 and CUB/310 – PGE Response to OPUC DR 635 (TPAs take a customer's balance and divide it out over time for payment-typically 12 months. A customer is able to renegotiate the terms of the TPA one time); *See* CUB/317 PGE Response to OPUC DR 638 (At the initiation of a TPA, a customer's arrearage balance is reset to 0\$ while the original past-due balance is paid over a 12-month period, alongside paying current bills).

¹⁴⁰ CUB/300 Wochele-Jenks/21.

¹⁴¹ *See Id.* at 26-27. From January through April, roughly 13% of household disconnections were to PGE customers receiving some type of energy assistance CUB/100 Jenks/11-15 (this figure includes customers enrolled in PGE's IQBD); *see also* CUB/300 Wochele-Jenks/19. In April 2024, 29% of PGE's customers who were in arrears were IQBD customers. CUB/300 Wochele-Jenks/30-31.

CUB does not disagree with the Company that the UM 2211 investigation will likely result in comprehensive strategies to reduce customer energy burden. But nothing precludes the Commission from addressing the affordability crisis in this docket. Just as the Commission ordered the Company to modify its IQBD program in its rate case last year¹⁴²—which PGE agreed to¹⁴³ and which originated from the UM 2211 investigation¹⁴⁴—the Commission can also address CUB recommendations that PGE add safety tools to its toolbox that actually *relieve* the customer of their debt. AMPs and arrearage forgiveness, for example, often match a customer’s payments toward paying off their debt, provide a percent off the debt, or forgive it entirely.¹⁴⁵ Arrearage forgiveness programs can offer debt forgiveness without requiring customers to match anything from the Company and offer more accessible paths for customers to address past due bills and avoid a shut off.¹⁴⁶ Indeed, as a thoughtful Commission staff member recently said, “Energy justice and energy equity go beyond keeping the lights on. They’re about creating an energy system that provides affordable, reliable, and safe access for every household.”¹⁴⁷

To this last point, PGE argues that the levels of disconnections should not be alarming.¹⁴⁸ According to PGE, there is no urgency to act, because the increasing disconnections are only reaching historic levels, not unprecedented levels.¹⁴⁹ But to this CUB asks whether the Commission is comfortable with saying those historic figures, approximately 3,000 a month,¹⁵⁰ are not concerning. The Commission recently agreed with CUB that there is no threshold number of customers that

¹⁴² UE 416 – Order No. 23-386, 11-15 (Oct. 30, 2023).

¹⁴³ UE 416 – Sixth Partial Stipulation, 5 (Oct. 6, 2023).

¹⁴⁴ See also ADV 1365 - PGE's Advice No. 22-01 *Income Qualified Bill Discount*, Initial Utility Filing (Jan. 13, 2022).

¹⁴⁵ See CUB/300 Wochele-Jenks/27-28.

¹⁴⁶ See *Id.*

¹⁴⁷ Cassie Allen, *Michelle Scala's 2024 Consumer Champion Speech* (Oct. 21, 2024), <https://oregoncub.org/news/blog/michelle-scalas-2024-consumer-champion-speech/3055/>

¹⁴⁸ PGE Opening Br. At 144-145; see also PGE / 2300 Sheeran – Latu - Newman / 4-5.

¹⁴⁹ PGE Opening Br. At 144-145.

¹⁵⁰ See *Id.*; see also PGE /2300 Sheeran – Latu - Newman / 4-5.

triggers its duty to protect customers who are not receiving safe and adequate service.¹⁵¹ If a utility was consistently losing power or operating with faulty equipment, it could not tell the Commission that these safety issues were in line with historic trends; the Commission would immediately intervene.¹⁵² If we expect a utility to maintain hardware to provide reliable service and prevent outages, we can also expect programs in place to maintain service and prevent disconnections.

