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.	STAFF OPENING BRIEF

I. Introduction.

The issue before the Commission is whether Portland General Electric Company (PGE) should be allowed to defer for later recovery in rates "Level III" storm damage restoration costs that exceed amounts for such costs that PGE collects in rates annually. PGE filed this request for deferred accounting on January 11, 2017, in the midst of a severe winter storm that began in the evening on January 10, 2017. The deferral application covers the period from January 11, 2017, to December 31, 2017, and includes PGE's request to defer $8 million.

Staff opposes PGE's deferral application because the circumstances do not satisfy the Commission's previously articulated principles governing review of deferral applications and justify the extraordinary remedy of deferred accounting. Accordingly, Staff recommends that the Commission deny PGE's application.

II. Background.

A. Level III storm damage restoration costs.

Level III storms are those that cause outages that meet at least one of the following criteria, (1) affect at least 50,000 customers, (2) qualifies for Institute of Electrical and Electronics Engineers (IEEE) Major Day Event exclusion, or (3) includes several substations or feeders. Prior to 2011, PGE purchased property insurance to cover Level III storm damage restoration costs (hereinafter referred to as "Level III storm costs"). PGE's actual cost for this

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insurance was approximately $1.5 million a year and expense for this insurance was included in PGE's revenue requirement for purposes of setting rates.[1] In its 2010 general rate case, PGE testified that property insurance for Level III storm costs would no longer be available at favorable terms and that PGE intended to discontinue the policy.[2] PGE proposed to recover Level III storm costs directly from ratepayers with a balancing account mechanism.[3]

Under PGE's proposal in its 2010 GRC, PGE would recover $4.5 million annually from ratepayers with $3.5 million accruing to a balancing account and $1.0 million for fixed O&M. Actual costs would accrue to the balancing account as well and the balancing account would become negative if costs exceeded amounts in the account.

Staff opposed PGE's proposed balancing account proposal. Staff proposed rate recovery for Level III storm costs based on a ten-year average of PGE's Level III storm costs, which was $2,034,613.[4] Staff explained that "[w]hile it is true that expenses associated with Level III outages can vary from year to year, setting rates based on a historical average addresses these fluctuations, incents the company to operate in a manner to control costs, and does not put the burden of auditing and micro managing the company's efforts to restore service on Staff."[5]

Parties to PGE's 2010 GRC ultimately stipulated to test year expense of $2 million based on a ten-year rolling average of Level III costs. The parties also agreed to support an accounting order allowing PGE to reserve any unspent dollars for future Level 3 storm costs.[6] The Commission adopted the parties' agreement.

The amount recovered for Level III storm costs has been subject to change in PGE's rate cases since its 2010 GRC. In PGE's most recent rate case, Docket No. UE 335, the parties

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[1] UE 215 PGE/1000, Pope-Tooman/8-9.

[2] UE 215 PGE/800, Hawke-Nicholson/12-14.

[3] UE 215 PGE/800, Hawke-Nicholson/12-14.

[4] UE 215 Staff/400, Ball/6.

[5] UE 215 Staff/400, Ball/5.

[6] *In the Matter of Portland General Electric Co.* (UE 215) (Order No. 10-478, p. 6).

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stipulated the amount should be set to $3.8 million based on a ten-year rolling average and the Commission adopted the stipulation.[7] In this application, PGE seeks to defer for later recovery in rates Level III costs incurred in 2017 that exceeded the expense included in PGE's test year expense used to set the rates that were effective in 2017.

