

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 2377**

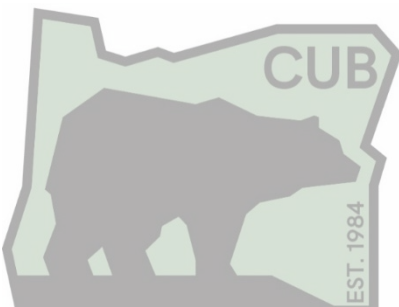
In the Matter of)

PUBLIC UTILITY COMMISSION OF)
OREGON,)

Investigation into Marginal Cost Study)
Treatment of Costs for Large Customers)
and Further Modifications to Portland)
General Electric Company's Rule C and)
Rule I.)

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

February 4, 2026



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Data centers’ demand on Portland General Electric’s (“PGE”) system is growing at an unprecedented scale and speed. By law, PGE must serve this demand. Yet this demand jeopardizes the other customer classes’ ability to receive adequate service at fair and reasonable rates. This is The Data Center Question. To date, PGE’s tariffs enable the utility to shift costs incurred to serve data centers onto other customers. With the passage of the POWER Act (HB 3456) and through this investigation, PGE must rectify that cost-shift. To do so, PGE has proposed the creation of a new class schedule for data centers: Schedule 96. PGE has also proposed a new mechanism, the Peak Growth Modifier (“PGM”), to allocate growth-related costs to all customers based on class contribution to system peak. The Oregon Citizens’ Utility Board’s (“CUB”) primary concern of our Opening Brief is that PGE’s proposal fails to properly assign the costs of data centers to data centers, as the POWER Act requires.

PGE has burden of persuasion and the ultimate burden of producing sufficient evidence to support its proposed tariff and the PGM. While some of the simpler components of this proposal have been resolved among the parties, the more difficult issues remain and are addressed, in part, in CUB’s Opening Brief.

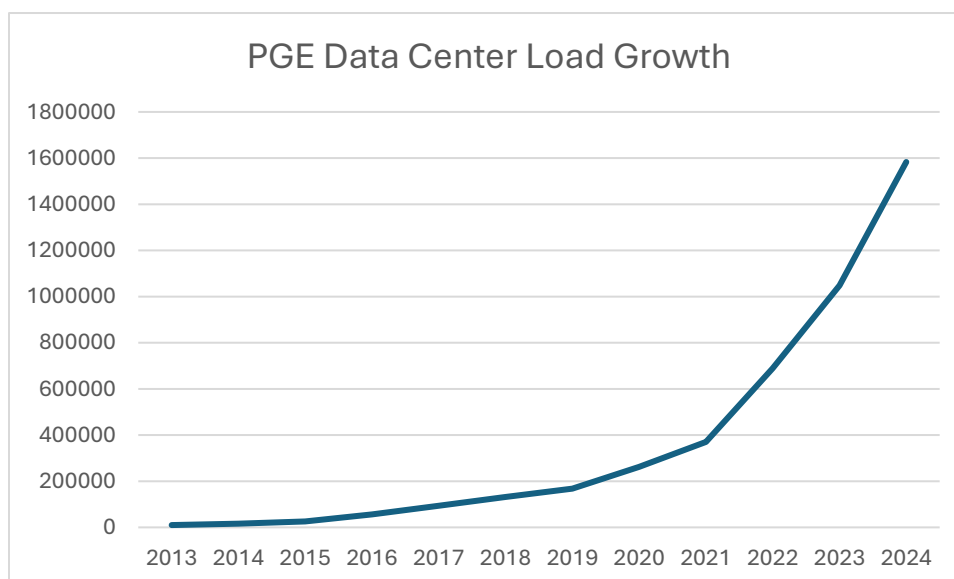
At the culmination of these issues, the Commission should order PGE to submit a compliance filing reallocating the revenue from the last rate case, and applicable single-issue rate cases, based on the decisions it makes in this case.

Contents

Introduction.....	3
Arguments and Authorities	5
I. The Commission has the authority to mitigate the impact of data center cost shifting.....	5
II. The Commission should direct PGE to assign the transmission and generation investments needed to serve data centers to data centers.	8
III. The size and scale of data centers raise unique risks that warrant stricter measures than those proposed in Rule C and I.....	18
IV. PGE should revisit distribution cost allocation as its modernized grid provides new energy and capacity to the system.	23
V. The Commission should consider innovations to meet HB 2021 emissions requirements amid growing data center demand.....	24
Conclusion	26

Introduction

Data centers have been the primary source of growth on PGE's system for the last decade.¹ This growth is not gradual. While other classes' growth remained stable or declined, data centers on PGE's system grew at an exponential rate.²



The data centers of the sizes we are seeing now are a new, very specific customer type, that has generally inflexible and substantive energy needs.³ The power hungry nature of data centers matters because it means that serving data centers is expensive. To meet the energy and capacity needs of a data center, PGE must build infrastructure to

¹ CUB/100 Jenks/8; *see also* CUB/105 Jenks /4; CUB/107 Jenks.

² CUB/100 Jenks/8; CUB/106 Jenks/2.

³ See CUB/100 Jenks/10.

serve the data center – things like transmission and substations. Likewise, PGE needs to deliver on that demand with new generation and capacity investments while at the same time offsetting the emissions from data centers constant peak demand to comply with Oregon’s emissions reduction law: HB 2021.