O. The Commission should amend three aspect of the Company’s billing rule to protect customers from disconnection due to arrears

CUB recommends the following three changes to PGE’s Rule F Billings. These three recommendations are supported by the National Consumer Law Center’s white paper on ways to address mounting disconnections due to arrears.¹⁵³

(1) CUB recommends that the Commission instruct the Company to extend the residential bill due date from 20 days to 30 days to give customers more time, and thus more pay periods, to pay their bills on time and in full.¹⁵⁴

(2) CUB recommends that the Commission instruct the Company to extend Time Payment Arrangements (“TPAs”) from 12 months to 24 months for all customers, at least until a more robust plan and program is put into place to address arrears and disconnections.¹⁵⁵

¹⁵¹ UM 1908 - *In the Matter of QWEST CORPORATION, UNITED TELEPHONE COMPANY OF THE NORTHWEST, CENTURYTEL OF OREGON, and CENTURYTEL OF EASTERN OREGON, Joint Petition for Approval of Price Plan*, Order No. 23-109, 8 (March 21, 2023) (“...we must also be able to protect customers who are not receiving adequate service even if those customers represent a small portion of the total customer base.”).

¹⁵² *Id.*

¹⁵³ *See Id.* at 5-6 (citing Anna Kowanko and Charlie Harak, *More Can and Must Be Done to Prevent Utility Consumers from Losing Service Due to Mounting COVID-Driven Arrearages in Massachusetts and Other States*, National Consumer Law Center (Nov. 2021), available at https://www.nclc.org/wp-content/uploads/2022/10/Rpt_More_Covid_Util_Arrearage_Svc.pdf). (hereinafter “NCLC report”).

¹⁵⁴ CUB/300 Wochele-Jenks/32; CUB/ 600 Wochele-Jenks/5.

¹⁵⁵ CUB/ 600 Wochele-Jenks/ 6.

(3) CUB recommends that the Commission instruct the Company to remove late fees for *all* PGE customers, not just IQBD customers, again at least until a more robust plan and program is put in place to address arrears and disconnections.¹⁵⁶ On this last recommendation, the Commission should take a page from Consumer Financial Protection Bureau.¹⁵⁷ Like junk fees, late fees impose unreasonable obstacles on people already struggling to pay their bill.

In its Opening Brief, PGE argues that this issue was already addressed in AR 653.¹⁵⁸ That's not accurate. In AR 653, CUB, joined by other advocates, addressed Staff's recommendation to prohibit an energy utility from imposing late payment charges on the accounts of *low-income* residential customers.¹⁵⁹ CUB's proposal here is for *all* residential customers. PGE also argues that CUB has failed to address the potential impacts to other customers, including residential customers, from this recommendation.¹⁶⁰ In the grand scheme of things, preventing utilities from charging customers late fees, deposits, and other unnecessary charges is the right thing to do, even if it adds slight, upward pressure to rates. And this is consistent with Oregon policy, as adopted in the Energy Affordability Act in 2021.¹⁶¹ That said, if late fees were removed, the revenue would need to be made up somewhere else -- but it doesn't need to come from customers.

¹⁵⁶ *Id.*

¹⁵⁷ See Consumer Financial Protection Bureau, CFPB Bans Excessive Credit Card Late Fees, Lowers Typical Fee from \$32 to \$8 (March 5, 2024) available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-excessive-credit-card-late-fees-lowers-typical-fee-from-32-to-8/>; see also Consumer Financial Protection Bureau, *CFPB Issues Guidance to Halt Large Banks from Charging Illegal Junk Fees for Basic Customer Service* (Oct. 11, 2023) available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-to-halt-large-banks-from-charging-illegal-junk-fees-for-basic-customer-service/>

¹⁵⁸ PGE Opening Br. at 146.

¹⁵⁹ See AR 653, Advocates' Comments on Staff's Draft Changes to Division 21 Rules at 2-3 (March 7, 2022).

¹⁶⁰ PGE Opening Br. at 146.