B. Deferred Accounting

Deferred accounting is an "extraordinary" ratemaking tool because it is one of the few exceptions to the (1) prohibition on retroactive ratemaking, and (2) Commission's general policy of avoiding single-issue ratemaking.[8] "Generally stated, the rule against retroactive ratemaking prohibits a utility regulator from setting rates that allow a utility to recover past losses or require it to refund past profits."[9] The Oregon Supreme Court has explained that the rule against retroactive ratemaking "serves the important function of providing stability in the regulatory process—parties can reasonably rely on the fact that rates will not be changed after they have been set and paid."[10] The rule also "plays a critical role in providing an incentive for efficient operations because utilities know that they can keep profits even if they exceed the authorized rate of return and that they cannot seek to recover losses from ratepayers."[11]

With respect to its general policy of avoiding single-issue ratemaking, the Commission has explained that "concerns about single-issue ratemaking, are grounded in the idea that the ratemaking formula is designed to determine a company's revenue requirement based on the aggregate costs and demands of the utility. Except in limited circumstances, it is improper to consider changes to components of the revenue requirement in isolation."[12] The Commission

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[7] PGE has since reported that the ten-year average is actually $3.7 million.

[8] Order No. 05-1070, p. 2.

[9] *In the Matter of Portland General Electric Company Advice No. 17-05 (ADV 523), Schedule 134, Gresham Privilege Tax Payment Adjustment* (UE 324) (Order No. 17-480, p. 6).

[10] *Gearhart v. Public Utility Comm'n of* Oregon, 356 Or 216, 242 (2014), *citing* Krieger, 1991 U Ill L Rev 1044.

[11] *Gearhart v. Public Utility Comm'n of Oregon,* 356 Or. at 242-243.

[12] *In the Matter of Northwest Natural Gas Company, dba, NW Natural Request for a General Rate Revision* (UG 221), Order No. 12-437.

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has observed that "a change to one item of the revenue requirement is often offset by a corresponding change in another item. If rates are increased based solely on the fact that one type of expense is higher than expected, without considering changes to other elements of revenue requirement, the company's reasonable revenue requirement could be overstated."[13]

Deferred accounting is statutorily authorized under ORS 757.259. ORS 757.259(2)(e) authorizes the Commission to allow a utility to defer for later amortization into rates "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."[14] In 2004, the Commission opened Docket No. 1147 to examine and clarify its policies regarding deferred accounting to "address criticism by customer groups about the frequency and scope of deferrals, as well as raised concerns from utilities about uncertainties associated with the processes."[15] The Commission noted that it had used deferrals for a variety of reasons for the previous twenty years but had not identified standards governing its use of the deferral statute until a contested case in 2004 regarding PGE's request to defer excess hydro costs.[16] In Docket No. UM 1147, the Commission set out to clarify and establish standards in a general investigation into deferred accounting.

Ultimately, the Commission decided its review of a deferral request includes two stages. One stage of review involves a determination of whether a proposed deferral meets the criteria set forth in subsections (a) through (e) of ORS 757.259(2). These subsections identify types of monies, whether expenses or revenues, that the legislature has given the Commission discretion

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[13] *Id.*

[14] ORS 757.259(2)(e).

[15] *In the Matter of Staff of the Public Utility Commission of Oregon Investigation into Deferred Accounting* (UM 1147), Order No. 05-1070, p. 1.

[16] *Id.*

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to defer. The other stage of the Commission's two-stage review entails an exercise of Commission discretion under ORS 757.259(2).

ORS 757.259(2) is permissive; it provides that the Commission "may" authorize deferral of amounts that meet the statutory criteria of subsection (a), (b), (c), (d), or (e).[17] Most disputes about deferrals concern whether the Commission should exercise its discretion to authorize deferrals under ORS 757.259(2)(e), which 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."[18] Accordingly, before authorizing a deferral under ORS 757.259(2), the Commission determines whether the costs are if the type that should be deferred.

The Commission has explained that in exercising its discretion under ORS 757.259(2)(e), it will consider two interrelated factors: the type of event that caused the deferral and the magnitude of event's effect.