These are big and expensive investments – especially when we consider things like inflation and the price of steel. With long useful lives, customers could spend decades paying for the investments incurred, including the return to PGE’s shareholders.⁴ Traditionally, PGE socialized these capital costs among the customer classes. When all customer classes were growing equally, socializing the costs made sense. We assumed that the infrastructure supported the collective increase in demand on the system, thus benefiting all customers.⁵ But with the growth of a single customer class, the result of this socialization is subsidization. Absent this growth-related cost shift, residential rates would not be as high.

It is no coincidence, then, that the POWER Act (HB 3546),⁶ the FAIR Energy Act (HB 3179), the Performance Based Regulation bill (“PBR”) (SB 688), and the Grid Enhancing Technologies bill (“GETS”) (HB 3336) passed in the same legislative session. Customer affordability, data center cost accountability, and making better use of our existing electric grid are interrelated. The short of it is, as data centers come online, electricity is becoming luxury priced for PGE’s existing customers, even though it is a basic necessity.

⁴See CUB/100 Jenks/39.

⁵ *Id.* at 9.

⁶ See CUB/121 Jenks (House Bill 3546 as enrolled).

Arguments and Authorities

I. The Commission has the authority to mitigate the impact of data center cost shifting.

Since 1911, the Oregon legislature has delegated the authority to regulate public utilities exclusively to the Commission.⁷ A key component of this regulatory authority is the responsibility to protect public utility customers. Specifically, the Commission:

is expressly charged with representing utility customers and the public generally ‘in all controversies respecting rates, valuations, service, and all matters of which the commission has jurisdiction,’ and to use those powers ‘to 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.’⁸

In 2025, Oregon enacted the POWER Act.⁹ The aim of the POWER Act is to ensure that the large customers of for-profit electric utilities are paying their fair share. The POWER Act requires the creation of a data center class with its own tariff schedule.¹⁰ Under this Act, the Commission must ensure the tariff schedule will:

Allocate the costs of serving the class of retail electricity consumers that are large energy use facilities to the class in a manner that is equal or proportional to the costs of serving the class;¹¹ or

Directly assign the costs of serving a retail electricity consumer that is a large energy use facility to the retail electricity consumer.¹²

The Commission must also ensure that the tariff will:

Meet the same conditions the commission requires for a contract under section 5(1)(b)(A)(v) of this 2025 Act.¹³

⁷ OPUC Order No. 08-487 at 4.

⁸ *Id.* citing ORS 756.040(1).

⁹ See CUB/121 Jenks (House Bill 3546 as enrolled).

¹⁰ *Id.* at Section 2(2).

¹¹ *Id.* at Section 2 (2)(a)(A).

¹² *Id.* at Section 2 (2)(a)(B).

¹³ *Id.* at Section 2 (2)(b).

Whatever tariff is adopted must mitigate the risk of:

Other classes of retail electricity consumers paying unwarranted costs; and

Shifting the costs, in an unwarranted manner, of serving a retail electricity consumer that is a large energy use facility to other classes of retail electricity consumers, including costs of an electric company to meet load requirements resulting from the provision of electricity service to a retail electricity consumer that is a large energy use facility.¹⁴

Thus, at the core of the Commission’s legislatively-delegated powers, and legislatively-directed mandates, is the responsibility to protect utility customers from unreasonable practices, ensure reliable service, and set rates that are just and reasonable. This core function is distilled into the Commission’s mission “[t]o ensure Oregon utility customers have access to safe, reliable, and high quality utility services at just and reasonable rates.”¹⁵

In reaching a determination that utility rates are set at a just and reasonable level, the Commission has significant flexibility. The Court in *Federal Power Commission v. Hope Natural Gas Co* found that “under the statutory standard of ‘just and reasonable,’ it is the result reached, not the method employed, that is controlling.”¹⁶ This allows the Commission tremendous flexibility to employ a variety of ratemaking tools, as long as they reach a just and reasonable result.¹⁷ The Commission has addressed this flexibility, acknowledging that it:

sets rates under a comprehensive and flexible regulatory scheme. The legislature has expressed no specific process or method the Commission must use to

¹⁴ *Id.* at Section 2 (2)(c).

¹⁵ Oregon Public Utility Commission, About Us, *available at* <https://www.oregon.gov/puc/aboutus/Pages/default.aspx>.

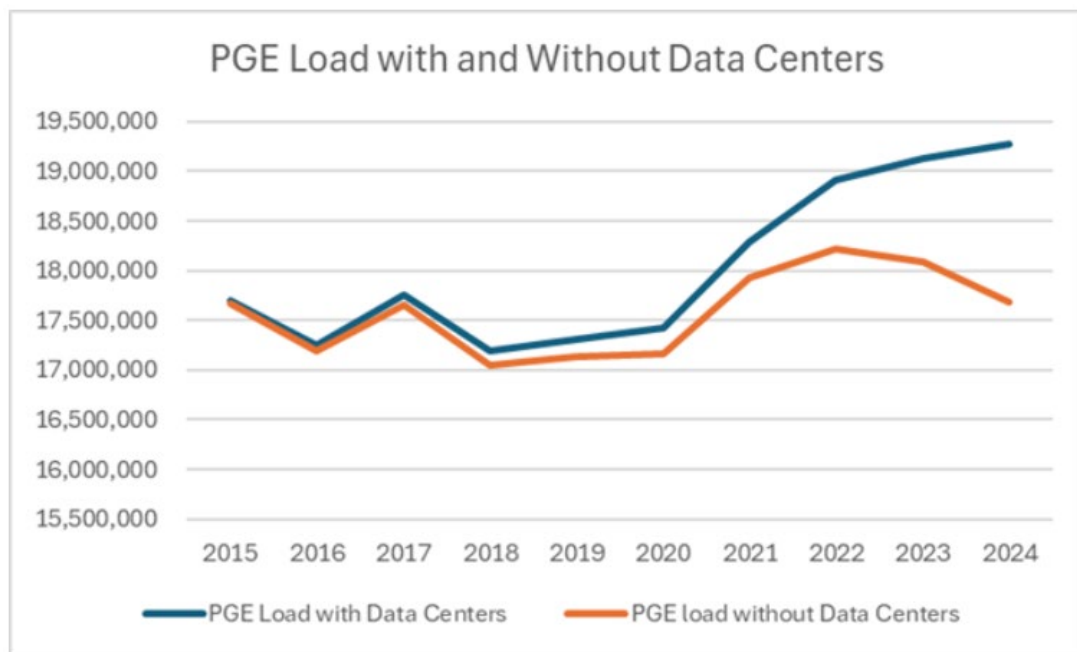
¹⁶ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