¹⁶¹ See HB 2475 (2021), partially codified at ORS 757.230(1), "The Public Utility Commission shall provide for a comprehensive classification of service for each public utility, and such classification may take into account... differential energy burdens on low-income customers and other economic, social equity or environmental justice factors that affect affordability for certain classes of utility customers, and any other reasonable consideration."

P. Additional changes to PGE' IQBD are necessary to address rising energy burden from this latest proposed rate increase.

The Commission has already established that it can adopt changes to utilities' bill discount programs through general rate cases.¹⁶² In fact, Staff in UM 2211 recommends that refinements to the bill discount programs be made through this year's rate cases.¹⁶³ And yet PGE has declined to make any commitments through this proceeding.¹⁶⁴ To this point, PGE points to changes made through a separate advice filing, its "September filing" to say that additional changes to its IQBD program would be "premature."¹⁶⁵ PGE also points to the settlement agreement in UE 416 that added tiers to the IQBD program.¹⁶⁶ While CUB appreciates these changes, PGE has not articulated anything that prevents the Commission from taking action here, only that the Company does not want to. For example, if parties had agreed the utility would undertake certain tree trimming services in a rate case, and then a winter storm revealed that additional vegetation management was needed, that would not preclude the parties from addressing that issue in the following general rate case. Nor would it prevent the Commission from requiring the utility to take certain actions to address the issue. Nothing in the record supports that the standard of review for changes to the IQBD program should be any different.¹⁶⁷

¹⁶² See UG 490 - *In the Matter of NORTHWEST NATURAL GAS COMPANY, dba NW NATURAL, Request for a General Rate Revision*, Second Partial Stipulation, 6 (July 24, 2024); UE 426 - *In the Matter of IDAHO POWER COMPANY, Request for a General Rate Revision*, Order No. 24-311, 9-11 and Appx. B 3-5 (Sept. 23, 2024); UE 416 - *In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Request for a General Rate Revision*, Order No. 23-386, 11, 15 (Oct. 30, 2023) (increased number of discount tiers).

¹⁶³ Docket UM 2211, Phase 2 Survey Synthesis and Updates. See Figure 1. Available at: [um2211hah327921024.pdf](#) (state.or.us); see also UE 433 – Staff Opening Testimony, Staff/600 Ayres/8 (Recently, Staff released the UM 2211 Phase 2 update. The update included that refinement of the utility interim rate programs would occur in general rate cases while Staff addressed additional implementation processes 14 through the UM 2211 docket process, focusing near term on evaluating current energy assistance and weatherization programs available across the state.).

¹⁶⁴ PGE Opening Br. at 143; see also UE 435 PGE/1200/Sheeran - Wise/12.

¹⁶⁵ *Id.* (referring to ADV 24-19).

¹⁶⁶ *Id.*

¹⁶⁷ In fact, many items that were agreed to in UE 416 that are being litigated again here. For example, the parties in UE 416 stipulated to an ROE of 9.5%, but the ROE is again a live issue in this proceeding, with PGE requesting a higher ROE than that set in UE 416.

PGE's rate for UE 416 was determined last December and went into effect January 1, 2024. PGE then released its Energy Burden Assessment ("EBA") in June.¹⁶⁸ The results of the EBA suggested that another rate increase would mean energy burden would increase.¹⁶⁹ Additionally, recent disconnection reporting, as well as data coming out of PGE's IQBD re-enrollment process were major causes for concern with a new pending rate increase.¹⁷⁰ CUB urged that if PGE wanted to raise rates again following UE 416, the Company would need to consider a corresponding adjustment to the IQBD tiers based on the results of the EBA.¹⁷¹ Throughout this proceeding, PGE assured parties in this docket, as well as members of its Community Benefits and Impacts Advisory Group ("CBIAG"), that the Company would be making changes to its IQBD program in September ("September Filing").¹⁷² But the extent of PGE's September Filing was to extend the IQBD to customers living in master metered dwellings.¹⁷³ While CUB appreciates that PGE has implemented this change, this is still far from adequate to address the risk of the increased energy burden resulting from the impending rate increase. Accordingly, CUB would like the Commission to instruct PGE to collaborate with stakeholders to implement the following prior to the rate effective date.

