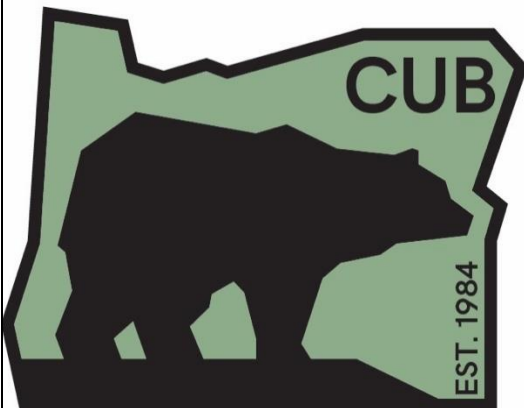


**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 1817**

In the Matter of )  
 )  
PORTLAND GENERAL ELECTRIC )  
COMPANY, )  
 )  
Application for the Deferral of Storm- )  
Related Restoration Costs. )  
\_\_\_\_\_ )

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

June 13, 2019



**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 1817**

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC	)	
COMPANY,	)	OPENING BRIEF OF THE OREGON
	)	CITIZENS' UTILITY BOARD
Application for the Deferral of Storm-	)	
Related Restoration Costs.	)	
_____	)	

**I. INTRODUCTION**

*A. Background and Procedural Posture*

Pursuant to Administrative Law Judge (“ALJ”) Moser’s March 14, 2019 Prehearing Conference Memorandum, the Oregon Citizens’ Utility Board (“CUB”) hereby submits its Opening Brief in the above-captioned proceeding. In this Brief, CUB responds to arguments raised by Portland General Electric Company (“PGE” or “the Company”) in testimony throughout this docket. CUB joins Staff of the Public Utility Commission of Oregon (“Staff”) and the Alliance of Western Energy Consumers (“AWEC”) in opposing the Company’s request seeking Public Utility Commission of Oregon (“Commission”) authorization to defer approximately \$8 million in Level III storm damage restoration costs between January 11, 2017 and year-end 2017.<sup>1</sup> The

---

<sup>1</sup> See UM 1817 – CUB/100/Gehrke/3, lines 17-18 and UM 1817 – Staff/100/Moore/1 and UM 1817 – AWEC/100/Hellman/2 at 9.

evidentiary record in this proceeding demonstrates that not one non-Company party supports PGE's request.<sup>2</sup>

Utilities like PGE must repair damage to their systems that occur from storm damage in order to maintain or restore service to their customers. PGE proposed a balancing account for Level III storm cost recovery in its 2010 rate case—OPUC Docket No. UE 215.<sup>3</sup> PGE defines Level III storms as those resulting in an outage that is expected to impact at least 50,000 customers, or across three to four of their regions, or rendering several substations and feeders out of service.<sup>4</sup> In response to PGE's UE 215 balancing account proposal, Staff proposed a reserve account utilizing a ten-year average adjusted to reflect present value as a method to forecast Level III storm costs.<sup>5</sup> That method is used today. The reserve account enables the Company to save unused money collected for Level III storms in subsequent years.<sup>6</sup>

In 2017, several years of successive Level III storms depleted PGE's storm reserve account.<sup>7</sup> The Company filed this request for deferred accounting on January 11, 2017 during a storm that began the prior evening.<sup>8</sup> This Brief will discuss the merits of the Company's filing, and will detail how PGE's deferred accounting application fails to meet the Commission's discretionary standard for granting a deferred accounting application. The Company's deferral request does not rise to the requisite magnitude of

---

<sup>2</sup> UM 1817 – PGE/200/Nicholson – Bekkedahl – Tooman/1, lines 14-16.

<sup>3</sup> UM 1817 – CUB/100/Gehrke/2, lines 12-13.

<sup>4</sup> *Id.* at lines 9-12.

<sup>5</sup> UM 1817 – CUB/100/Gehrke/2-3, lines 12-13, 1-3; UM 1817 – Staff/100/Moore/3, lines 7-9.

<sup>6</sup> UM 1817 – CUB/100/Gehrke/3, lines 3-5.

<sup>7</sup> *Id.* at lines 8-9.

<sup>8</sup> UM 1817 – Staff/100/Moore/2, lines 9-11.

harm to justify Commission authorization. Therefore, CUB respectfully requests that the Commission deny PGE's request for deferred accounting in this matter.