¹⁷ *Id.*

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.¹⁸ Underlying many of the arguments made in this proceeding is the cost causation

principle. Part of the bedrock of a just and reasonable rate, per the cost causation principle “utilities and regulators strive to allocate costs according to causation, meaning that customers should be charged for the costs they cause to the system.”¹⁹ As the Commission has explained, the cost-causation principle compares “the costs assessed against a party to the burdens imposed or benefits drawn by that party.”²⁰

In this case, cost causation is fairly clear; nearly all of PGE’s recent net load growth has been due to data centers.²¹ As the record shows,²² without the growth of this data center load on PGE’s system, demand would have declined over the last decade.²³



¹⁸ OPUC Order No. 08-487 at 5.

¹⁹ *In the Matter of J.M.G. v. PACIFICORP*, Docket No. UCR 191, Order No. 18-430 at 4 (2018).

²⁰ *Id.* citing *S.C. Pub. Serv. Auth. v. FERC*, 412 U.S. App. D.C. 41, 48, 762 F.3d 41, 48 (2014).

²¹ See CUB/100 Jenks/35.

²² Data presented in the graph from CUB/216 (PGE annual load) and CUB/106 (data center load).

²³ CUB/100 Jenks/4.

Moreover, like other utilities across the country, PGE's ongoing expectations about growth are dominated by data centers.²⁴ As a result, much of PGE's recent investment has been incurred to serve the growing load of industrial data center customers.²⁵ PGE has to size, build, and maintain a transmission network that can move power within its territory so there is power available where load is located.²⁶ A drive through Washington County, for example, shows transmission infrastructure built to serve the recent data center boom in Hillsboro and Beaverton.²⁷ Likewise, if a 1 GW data center locates in PGE's territory, it is clear that PGE will have to invest in some transmission and generation specifically to serve this customer's load. These data centers, and their contribution to load, are identifiable. The cost causation principle thus requires that rates reflect that these costs were caused by the growing data center load, who must pay for them.²⁸

II. The Commission should direct PGE to assign the transmission and generation investments needed to serve data centers to data centers.

In Opening Testimony, CUB put forward a proposal to allocate costs given the above circumstances. We recommended that data centers should be allocated the marginal cost of transmission and assign other customer classes the remaining

²⁴ See CUB/105 Jenks / 4; *see also* CUB/100 Jenks/7 (At the February 14th, 2025 investor presentation, PGE announced a year-over-year load growth of 3.1%, weather adjusted, with industrial deliveries up 10.7%. In comparison, residential deliveries were up only 0.5% and commercial deliveries were down 0.9%).

²⁵ CUB/100 Jenks/35,

²⁶ *Id.* at 34.

²⁷ *Id.* at 35.

²⁸ See Order No. 18-430 at 4.

transmission revenue requirement, divided proportionally.²⁹ We made similar recommendations with respect to generation.³⁰

The marginal cost of service (MCOS) study identifies the transmission cost for new customers that are adding new load to the system.³¹ Traditionally, in its MCOS study, PGE has treated all customers as if their load is new and assigned the same marginal cost of transmission to all customers.³² But the MCOS study data can be used more effectively. CUB's proposal would use the MCOS study data to allocate the marginal costs of the system to data centers.³³ A MCOS study identifies the long run incremental cost a utility would need to pay to serve a new customer.³⁴ The basis of our proposal was straightforward. Data centers are the customer driving the need for PGE to make new investments. So data centers should pay the marginal cost.³⁵

If the Commission does not accept this approach, CUB proposed necessary changes to PGE's peak growth modifier ("PGM") to bring it into compliance with the POWER Act. These changes include:

1. directly assigning costs;
2. recognizing energy efficiency as a resource that helps meet peak load and is being purchased primarily by residential customers;
3. rejecting a time limit on the assignment of growth-related costs; and
4. correcting PGE's subjective "growth-related" lens that would unreasonably constrain what costs would be subject to the PGM.

These changes are discussed below.

A. The PGM fails without direct assignment.

²⁹ CUB/100 Jenks/19; *see also* CUB/118 Jenks.

³⁰ *See* CUB/100 Jenks/38-40.

³¹ *Id.* at 13; *see also* CUB/115 Jenks/1.

³² *See* CUB/100 Jenks/15-18.

³³ *Id.* at 17-20.

³⁴ *Id.* at 9; *see also* CUB/115 Jenks/1.

³⁵ *See* CUB/200 Jenks/19-25.