1. Implement an arrearage management and forgiveness program;

¹⁶⁸ CUB/734 at 1.

¹⁶⁹ See CUB/734 at 18-19, 33-34.

¹⁷⁰ CUB/600 Wochele-Jenks/9 ("On August 20, 2024, PGE filed its quarterly disconnection report, and on August 30, 2024, PGE filed a correction to it, indicating there were more customers receiving assistance who PGE shut off for non-payment than the Company initially reported—going back to May 2023." (citing RO 12 - PGE's Service Disconnection Quarterly Report May 1, 2024 - July 31, 2024, and PGE's Corrected Quarterly Disconnect Report for May 1, 2024 to July 31, 2024)).

¹⁷¹ CUB/300 Wochele-Jenks/7, 17-18

¹⁷² See CUB/600 Wochele-Jenks/3; see also PGE/100/Pope - Sims/25 ("We intend to file with the Commission in Q3 2024 further updates to our discount program, informed by the EBA. This filing will be conducted in a separate docket to maximize focus and opportunities for engagement by energy justice communities."); PGE/1200/Sheeran - Wise/12 ("PGE is evaluating the cost versus benefits of modifications to the existing IQBD tiers, and any changes to the discount levels or other program modifications would be considered within the EBA process and PGE's September filing."); July 2024 PGE CBIAG Meeting Slides, available at https://assets.ctfassets.net/416ywc1laqmd/6sMyMIRkBeZXDZ7QKFgLVA/12b8154b3a30121dd532bf2216c43e39/CBIAG_240724_July_Meeting_15.pdf

¹⁷³ See ADV 24-19, PGE's September Filing (Sept. 27, 2024).

2. Increase the bill discount tiers to ensure savings are not lost with the rate increase in this proceeding; and
3. Implement some level of assistance for its residential customers with incomes in the 61-100% SMI range. Customers at 61-100% State Median Income (SMI) are especially vulnerable to rate shock.¹⁷⁴ PGE’s EBA indicates that 16% of households in PGE’s service territory earn between 60-100% SMI, making them ineligible for almost all energy assistance programs, but they may still bear a relatively high level of energy burden.¹⁷⁵ Though the economic, physical, and coping dimensions may be distinct, both energy burden and rate shock can lead to energy insecurity and energy poverty.¹⁷⁶

Q. Additional reporting is necessary

CUB also recommends the Commission require additional reporting to better understand the outcome of the Company’s new Post Enrollment Verification (“PEV”) and customer access to the benefits of the IQBD. Reporting is often seen as a critical step in decreasing arrears and disconnections. And preliminary data showcase the need for additional reporting to better support low-income customers.¹⁷⁷

When the Commission instituted disconnection reporting in RO 12 it opened a new layer of insight into energy service inequities. In this same vein, CUB continues to recommend that the Commission require PGE to provide the following reporting and data analysis.

1. Include IQBD re-enrollment data and Post Enrollment Verification (“PEV”) data to existing RE 195 reporting.
2. Complete a data sharing walkthrough for these re-enrollment and PEV data with both its IQBD Program Update Group and its CBIAG, informed both by stakeholder questions and

¹⁷⁴ CUB/600 Wochele-Jenks/8.

¹⁷⁵ *Id.* at 5; *See also* CUB/734 at 18-19 (PGE’s EBA).

¹⁷⁶ CUB/600 Wochele-Jenks/8.