> Initially, the proper approach in analyzing an event is to examine the nature of the event, its impact on the utility, the treatment in ratemaking, and other factors used to evaluate whether a deferred account is appropriate. The next step is to examine the magnitude of the underlying event in terms of the potential harm. The type of event—modeled in rates or not, foreseeable or not—will affect the amount of harm that must be shown by the utility. If the event was modeled or foreseen, without extenuating circumstances, the magnitude of harm must be substantial to warrant the Commission's exercise of discretion in opening a deferred account. If the event was neither modeled nor foreseen, or if extenuating circumstances were not foreseen, then the magnitude of harm that would justify deferral likely would be lower."[19]

The Commission has not established a bright line for what constitutes a "substantial" impact for purposes of determining whether a deferral for a stochastic risk is warranted or for what constitutes the lesser impact sufficient to warrant deferral of a non-modeled or unforeseen (aka "scenario") risk.

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[17] *Id.*, p. 3.

[18] *Id.*, p. 7.

[19] *Id.*

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III. Argument.

A. The circumstances underlying PGE's deferral do not satisfy the Commission's discretionary criteria for deferred accounting.

Staff agrees with PGE that the circumstances satisfy the criteria for one stage of the two-stage review used by the Commission. Deferring expense for later recovery would match costs with ratepayer benefits, which is one of the alternate criteria in ORS 757.259(2)(e). However, deferral is not warranted because the circumstances do not satisfy the discretionary criteria the Commission has established to determine when the circumstances warrant the extraordinary remedy of deferral.

1. The event underlying the deferral request is properly classified as a stochastic risk for purposes of the Commission's deferral analysis.

As discussed above, the type of event—modeled in rates or not, foreseeable or not—will affect the amount of harm that must be shown by the utility in order to justify special rate treatment. If the event was modeled or foreseen, without extenuating circumstances (that is, the event was considered a stochastic risk), then the magnitude of harm must be substantial to warrant the Commission's exercise of discretion in opening a deferred account. "If, on the other hand, the event was neither modeled nor foreseen, or if extenuating circumstances were not foreseen, then the magnitude of harm that would justify deferral likely would be lower."[20]

Expense for Level III storm costs is modeled in rates based on a ten-year rolling average. Under the Commission's analysis adopted in Docket No. UM 1147, the risk of Level III storm costs is a stochastic risk and the amounts at issue must be "substantial." Approximately $8 million in expense does not satisfy this criteria.

PGE argues the event underlying the expense is not appropriately treated as a stochastic risk requiring only a "substantial" financial impact because the modeling underlying the

[20] *Id.*

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determination of the rate case expense provides no degree of certainty around predictable outcomes. PGE states:

> We agree that PGE's historical storm costs, as with other sets of numerical data, allow for: 1) averaging (hence PGE's stipulating to the 10-year rolling average mechanism), and 2) a calculation of standard deviations. Because Level III events in the Northwest are highly irregular in both timing and severity, however, we believe their unpredictability is more indicative of a paradigm or scenario risk than stochastic. Ultimately, many costs and events can be modeled or averaged but provide no degree of certainty around predictable outcomes.[21]

Staff disagrees with PGE's characterization of the test the Commission applies to determine whether the risk at issue is appropriately characterized as "stochastic" for purposes of their deferral analysis.

The Commission elaborated on its deferral request analysis in Docket No. 1234, a 2007 docket addressing PGE's request to defer replacement power costs stemming from an extended unplanned outage of its Boardman generating plant (the "Boardman Outage"):

> If an event was modeled in rates, we evaluate whether the event was within a foreseen range of risk, or whether extenuating circumstances were involved that rendered the event unforeseeable. If the event was not modeled in rates, we assess whether it was otherwise foreseeable in the normal course of business.[22]

In Docket No. 1234, the Commission noted its ratemaking treatment for power costs assumes a thermal resource will be off-line periodically for unplanned outages ("forced outages") and that the appropriate "forced outage rate"[23] that applies is generally determined by the average availability of the utility's thermal plants for the preceding four years.[24] To determine whether the Boardman Outage was appropriately characterized as a stochastic or scenario risk, the Commission examined "whether the scope of the event was within a reasonable

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[21] PGE/200, Nicholson-Bekkedahl-Tooman/2.

[22] *In the Matter of Portland General Electric Company Application for Deferred Accounting of Excess Power Costs Due to Plant Outage* (UM 1234), Order No. 07-049, p. 1.