PGE's proposed tariff does not meet the requirements of the POWER Act because the proposal does not directly assign the costs of serving data center customer to that customer.³⁶ When a specific transmission or generation investment is caused by new large customer load growth, that cost should be directly assigned to the customer or to the customer class associated with the need for that investment because of the unique qualities of service to meet the demand. As the Commission observed in UE 433, securing the level of capacity needed at the pace requested to meet large customer demand posed significant risk.³⁷ The Commission observed these characteristics of this demand meant the:

risks posed are broader, extending to upstream transmission and generation capacity, particularly in light of the emissions constraints created by HB 2021. It is important to address these risks and implement guardrails and appropriate incentives now before significant resource commitments are made. The scale of utility procurement and stranded asset risk associated with these loads creates a risk difference not only of degree, but of nature.³⁸

New transmission and generation typically have multi-decade useful lives. As such, there will be a need to ensure that the customer or class is paying for the fixed costs of the assets that were developed to serve that load.³⁹ The POWER Act specifically provides for direct assignment because direct assignment minimizes the risk of cost shifting, *i.e.*, subsidization, from data centers to other COS customers.⁴⁰ In contrast, the

³⁶ CUB/121 Jenks/Section 2 (2)(a)(B)).

³⁷ Order No. 24-447 at 99.

³⁸ *Id.*

³⁹ See CUB/100 Jenks/9.

⁴⁰ See CUB/121 Jenks/Section 2 (2)(a)(B).

PGM allocates growth-related costs to all customers based on class contribution to system peak.⁴¹ Under the PGM, there is no distinction between growth-related costs incurred to serve all customers and those incurred to serve only a single customer or the data center class as a whole. Without direct assignment, PGE will be shifting the costs to serve that individual customer/class to other customer classes through the PGM. The POWER Act requires the tariff to mitigate this cost shift, not enable it.⁴²

PGE opposes direct assignment.⁴³ PGE argues the large investments in transmission and generation are system costs that cannot be directly assigned.⁴⁴ While PGE's argument may have made sense in the past when all customer classes were growing equally, the argument fails in the face of the unique and identifiable growth characteristics of a single customer class, data centers. Moreover, PGE's argument ignores the cost causation principle discussed above. The cost causation principle does not require perfect alignment.⁴⁵ So even if other customers receive some ancillary benefits, this does not foreclose directly assigning costs incurred to serve the data center customer to that customer/class so that data centers pay their fair share.

Staff recommends direct assignment of local transmission only.⁴⁶ Local transmission investments are the investments PGE is making to the transmission system within its service territory.⁴⁷ Non-local transmission is transmission that exists outside of PGE's service territory and is used to bring power to PGE's service territory.⁴⁸ Staff

⁴¹ See PGE/100 Ferchland-Barrow/19.

⁴² CUB/121 Jenks/Section 2 (2)(c)(B).

⁴³ PGE/400 Ferchland – Barrow - Jose/4.

⁴⁴ See PGE/200 Ferchland – Barrow/12-13.

⁴⁵ Order No. 18-430 at 5.

⁴⁶ Staff/100 Stevens/31-32; Staff/300 Stevens/18-19.

⁴⁷ CUB/200 Jenks/23.

⁴⁸ *Id.*

proposes PGE directly assign local transmission investments to large load customers to the extent the Commission determines “load growth from large customers is the major driver in the asset’s construction.”⁴⁹ But data centers have uniquely large energy needs. The data centers located just in Washington County, for example, collectively use about the same amount of power as Eugene, Oregon’s second largest city.⁵⁰ The increase in data center load therefore will require significant new generating resources and the “long” or non-local transmission necessary to get the output of those resources to PGE’s system.⁵¹

While CUB believes that Staff’s proposal to directly assign the costs of local transmission to data centers is generally reasonable, CUB is concerned that it only applies to local transmission, thus omitting the substantial investment necessary to serve data centers. Transmission investments that are made outside of PGE’s service territory, but that are needed to deliver the magnitude of power needed for data centers, would still be socialized across all customers when it is rolled into the transmission revenue requirement.⁵² In turn, this cost-shift will raise the rates for all customers. This would not be in line with the POWER Act’s intention to mitigate the unwarranted costs and cost shifting from large load customers to other customers.⁵³

Recall too that this case started back in 2023 with the question in UE 416 of how to allocate the costs of the Hillsboro Reliability Project (HRP).⁵⁴ Staff had proposed to

⁴⁹ Staff/100 Stevens/31.

⁵⁰ See CUB/130 Jenks (explaining that Eugene’s municipal utility had 2.3 million MWh of energy sales in 2023).

⁵¹ CUB/200 Jenks/23-24.

⁵² *Id.* at 22.

⁵³ *Id.* at 24.

⁵⁴ *Id.* at 11.

directly assign the costs of the HRP to large loads, because that was the primary load that necessitated the HRP investment.⁵⁵ An outcome of that case was that instead of directly assigning those costs within UE 416, the Commission opened UE 430 and then the current proceeding, UM 2377, to investigate the entire issue of cost allocation for data center-related investments.⁵⁶ Accordingly, CUB recommends direct assignment should apply on a going-forward basis to the revenue requirement associated with the Shute and Evergreen substations that were built as part of the HRP.⁵⁷

CUB also recommends the Commission direct PGE to study the need for new generation and capacity resources and directly assign the fixed costs associated with the new generation and capacity resources to the appropriate customer(s) or class. When a resource is clearly connected to the growth of data center load, it should be directly assigned to the individual data center or to the data center class.⁵⁸ Correspondingly, a resource that is growth-related, but not directly assigned would be allocated based on the growth in customer classes, i.e., through the PGM, after recognizing the impact of energy efficiency.