## II. ARGUMENT

PGE's application does not meet the standard for authorization by the Commission's own discretion. The Commission's review of a request to defer costs involves these two stages of review, and the Commission may deny authorization to defer costs at either stage.<sup>9</sup> That is, even if the Commission were to find that a deferral request met the statutory criteria in ORS 757.259(2)(e), it could still deny the request under its own discretion. This Brief will focus on why the Company's application should be denied under the Commission's discretionary authority. CUB respectfully urges the Commission to decline to exercise its discretion to grant PGE's application.

The first stage of the Commission's review involves a determination of whether a deferral application meets the criteria set forth in ORS 757.259(2)(e). ORS 757.259(2)(e) is a catch-all provision that allows deferral of:

[i]dentifiable 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 the benefits received by ratepayers.<sup>10</sup>

The second stage of the Commission's review involves a permissive exercise of the Commission's discretion under ORS 757.259(2), providing, in pertinent part:

---

<sup>9</sup> *In re Public Utility Comm'n of Oregon, Staff Request to Open an Investigation Related to Deferred Accounting*, OPUC Docket No. UM 1147, Order No. 05-1070 at 2 (Oct. 5, 2005) (hereafter OPUC Order No. 05-1070).

<sup>10</sup> OPUC Order No. 05-1070 at 2-3.

Upon application of a utility or ratepayer or upon the Commission’s own motion . . . the commission by order *may* authorize deferral of the following amounts for later incorporation into rates.<sup>11</sup>

When exercising this discretion, the Commission considers two interrelated factors: the type of event that caused the deferral, and the magnitude of the event’s effect.<sup>12</sup> The Commission draws a distinction between risks that can be predicted to occur as part of the normal course of events—stochastic risks—and risks that are not susceptible to prediction and quantification—scenario risks.<sup>13</sup> All non-Company parties to this proceeding agree that storm-related restoration costs are stochastic risks. Stochastic risks are generally not appropriate for deferral unless the magnitude of the financial impact of the event on the utility is substantial. As CUB will detail in this brief—and as the record and prior Commission precedent clearly detail—the approximately \$8 million that the Company seeks to defer in this case is not sufficiently substantial to warrant Commission authorization.

While deferred accounting applications are appropriate in limited, discrete circumstances—such as when an entirely unforeseen event results in an unexpected cost of substantial magnitude—this is not one of them. Deferred accounting is a narrow exception to the broad prohibition against retroactive ratemaking. It is also a form of single-issue ratemaking that the Commission has long disfavored.<sup>14</sup> Over or under-recovery of any single expense is irrelevant in ratemaking—it is the “total effect of the

---

<sup>11</sup> *Id.* at 3 (emphasis added).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *In re PGE Request for a General Rate Revision*, OPUC Docket Nos. UE 180/184, Order No. 07-454 at 5 (Oct. 22, 2007); *City of Portland v. PGE*, OPUC Docket No. UM 1262, Order No. 06-636 at 7 (Nov. 17, 2006).

rate” that should be primarily taken into consideration.<sup>15</sup> The Commission has found that deferred accounting is an “exceptional form of ratemaking” that “should be used sparingly.”<sup>16</sup>

Further, deferrals ensure dollar-for-dollar recovery of costs for the utility, which has the practical effect of shifting all business risk onto ratepayers.<sup>17</sup> For its part, PGE agrees with this general ratemaking principle, stating that “[d]eferrals should be limited because most costs and risks are embedded in PGE’s revenue requirement and associated prices.”<sup>18</sup> Isolated, single issue ratemaking mechanisms like deferrals fail to account for the holistic ebbs and flows of revenues and expenses that utilities incur, as well as the Commission-approved return on equity (“ROE”) that utilities are given as compensation for operating risk.

CUB’s Brief will demonstrate that: (i) PGE’s application fails to satisfy the necessary prerequisites for the Commission to exercise its discretion to authorize a deferral; and (ii) that other policy considerations necessitate that the Commission deny PGE’s application in this matter.

A. *The Commission should decline to exercise its discretionary authority to grant PGE’s application.*

The Commission should deny the application under its discretionary authority to do so. Whether or not the Commission finds that PGE’s application meets the statutory

---

<sup>15</sup> *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 US 591, 602 (1944); *see also Gearhart v. Pub. Util. Comm’n of Oregon*, 255 Or App 58, 63 (2013) (“the validity of a particular determined rate is measured, not on the individual theories or methodologies used by the PUC, but on the ‘end result’ and whether it is just a reasonable.”).

<sup>16</sup> OPUC Order No. 05-1070 at 10.

<sup>17</sup> UM 1817 – Staff/100/Moore/14, lines 9-11.