¹⁷⁷ Preliminary data shows that these processes are unnecessarily removing likely qualified customers from the IQBD, which will certainly lead to increased arrearages and disconnections. For example, of the 13,437 IQBD customers who were flagged for re-enrollment in May, June and July 2024, approximately 3.6% (486) were also disconnected for nonpayment during these three months. CUB/600 Wochele-Jenks/11 *See also* CUB/601 and CUB/604. Additionally, from April 18, 2024, to July 31, 2024, there were 3,207 customers who were un-enrolled in IQBD simply because they did not respond to re-enrollment requests. *Id.* This means that approximately 21.3% of customers who were flagged for re-enrollment were unenrolled due to non-response. Of these un-enrolled customers, 24 were also medical certificate holders. CUB/600 Wochele-Jenks/12; *see also* CUB/604.

data requests made by CUB and Staff in this rate case,¹⁷⁸ which includes accessible data visualization for participants.

3. Going forward, utilize the data from its 2024 EBA and conduct equity impact analyses as it relates to the Company's proposals to increase rates for residential customers.

R. The Commission should reject AWEC's proposal to move to revenue-based allocation for IQBD cost recovery though Schedule 118:

CUB and Staff agree that the Commission should reject AWEC's proposals to modify the recovery mechanism of Schedule 118.¹⁷⁹ A move to revenue-based allocation for IQBD cost recovery would force residential customers to shoulder an additional \$6 million a year.¹⁸⁰ Staff similarly states that this is a way to "shift costs away from large customers, regarding less of the impact on equity."¹⁸¹ While CUB did not take an initial position specifically on AWEC's request to amend the per-site limit to a per-customer limit, CUB's view is that it is just another attempt by AWEC to shift cost recovery, and that it also needs to be rejected.

What AWEC describes as "rebalancing rate recovery for the IQBD program"¹⁸² is not balanced at all. The record shows that PGE's IQBD program, as it exists today, is still not sufficient to support the needs of the many thousands of residential customers who will be increasingly burdened through continuous rate increases. Meanwhile, PGE's high-tech industrial customers are continuing to grow their load despite the challenges of increased rates and inflation.¹⁸³ Any shifting of cost recovery from industrial customers to residential will only tip the scale further in the wrong direction. Accordingly, CUB urges the Commission to reject both of AWEC's requested changes to Schedule 118.

¹⁷⁸ CUB/ 604, CUB/606-607.

¹⁷⁹ See Staff Opening Br. at 74. CUB would not oppose Staff's recommendations, however, to evaluate creative cost-recovery models for Schedule 118 that distribute costs equitably across customer classes within the ongoing UM 2211 process. See Staff Opening Br. at 73-74.

¹⁸⁰ CUB/500 Tran/12.

¹⁸¹ Staff Opening Br. at 74.

¹⁸² AWEC Opening Br. at 49

¹⁸³ See CUB/741/Figure 4

Issue No. 58. The Commission should adopt CUB’s rate shock proposal.

Verde supports CUB’s rate shock proposal.¹⁸⁴ Staff supports such mechanisms “that can mitigate rate pressure and respond to the statewide call to address the rising rates and energy insecurity faced by increasing numbers of Oregon.”¹⁸⁵ PGE argues that CUB’s rate shock proposal is “inconsistent” with the balancing of interests in ORS 756.040 and regulatory compact because it would impose a delay on the collection of revenues.¹⁸⁶ The Commission has already explained however, that establishing a rate shock mechanism is within its constitutional and statutory boundaries.¹⁸⁷ The Commission can conclude that rates remain just and reasonable even if their delayed collection is projected to result in lower revenues.¹⁸⁸

CONCLUSION

For the foregoing reasons, CUB respectfully recommends that the Commission adopt its proposals in this proceeding.

Dated this 8th day of November 2024.

Respectfully submitted,

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¹⁸⁴ Verde Opening Br. at 1. (Walmart, AWEC and NewSun did not take a position on this issue).

¹⁸⁵ Staff Opening Br. at 76-77.

¹⁸⁶ PGE Opening Br. at 164-65.

¹⁸⁷ UG 490, *NW Natural, Request for a General Rate Revision*, Order No. 24359 at 46 (Oct. 25, 2024).

¹⁸⁸ *Id.*