B. To protect residential ratepayers from unwarranted growth-related costs, energy efficiency must be the first resource considered in the PGM.

Residential households more than offset their load growth through investing in energy efficiency for other classes of customers.⁵⁹ Yet PGE's peak growth modifier

⁵⁵ *In re Portland General Electric Company, Request for a General Rate revision; and 2024 Annual Power Cost Update*, Docket Number UE 416, Order No. 23-386, 14 (Oct. 30, 2023).

⁵⁶ *Id.*; see also CUB/300 Jenks/6.

⁵⁷ See CUB/300 Jenks/5-7.

⁵⁸ See Staff/100 Stevens/26-29.

⁵⁹ CUB/100 Jenks/5; CUB/ 200 Jenks/5.

(PGM) fails to recognize that energy efficiency is a resource, primarily purchased by residential customers, that helps meet peak load.⁶⁰ The Commission should not adopt the PGM unless it accounts for energy efficiency as a resource before assigning costs related to growth.

Oregon law requires that “[a]ll funds necessary to plan for and pursue cost-effective energy efficiency resources pursuant ... *must* be collected in the rates of an electric company through charges paid by all retail electricity consumers.”⁶¹ The law also places a statutory cap on how much certain large customers can contribute in rates towards this pursuit of cost-effective energy efficiency resources.⁶² There are no such caps on residential customers. As a result, residential customers have paid for the majority of this cost-effective energy efficiency . From 2017 through 2025, PGE’s residential customers were 39% of the load yet paid 53% of the costs of energy efficiency.⁶³ In other words, residential customers are paying to offset the load growth of other customers. The record also shows that the increase in energy efficiency savings that residential households are funding primarily goes to the commercial and industrial sector.⁶⁴ In this way, residential households are the deep pocket for freeing up capacity for data centers on PGE’s grid. Due to the current statutory caps noted above, residential customers will continue to subsidize data center growth under PGE’s proposed PGM without compensation.⁶⁵

⁶⁰ See CUB/300 Jenks/3, 5, 7-12.

⁶¹ CUB/203 Jenks/6 (emphasis added); see also CUB/200 Jenks/5.

⁶² See CUB/203 Jenks/7 (Section 3 (2)-(4)),

⁶³ CUB/200 Jenks/5; CUB/201 Jenks/2 (attachment A).

⁶⁴ See CUB/300 Jenks/8-9.

⁶⁵ See CUB/203 Jenks/7 (Section 3 (2)-(4)).

Energy efficiency has served Oregon well. But residential customers are paying too much of the cost of energy efficiency and will get less of the benefits as we assign the cost of load growth through the PGM to classes that are rapidly growing. The PGM should account for energy efficiency as a resource before assigning costs related to growth. This is not just a residential issue but could be a way for data centers to invest in resources to meet their loads.⁶⁶ The Commission should ensure that customers who fund energy efficiency outside of their property or their rate class see recognition of the role this energy efficiency investment has in avoiding investments in more expensive new resources.

C. The Commission should reject imposing a time limit on the assignment of growth-related costs.

The Commission should reject PGE's proposal to place a time limit on the assignment of costs to data centers or other growing load as this will continue cross subsidization contrary to the POWER Act. Whether three years or ten years, growth-related investments that are directly assigned to customers or allocated based on a growth-related allocation methodology should not become system resources based on such arbitrary time periods or ambiguous proposals.⁶⁷ These resources have decades-long lifespans, meaning the majority of the costs under PGE's proposed time limits would be socialized among the classes even where the resource was still used to serve data centers. Moreover, the ambiguity of PGE's final proposal kicks the can down the road to yet

⁶⁶ CUB/100 Jenks/5; CUB/200 Jenks/5-19

⁶⁷ PGE spent two rounds of testimony arguing for a three-year limitation on assigning the cost of growth-related transmission to classes that are growing. After three years, PGE's initial proposal would shift costs in an unwarranted manner to other customer classes. In its final round of testimony, PGE introduced a new 10-year phased method. Of note, no other party was able to provide testimony on PGE's final proposal.

another docket (UE 416, UE 430, UM 2377 ...) where PGE may again argue to limit the assignment of costs to the data centers causing the costs.

Instead of PGE's proposal, CUB and Staff agree that the initial cost assignment should remain until there is evidence that this no longer represents how the investments are being used. This recommendation is consistent with traditional ratemaking. 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.⁶⁸ The burden of persuasion and the ultimate burden of producing sufficient evidence to support its claims is always with the proponent of the rate change.⁶⁹ If PGE wishes to change the allocation of a growth-related investment, it has the burden to show the change is just and reasonable. The Commission should not carve out an exception to this standard of review in the PGM.

D. PGE's subjective "growth-related" lens puts unwarranted constraints on what costs would be subject to the peak growth modifier.

PGE's proposed PGM methodology is biased towards PGE's own determination of what investments are considered "growth-related". For example, PGE has long claimed that the transmission investments support the entire system, not individual loads. In UE 416, the docket that this investigation UM 2377 grew out of, Staff proposed to directly assign the local transmission costs of the Hillsboro Reliability Project to large customers.⁷⁰ PGE objected to direct assignment under the claim that the investments "will provide more

⁶⁸ *In re Portland General Electric Company Application to Amortize the Boardman Deferral*, Docket No. UE 196, Order No. 09-046 at 7 (Feb. 5, 2009).