<sup>18</sup> UM 1817 – PGE/200/Nicholson – Bekkedahl – Tooman/10, lines 6-7.

criteria, it can deny authorization to defer costs at either stage of its two-step analysis.<sup>19</sup> CUB continues to believe that Level III storm risk represents a stochastic risk. As such, the magnitude of harm must be substantial to warrant Commission authorization. As is well-demonstrated by all non-Company parties to this proceeding, an approximately \$8 million deferral that represents 36 basis points to the Company's authorized ROE does not represent harm of substantial magnitude.<sup>20</sup>

1. *Level III Storm damage represents a stochastic risk.*

Staff, CUB, and AWEC all view the risk associated with Level III storms as a stochastic risk. The Commission defined stochastic and scenario risks in UM 1234, explaining “that a stochastic risk can be predicted to occur as part of the normal course of events, whereas a scenario risk is not susceptible to prediction or quantification.”<sup>21</sup> Further, stochastic risks imply that there is a distribution of costs around some average—sometimes they are higher than normal, sometimes they are lower.<sup>22</sup> In determining whether a risk is scenario or stochastic, the Commission will look to whether the event was modeled in rates and whether it was foreseeable.<sup>23</sup> Even though stochastic risks may have random occurrence—i.e., we are unable to predict the severity of storms in a given year—they can still be modeled and forecasted with some degree of accuracy.<sup>24</sup> While the Company's 2017 Level III storm-related restoration costs were relatively high, they were not historically unprecedented.<sup>25</sup> Restoration costs have historically fluctuated, and

---

<sup>19</sup> OPUC Order No. 05-1070 at 2.

<sup>20</sup> See, e.g., UM 1817 – CUB/100/Gehrke/8, lines 2-4.

<sup>21</sup> UM 1817 – AWEC/100/Hellman/9, lines 7-9, citing OPUC Order No. 07-049 at 9 (Feb. 12, 2007).

<sup>22</sup> UM 1817 – AWEC/100/Hellman/10, lines 17-19.

<sup>23</sup> UM 1817 – Staff/100/Moore/7, lines 7-14.

<sup>24</sup> UM 1817 – Staff/100/Moore/7, lines 15-17.

<sup>25</sup> UM 1817 – Staff/100/Moore/13, lines 4-6.

the 2017 costs are not abnormal when examined in the context of costs that PGE has incurred over time.<sup>26</sup>

PGE's Level III storm-related restoration costs are a stochastic risk because they were modeled and foreseen.<sup>27</sup> The current ten-year rolling average ratemaking mechanism that compensates PGE models these costs in rates. These costs are foreseen because the Company is given a certain amount of money each year to account for the costs they will incur to repair storm damage. Just because the costs change from year to year—and, in some years will be higher than others—does not render Level III storm damage a scenario risk. It is merely a distribution around an average. Further, as CUB notes in testimony, these storm-related restoration costs are known by the Company and are communicated to shareholders as part of the ordinary course of business.<sup>28</sup> PGE unsuccessfully attempts to argue that this logic would mean that a Cascadia earthquake would be a stochastic risk because PGE investors were presented with this risk.<sup>29</sup> This argument is unavailing because the damage from a Cascadia earthquake is not modeled in rates. PGE receives, in rates, the average of the past ten years of Level III storm-related restoration costs. Actual restoration costs will be distributed around this average, and it is likely that, in some years, future storm costs will be below this average. CUB is unpersuaded by the Company's arguments and continues to believe the underlying risk in this proceeding to be stochastic in nature.

---

<sup>26</sup> *Id.*

<sup>27</sup> UM 1817 – Staff/100/Moore/8, lines 16-18.

<sup>28</sup> UM 1817 – CUB/100/Gehrke/5, lines 5-6.

<sup>29</sup> UM 1817 – PGE/200/Nicholson – Bekkedahl – Tooman/3, lines 18-21.