[23] *See e.g., In the Matter of Portland General Electric Company Request for General Rate Revision* (UE 180), Order No. 07-015, p. 13 ("A forced outage is an unplanned failure of a generating unit, and is calculated as a proportion of forced outage hours to total hours a unit is capable of providing service on an annual basis.").

[24] Order No. 07-049, *supra.*, p. 9.

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range around th[e] previously determined forced outage rate[]" for the Boardman generating plant." The Commission explained that it was "look[ing] to determine whether the event falls within a reasonable deviation range around the forced outage rate."[25]

The Commission concluded the Boardman Outage was not within a reasonable deviation around the forced outage. The Commission observed that the Boardman Outage had been excluded from the calculation of PGE's most recent forced outage rate because it was extreme and an anomalous. The Commission found "that the nature, and the 105-day duration of the Boardman Outage are unique, and that its occurrence is outside of the foreseen range of risk for forced outages."[26] In contrast, the Level III storm costs at issue in this docket are not outside the "foreseen range of risk."

Unlike the Boardman Outage, the Level III storm costs incurred in 2017 were not excluded from the calculation of the ten-year rolling average for PGE's recent rate case because they were "extreme" or so high as to be anomalous. Instead, the costs were included in the ten-year rolling average used for ratemaking – increasing the amount collected for Level III storm costs annually from $2.6 million to $3.7 million.

Staff believes PGE's interpretation of the Commission's analysis of stochastic vs. scenario risks would essentially eliminate the possibility that any deferral request would concern a stochastic risk. If an expense must be capable of prediction with certainty in order to be a stochastic risk there presumably would be little need to defer unanticipated costs. In other words, it would be a category of deferral with no real application or usefulness. Staff does not believe that this is what the Commission intended.

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[25] *Id.*, p. 10.

[26] *Id.*

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2. The financial impact of the Level III storm costs is not substantial and therefore deferral is not warranted.

Because the event underlying the amounts at issue in PGE's deferral application is appropriately classified as a "stochastic" event, the financial impact must be substantial before the Commission will exercise its discretion to allow deferral. Notably, the financial impact is determined by examining PGE's overall costs and revenues, not just test year expense for storm costs.

The Commission has not announced a bright-line rule for what is considered a "substantial" rate impact, but the cases in which the Commission has considered this question lead to the conclusion it is not.

In Docket No. UM 1071, the Commission declined to allow PGE to defer any part of $31.6 million in excess power costs related to poor hydro conditions:

> In the present application, PGE claims that it has incurred $31.6 million in excess NVPC, only some of which is attributable to hydro replacement costs. PGE asserts that this excess NVPC amounts to 172 basis points of return on equity. This is well short of the 250 basis points of return on equity within which we allowed no recovery in UM 995. Moreover, Staff estimates the hydro related excess NVPC to be about $17.5 million, which, by extension, amounts to about 95 basis points of return on equity. That figure is about 55 percent of PGE's $31.6 million. Finally, we note that PGE claims that without deferral, its return on equity will drop to 8 percent. That is far from a dire figure. We find that the impact of excess hydro costs is not significant enough in this case to warrant a deferral.[27]

In Docket Nos. 1008/1009 (PGE deferral of excess NVPC associated with Western Power Crisis) and UM 995 (PacifiCorp deferral of excess NVPC associated with Western Power Crisis), the Commission concluded that utilities reasonably could be expected to absorb excess NVPC equal to or less than 250 basis points of ROE between rate cases.[28] In Docket No. UM

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[27] *See In the Matter of Portland General Electric Company Application for an Order Approving the Deferral of Hydro Replacement Power Costs* (UM 1071), Order No. 04-108 (Denying PGE's request to defer hydro replacement power costs noting that financial impact equal to 171 bp ROE was not sufficient to warrant deferred accounting.).