⁶⁹ *Id.*

⁷⁰ UE 416/PGE/2600 Macfarlane – Pleasant/22.

reliable service to many residential and small commercial customers.”⁷¹ While there is little doubt that allowing the data center load to grow in Hillsboro without upgrading the local transmission system would have caused reliability problems, the record does not support that the Hillsboro Reliability Project would have been contemplated without the massive increase in load due to Hillsboro data centers.⁷² PGE’s assessment that these costs are “system costs” not attributable to the growth of data centers in Hillsboro foreshadows how PGE will determine what it believes are “growth-related” investments to include in the PGM going forward.

Thus, under PGE’s proposed PGM, PGE itself would identify the growth-related investments on its system according to the limited 4-CP and then allocate those costs using the PGM for a set number of years. Such a subjective approach to applying the PGM risks unwarranted cost shifts.⁷³ Instead the Commission should adopt an objective approach to determine what investments are growth-related. CUB supports Staff’s proposal to have utility Integrated Resource Plans (“IRP”) examine load requirements with and without new large load.⁷⁴ The information presented in the IRP can help inform stakeholders about when new resources are growth related including which assets are directly required by the growth in data center load.⁷⁵ Finally, the Commission should adopt methods that improve accuracy, as this can also mitigate subjectivity. This would include directing PGE to study the cost allocation approaches that the Regulatory

⁷¹ UE 416/PGE/2600 Macfarlane – Pleasant/22.

⁷² CUB/200 Jenks/22.

⁷³ See CUB/200 Jenks/21-22.

⁷⁴ CUB/300 Jenks/17; see Staff/100 Stevens/28-29.

⁷⁵ CUB/300 Jenks/17; see Staff/100 Stevens/28-29.

Assistance Project (“RAP”) proposes.⁷⁶ This study will provide more accuracy to establishing customers classes ‘contributions to peak growth. The approaches discussed by RAP can improve accuracy as compared to the 4-CP and 12-CP approaches.⁷⁷ This also includes adopting the Alliance of Western Energy Consumer’s (“AWEC”) proposal for weather normalization of the PGM. Residential load is highly influenced by weather such that a rare heat wave could cause a mismatch of contributions to peak in the PGM. It would also allow PGE to examine how to include energy efficiency as a marginal resource in the MCOS. The Commission should further require PGE to hold a workshop with stakeholders before its next rate case to review these alternative allocation approaches and provide meaningful feedback.

III. The size and scale of data centers raise unique risks that warrant stricter measures than those proposed in Rule C and I.

In UE 433 the Commission adopted new charges to ensure that fluctuations in large load customer’s expected demand would not increase power and transmission costs for other customers.⁷⁸ In that proceeding, the Commission found a capacity reservation charge and an excess demand charge were appropriate solutions to address the risks raised by parties.⁷⁹ The size and scale of data centers raised unique risks and prompted the Commission to act proactively to mitigate the magnitude of the impact on other customers.⁸⁰ As the Commission explained:

⁷⁶ See CUB/300 Jenks/15.

⁷⁷ *Id.* citing CUB/116 Jenks/56.

⁷⁸ Order No. 24-447 at 3.

⁷⁹ *Id.* at 99.

⁸⁰ *Id.*

Concerns about overestimation of load needs at the scale represented by demonstrated inquiries, even if such inquiries are in initial stages, are meaningfully different than the risks posed by overestimating or underestimating the needs of other loads. Not only are the risks of not being able to recover the incremental costs if the customer does not meet the forecasted load more significant, simply securing the level of needed capacity at the pace requested, particularly if loads are underestimated, poses a significant risk of diverting utility resources from other customer priorities.

The issues addressed below are similar both in scope and scale.

A. Distribution Assets

In addition to transmission and generation assets incurred to serve data centers, PGE must also invest in the distribution assets. These primary distribution assets include the substation and feeder that interconnects the data center to PGE's system.⁸¹ PGE's proposed UE 430 Rules C and I will apply to distribution assets. CUB generally supports the rules' requirements for an Exit Fee and flat billing for distribution assets that are attributable to the new large load customer.⁸² These two items work together to support recovery of distribution asset costs to connect the customer to the utility system from that customer.⁸³ That said, the rules overall are not airtight. They contain the following holes that would allow costs to filter through to the other rate classes.

First, as written the rules allow PGE to include the costs in rate base before they are used and useful. This is not permitted under ORS 757.355, Oregon's "used and useful" law. ORS 757.355 provides:

A public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of

⁸¹ CUB/100 Jenks/21.

⁸² CUB/131 Jenks/ 7.

⁸³ CUB/100 Jenks/21.

construction, building, installation or real or personal property not presently used for providing utility service to the customer.⁸⁴

Oregon courts have settled that the statute “precludes the PUC from allowing rates ... that include a rate of return on capital assets that are not currently used for the provision of utility services.”⁸⁵

Anticipating the data center’s entry to the grid, PGE often makes the distribution investments two years before the data center is actually online.⁸⁶ PGE then puts the cost of those assets into ratebase. The problem is, PGE is including these distribution assets in ratebase before the customer comes online – if they come online at all. This means the other classes are paying for investments that are neither used nor useful. In sum, if the investments were made to serve specific customers, and the customer is not yet using the assets, the assets are not used and useful. If the assets are not used and useful, the statute prohibits PGE from including the costs in rate base.