2. *Regardless of the type of risk, the magnitude of harm is insufficient to justify granting PGE's application.*

Stochastic risks are only eligible for deferred accounting if the magnitude of the financial impact on the utility is “substantial enough to warrant deferral.”<sup>30</sup> If the event giving rise to the deferral was neither modeled nor foreseen, “then the magnitude of harm that would justify deferral likely would be lower.”<sup>31</sup> The harm that PGE has incurred—\$8 million or 36 basis points of PGE’s 2017 regulated adjusted ROE—is not significant enough to justify Commission approval regardless of the type of risk at issue.<sup>32</sup> However, given that all non-Company parties agree that the risk is stochastic in nature, the magnitude of harm in this proceeding is especially insufficient to warrant deferred accounting. Although the Commission has previously declined to set a specific threshold for the magnitude of harm necessary to authorize deferrals for either stochastic or scenario risks, it has provided guidance that can be used in this case.<sup>33</sup>

The most important consideration for deferral applications is the financial impact the utility.<sup>34</sup> A pertinent consideration is whether PGE could reasonably be expected to bear the costs associated with a deferral application between rate cases.<sup>35</sup> Further, various Commission decisions demonstrate that the 36 basis points at issue here are well below the magnitude of harm at issue in other proceedings where the Commission declined to authorize a deferral. The Commission imposed a 250 basis point deadband

---

<sup>30</sup> OPUC Order No. 05-1070 at 3

<sup>31</sup> *Id.* at 7.

<sup>32</sup> UM 1817 – AWEC/100/Hellman/14, lines 5-7 (“Regardless of whether storm costs are considered to be a “stochastic” or “scenario” risk, \$8 million is not a significant enough financial impact to warrant deferral under any circumstances.”).

<sup>33</sup> UM 1817 – AWEC/100/Hellman/13, lines 4-6.

<sup>34</sup> UM 1817 – AWEC/100/Hellman/7, lines 13-14.

<sup>35</sup> UM 1817 – Staff/100/Moore/11, lines 9-11.

onto a deferral application made by PacifiCorp in docket UM 995.<sup>36</sup> The Commission granted a deferrals of costs associated with scenario risks of \$26 million in 2007, but denied those for stochastic risks of \$31.6 million in 2004 and \$16.4 million in 2016.<sup>37</sup> In the 2016 example, UM 1623, the Commission stated that the 86 basis points considered in that application was “well within the bounds of acceptable risks between rate cases.”<sup>38</sup> If 86 basis points was well within the bounds of acceptable risk, it stands to reason that 36 basis points would be as well.

CUB recognizes that the Commission has observed that Level III storm costs that can be justified as extreme may warrant deferral.<sup>39</sup> However, we firmly believe that this deferral application should be judged based upon the financial impact to the utility, as has historically been Commission practice. The magnitude of harm at issue here is simply insufficient to warrant deferred accounting. Having said that, CUB did offer a reasonable threshold to judge future Level III storm deferrals should the Commission find that this risk is *scenario* in nature. We encourage the Commission to continue to employ the “use of a flexible, fact-specific review approach that acknowledges the wide range of reasons why deferred accounting might be beneficial to customers and utilities.”<sup>40</sup> However, if the Commission would like to set a threshold to judge future Level III storm deferrals by, we believe 100 basis points is sufficient magnitude to justify granting a scenario risk deferral. We do, however, continue to believe that Level III storm risk is stochastic in

---

<sup>36</sup> *In re Application of PacifiCorp for an Accounting Order Regarding Excess Net Power Costs*, OPUC Docket No. UM 995, Order No. 01-420 (May 11, 2001)

<sup>37</sup> UM 1817 – AWEC/100/Hellman/13, lines 7-10, citing docket No. UM 1071, Order No. 04-108 at 9 (Mar 2, 2004); OPUC Order No. 16-257 at 2.

<sup>38</sup> OPUC Order No. 16-257 at 4.

<sup>39</sup> *In re PGE Request for a General Rate Revision*, OPUC Docket No. UE 335, Order No. 18-464 at 14.

<sup>40</sup> OPUC Order No. 05-1070 at 1.

nature. Once again, regardless of the type of risk in question, 36 basis points is too low to warrant authorization. CUB respectfully requests that the Commission deny PGE's application in this matter.

B. *Other considerations.*

CUB, Staff, and AWEC all agree that PGE's deferral request should be denied, as it fails to meet the requisite magnitude of harm. CUB agrees with AWEC that this is a clear-cut case in which no deferral is warranted.<sup>41</sup> Beyond this threshold issue, however, CUB believes that granting the Company's application would be inappropriate due to a variety of policy considerations. CUB highlights a few additional considerations for the Commission's review of the Company's application.

First, regardless of this proceeding's outcome, it is imperative that the Commission retain its existing precedent and framework regarding the use of deferrals and the analysis used to evaluate them.<sup>42</sup> The Commission has significant discretion under its broad ratemaking authority to review deferred accounts based on the nature of the event and the magnitude of the event's impact on a utility's costs or revenues.<sup>43</sup> This discretion contains the understanding that deferred accounting is an extraordinary form of ratemaking that should be reserved for limited, discrete circumstances.<sup>44</sup> CUB believes the Commission should continue to exercise this discretion on a case-by-case basis, with the financial impact to the utility overall as the main factor.