[28] *In the Matter of the Application of PacifiCorp for an Accounting Order Regarding Excess Net Power Costs* (UM 995), Order No. 02-469; *In the Matter of Staff of the Public Utility Commission of Oregon for Deferral of a Portion of Portland General Electric Company's Excess NVPC* (UM 1008/1009), Order No. 01-231.

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1071, the Commission declined to allow PGE to defer any part of $31.6 million of excess power costs, which equaled approximately 172 basis points of ROE.[29]

In Docket No. UE 180, the Commission concluded that an adjusted 150 basis points of ROE deadband represented normal business risk for PGE.[30] In Docket No. UM 1234, the Commission concluded that a deadband of 100 basis points of ROE approximated the appropriate level of risk that PGE should absorb between rate cases and declined to allow deferral of replacement power costs within that band.[31]

Even assuming the threshold for what constitutes "substantial" financial impact is half of the 100 basis point deadband the Commission considered reasonable and applied in the last case in which it considered a similar application to defer, (PGE's request to defer excess power costs associated with plant outage in Docket No. UM 1234), the amount at issue in this docket does not qualify.

B. Treatment of difference between corrected calculation of ten-year average of Level III storm costs ($3.7 million), and expense in UE 335 test year expense ($3.8 million).

In its UM 1817 testimony, PGE informed the Commission and parties that it had inadvertently miscalculated the 10-year rolling average used to establish the Level III storm costs included in test year expense.[32] The Alliance of Western Energy Consumers (AWEC) recommended that the Commission order PGE to accrue a credit, of $100,000 annually, for later return to customers associated with the difference between the $3.8 million and $3.7 million.[33] The Administrative Law Judge issued a Bench Request on May 24, 2019, asking for responses regarding this proposal.

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[29] Order No. 04-108, *supra.*

[30] See Order No. 07-409, *supra*, p. 19 ("In Order No. 07-015, entered in UE 180, we applied an adjusted [for SB 408] 150 basis points on ROE deadband as an explicit measure of normal business risk.")

[31] Id., p. 18.

[32] See e.g., PGE/200, Nicholson-Bekkedahl-Tooman/19.

[33] AWEC/100, Hellman/3, 22.

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In response to the ALJ's Bench Request, PGE offered four different methods of treatment for the $100,000 difference – one non-deferral method and three deferrals methods.[34] The Oregon Citizens' Utility Board (CUB) submitted a response supporting PGE's non-deferral method of treatment:

> With the clarification offered by AWEC on June 7, 2019, CUB can support the Company's "Method 1" that would allow for the $100,000 to remain in the Level III storm accrual until PGE's next general rate case. CUB's understanding of the Company's proposal mirrors the approach delineated by AWEC in the June 7 filing. Setting $100,000 as the effective $0 threshold would ensure that the account never goes below that amount and would be increased by monthly amounts plus interests as discussed in AWEC's proposal. CUB supports AWEC's proposal to increase the amount remaining in the Level III storm accrual account monthly. AWEC's clarification to PGE's approach is reasonable because it minimizes administrative costs, minimizes the need for deferrals, and accurately captures the costs incurred by customers until base rates are adjusted in PGE's next general rate case. Given that alternative options exist, CUB is hesitant to support any of the deferral methods delineated in PGE's "Method 2".[35]

Staff supports PGE's non-deferral method with the modification discussed in CUB's June 3, 2019 Reply to PGE and AWEC's Bench Request Response.

IV. Conclusion.

For the reasons discussed above, Staff recommends the Commission deny PGE's application to defer and adopt PGE's non-deferral method of addressing the miscalculation of Level III storm costs recovered in rates.

DATED this 13th day of June 2019.

Respectfully submitted,
ELLEN F. ROSENBLUM
Attorney General

Stephanie Andrus, OSB No. 925123
Sr. Assistant Attorney General
Of Attorneys for Staff of the Public Utility
Commission of Oregon

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[34] PGE Response to OPUC Bench Request (May 31, 2019).

[35] Oregon Citizens' Utility Board's Reply to PGE and AWEC's Bench Request Response (June 7, 2019).

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