B. Contract Length.

Under POWER, data centers using or able to use 20 MW or higher are required to have at least 10-year contracts with PGE.⁸⁷ CUB argues that larger data centers between 50 MW and 100 MW should be required to sign 15-year contracts. And that data centers that are above 100 MW should be required to sign 25-year contracts. These lengths would also apply to contract renewals of these sized data centers.⁸⁸

⁸⁴ ORS 757.355(1).

⁸⁵ *Citizens' Util. Bd. of Oregon v. Pub. Util. Commn. of Oregon*, 154 Or.App. 702, 712, 962 P.2d 744, 752 (Or. App. 1998) (“*Trojan I*”); see also *Gearhart v. Pub. Util. Commn. of Oregon*, 299 P.3d 533, 541 (Or. App. 2013), *aff’d*, 339 P.3d 904 (Or. 2014).

⁸⁶ CUB/120 Jenks/2.

⁸⁷ CUB/121 Jenks/Section 5(1)(a)(A)(ii).

⁸⁸ CUB/200 Jenks/36.

C. Minimum Transmission Demand.

Consistent with the goals of the POWER Act and cost causation principles, the costs of transmission built because data centers require PGE to deliver power to their facilities should be assigned to data centers. It's all too easy to make an over-projected request to ensure excess capacity is available as needed. But the cost of this convenience should not be placed on PGE's other customers.

Data centers should be discouraged from over-projecting their demand by making sure they are responsible for the cost of assets built to serve their loads.⁸⁹ A Minimum Transmission Demand charge of 90% of requested demand should be applied to data centers that are below 100 MW. Customers that request 100 MW or more should pay a Minimum Transmission Demand charge of 95%.⁹⁰

D. Minimum Generation Demand.

Similarly to the above, as larger and larger data centers seek service on PGE's system, the risk generation incurred to serve the data center will sit idle and unpaid for increases in stride.⁹¹ The POWER Act requires a measure to mitigate this risk. CUB recommends PGE apply a charge of 80% of Generation Capacity to data centers that are under 100 MW. Data centers that are above 100 MW should be required to pay 90% of the expected generation capacity that they require.⁹²

⁸⁹ CUB/200 Jenks/37.

⁹⁰ *Id.* at 36; CUB/100 Jenks/23.

⁹¹ CUB/200 Jenks/38.

⁹² *Id.* at 37.

E. Exit Fees.

Exit fees are important to protect non-data center customers if a data center leaves the system.⁹³ Thus, they help mitigate the risk of cost-shifting as required by the POWER Act. CUB is generally aligned with the proposals offered by Staff and the Coalition, though CUB is concerned about whether these proposals are adequate for data centers nearing the end of their contracts.⁹⁴ If a data center is near the end of its contract length, there is a risk that the system may have difficulty absorbing the transmission and generating investment PGE recovers through the minimum demand charges. Accordingly, the Commission direct PGE to require a data center to pay the generation and transmission demand charges for the remainder of its contract, or five years, whichever is longer.⁹⁵ CUB supports a refund to a data center if another customer assumes all of, or part of, the capacity that is being left when a data center

F. Exceedance Penalty

The Commission should direct PGE to include the Exceedance Penalty in the tariff, not the contract.⁹⁶ The Commission should also adopt Staff's proposal to eliminate the exceedance penalty buffer established in UE 430.⁹⁷ CUB agrees with the Coalition that the initial exceedance penalty should be four times the tariff rate for Transmissions and 1.5 times the tariff rate for usage.⁹⁸ In addition, CUB is recommending that amount of the Exceedance Penalty should not be in the contract but should be in the tariff

⁹³ CUB/200 Jenks/39.

⁹⁴ *See* Coalition/100 Souder/11; Staff/100 Stevens/11.

⁹⁵ CUB/200 Jenks/39.

⁹⁶ CUB/300 Jenks/24.

⁹⁷ *Id.*; *see* Staff/100 Stevens/11.

⁹⁸ CUB/300 Jenks/24; *see* Coalition/100 Souder/11.

allowing the penalty to be adjusted to ensure that it effectively discourages data centers from misrepresenting their expected loads.⁹⁹

G. Sub-rate Class for Flexible Data Centers.

CUB generally supports the creation of a sub-class for flexible data centers but CUB cannot endorse Verrus' proposed criteria for defining a flexible load or specific proposal for allocating costs to a flexible load data center subclass.¹⁰⁰ It would be premature at this stage to determine what costs a flexible data center can avoid without first determining the cost responsibilities of the data center class.¹⁰¹ Instead, the Commission should require an additional examination to determine the criteria for defining flexibility and determining how this changes cost allocation.

IV. PGE should revisit distribution cost allocation as its modernized grid provides new energy and capacity to the system.

PGE's DSP outlines its grid modernization plans. Much of the system benefits flowing to the grid from PGE's distribution system are identified as part of the Virtual Power Plant ("VPP"), meaning that PGE is getting the same benefits from the distribution system as it would from an actual generating plant.¹⁰² And while the direct costs of the VPP are allocated as system resources, the physical elements of the distribution system that enable the VPP are often treated as old-fashioned distribution items, despite being far from old fashioned. For example, smart meters, three-phase conductors, and distribution management systems that drive distribution system spending support the VPP that

⁹⁹ CUB/300 Jenks/24.

¹⁰⁰ CUB/200 Jenks/20.