---

<sup>41</sup> UM 1817 – AWEC/100/Hellman/20, line 6.

<sup>42</sup> See UM 1817 – Staff/100/Moore/18, lines 3-5.

<sup>43</sup> OPUC Order No. 05-1070 at 1.

<sup>44</sup> UM 1817 – CUB/100/Gehrke/6, lines 11-13; UM 1817 – Staff/100, lines 8-10.

A decision to grant the Company's application in this matter has the potential to erode the existing precedent and framework through which the Commission reviews deferred accounting applications. The financial impact is too small. Such a decision would set a future precedent that would open the door for PGE and other utilities to seek deferral of all manner of unexpected costs, regardless of the magnitude of harm.<sup>45</sup> This would run counter to the Commission's general policy against single-issue ratemaking. CUB continues to stress that setting such a precedent would be dangerous, as it would be outside of the scope of Commission-delineated deferral guidelines.<sup>46</sup>

Second, CUB joins AWEC in expressing concern over the sheer number of deferrals that PGE currently has outstanding.<sup>47</sup> PGE notes seventeen different deferrals in its testimony.<sup>48</sup> This extraordinary ratemaking tool has been used enough in recent years to render it commonplace. Granting a deferral with such a low magnitude would do little to assuage our concerns. The information asymmetry associated with utility deferred accounting application ensures that most deferrals will swing in the Company's favor.<sup>49</sup>

In opposition, PGE argues that it only has two deferrals that fall in the stochastic/scenario risk category, and, if it were to use the information asymmetry, it would be able to over-earn above its actual ROE on a regular basis.<sup>50</sup> Both of these arguments are easily dismissed. Just because the utility claims to only have two deferrals

---

<sup>45</sup> UM 1817 – Staff/100/Moore/18, lines 11-15.

<sup>46</sup> UM 1817 – CUB/100/Gehrke/8, lines 2-4.

<sup>47</sup> UM 1817 – AWEC/100/Hellman/20, lines 6-8.

<sup>48</sup> UM 1817 – AWEC/100/Hellman/20, lines 9-10.

<sup>49</sup> UM 1817 – CUB/100/Gehrke/6, line 15.

<sup>50</sup> UM 1817 – PGE/200/Nicholson – Bekkedahl – Tooman/12, lines 15-21.

in that category does not mean that it is not passing over opportunities to file deferrals to the benefit of customers. While we do not know if that is happening—due to the aforementioned information asymmetry—we do know that the costs and benefits that utilities incur ebb and flow. PGE has many deferrals that benefit its shareholders. CUB is only aware of one that benefits customers—the federal tax reform deferral that was initiated by CUB and Staff. Further, simply because PGE is not earning above its authorized ROE on a consistent basis does not mean that the number of deferrals it has is reasonable. It is certain that it is at least earning closer to its authorized ROE due to the large number of deferrals it has. One can only wonder how many deferrals that would benefit customers are not being filed.

Finally, CUB notes that the Commission stated an openness to consider a deferral of the 2017 Level III storm if the costs were shown to be a result of climate change causing greater storm intensity.<sup>51</sup> CUB does not dispute that climate change is happening, nor do we dispute that the utility risks are generally changing as a result. CUB is open to discussing the effects that climate change has on storm-related restoration costs and weather-related risk but believes such a discussion is beyond the scope of this docket. We urge the Commission to judge this deferral application under its existing analytical structure and discretionary authority. Under that analytical framework, we urge the Commission to deny the Company's application.

///

///

---

<sup>51</sup> UM 1817 – AWEC/100/Hellman/2, lines 15-16, citing OPUC Order No. 18-464 at 14 (Dec. 14, 2018).

### III. CONCLUSION

For the foregoing reasons, CUB respectfully requests that the Commission deny PGE's application in this matter. The evidentiary record is robust in opposition to the Company's request. The magnitude of harm at issue is insufficient to warrant deferred accounting. PGE's request should therefore be denied.

Dated this 13<sup>th</sup> day of June, 2019.

Respectfully submitted,



Michael P. Goetz, OSB #141465  
General Counsel  
Oregon Citizens' Utility Board  
610 SW Broadway, Ste. 400  
Portland, OR 97205  
T. (503) 227-1984 x 16  
F. (503) 224-2596  
E. [mike@oregoncub.org](mailto:mike@oregoncub.org)