¹⁰¹ *Id.*

¹⁰² CUB/200 Jenks/31-32.

produces energy and capacity benefits for the entire system.¹⁰³ PGE’s current cost allocation methodology fails to recognize that many of the elements of PGE’s VPP could not exist without the two-way distribution system that is causing residential rates to sharply increase.¹⁰⁴

To begin to address this issue, the Commission should order PGE to conduct a study to identify which elements of the distribution system provide system benefits by supporting programs like the VPP and DER.¹⁰⁵ In its next general rate case propose a new distribution allocation methodology that recognizes these system benefits.¹⁰⁶

V. The Commission should consider innovations to meet HB 2021 emissions requirements amid growing data center demand.

HB 2021 requires PGE to reduce carbon emissions by 80% by 2030. At the time HB 2021 passed, PGE was not experiencing net load growth but the load growth that is now occurring because of data centers may make it difficult to meet these emission requirements.¹⁰⁷

The POWER Act recognizes these HB 2021 requirements. The POWER Act requires the Commission to mitigate the risk that the data center will “[i]mpede the electric company’s ability to meet the clean energy targets set forth in ORS 469A.410 or reduce the emissions of greenhouse gases consistent with state policy.”¹⁰⁸ In Opening Testimony, Staff proposed a methodology that the Commission could use to mitigate that risk. For data centers wanting to come onto service as cost-of-service customers, Staff

¹⁰³ CUB/ 200 Jenks/32.

¹⁰⁴ *Id.*

¹⁰⁵ CUB/200 Jenks/27.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 43.

¹⁰⁸ CUB/121 Jenks/Section 2 (3)(c).

proposed an interconnection queue for new large load customers, with customers in the queue needing to wait until for service until emission-free generation and the necessary transmission infrastructure can be available at just and reasonable rates.¹⁰⁹

Meeting Oregon 2030 emission requirement is a challenge without significant load growth due to data centers. Data center load growth makes meeting these requirements more difficult. There are ways to address this such as allowing data center load growth to be met by direct access, in which case the emission does not count against PGE's limit;¹¹⁰ prioritizing the queue relating to emissions per Staff's proposal;¹¹¹ and including the "but for" analysis in the IRP discussed above.¹¹² CUB also supports improved engagement and transparency, including the proposals made by the Columbia River Inter-Tribal Fish Commission("CRITFC") that PGE seek tribal consultation as a facet of Schedule 96 or otherwise to comply with the POWER Act and/or HB 2021.¹¹³ Additionally, energy efficiency is a non-emitting resource that can help PGE meet its HB 2021 requirements while bringing down the marginal cost. For customers with Allocated Capacity under 100 MW, the Coalition recommends the Commission require customers that do not hit the HB 3141 cap on contributions to the public purpose charge and energy efficiency to pay the remaining amount up to the HB 3141 contribution cap.¹¹⁴ Staff also recommends that customers at or above 20 MW pay the maximum contribution combined

¹⁰⁹ Staff/200 Bolton/3-4.

¹¹⁰ CUB/100 Jenks/27.

¹¹¹ Staff/200 Bolton/3-4.

¹¹² See Staff/100 Stevens/28-29.

¹¹³ See CRITFC/400 DeCoteau 8-12.

¹¹⁴ Coalition/400 Souder/43.

under ORS 757.054 and ORS 757.612, unless the customer is below 90 percent of their forecasted generation or transmission demand.¹¹⁵ CUB supports both proposals.

Conclusion

UM 2377 is Oregonians' first shot at implementing the POWER Act to protect customers from data center costs. As ratepayers' paychecks subsidize just a few of the wealthiest corporations, the will of the legislature and the law is clear: data centers must pay their own way. Other customers should not be responsible for the investments needed to serve these multi-billion dollar industries. Faced with an affordability crisis we need to get data center regulation right the first time. Not only does the Commission have the authority to direct PGE to fairly allocate costs among its customer classes, but the POWER Act requires it.

CUB urges the Commission to reject PGE's Schedule 96 as presented. PGE's proposed tariff and PGM fails to properly assign the costs of data centers to data centers and are unlawful. In its place CUB has proposed that data centers should be allocated the marginal costs as the customer class causing increases to demand. Alternatively, CUB proposed changes to the PGM including directly assigning costs, recognizing energy efficiency as a resource that helps meet peak load, rejecting a time limit on the assignment of growth-related costs; and correcting PGE's subjective "growth-related" lens. Reflecting back on the Commission's order in UE 433, CUB also proposed changes to Rule C and I to include stricter measures to mitigate the unique risks of data center

¹¹⁵ Staff/600 Bolton/14.

demand. CUB then recommended PGE revisit distribution system cost allocation as PGE's modernization of the distribution system has created new energy and capacity. Finally CUB supported innovative measures proposed by the parties to address the interplay between the POWER Act, the magnitude of data center demand, and the risk of meeting HB 2021 emissions reductions requirements with that added demand.

The Commission should order PGE to submit a compliance filing reallocating the revenue from the last rate case, and applicable single- issue rate cases, as soon as

In sum, CUB does not recommend approval of Schedule 96. As presented, PGE's proposed tariff and PGM fail to properly assign the costs of data centers to data centers, as the POWER Act (HB 3456) intended.

At the culmination of this proceeding, CUB requests the Commission order PGE to submit a compliance filing reallocating the revenue from the last rate case, and applicable single-issue rate cases, based on the decisions it makes in this case.

Pursuant to Administrative Law Judge (ALJ) Mapes December 8, 2025 Ruling to grant PGE's motion to amend the procedural schedule, CUB respectfully submits its Opening Brief in the above-captioned proceeding February 4, 2026.

/s/ Claire Valentine-Fossum

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