

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1623

In the Matter of)
)
)
 PORTLAND GENERAL ELECTRIC)
 COMPANY,)
)
 Application for Deferral Accounting of)
 Excess Pension Costs and Carrying Costs)
 on Cash Contributions.)
)
 _____)

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

April 15, 2016



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I. Introduction

Pursuant to Administrative Law Judge (“ALJ”) Grant’s Ruling issued March 18, 2016, the Citizens’ Utility Board of Oregon (“CUB”) submits its Reply Brief in UM 1623.

As stated in CUB’s testimony and briefs filed in this docket, CUB recommends that the Commission reject Portland General Electric’s (“PGE” or “the Company”) request for deferral to track the amount equal to the net of pension expense designed in rates and actual Financial Account Standard (“FAS”) 87 or pension expense. Based on review of testimony and briefs filed by Commission Staff, the Industrial Customers of Northwest Utilities (“ICNU”), and PGE, not one non-Company party to this case believes that PGE’s request for deferral should be granted.

Furthermore, the Commission should not be persuaded by PGE's argument that the excess pension costs at issue here were unforeseen, significant, and meet the requirements for deferral.¹

We address:

1. How the Company's Opening Brief fails to demonstrate that its deferral request meets the statutory bases articulated in ORS 757.259(2)(e);
2. How the Company's Opening Brief fails to demonstrate that its deferral request meets the bar to be granted by the Commission on a discretionary basis; and
3. Policy considerations that provide additional guidance for the Commission to deny the Company's deferral request.

II. Argument

A. Deferral Criteria Under ORS 757.259(2)(e)

PGE has requested deferral of excess FAS 87 pension expenses under ORS 757.259(2)(e). The Commission addressed whether to grant a deferral application in Order No. 05-1070, stating that an applicant may satisfy the statutory criteria for deferral by meeting either of two tests: that a deferral request "must either minimize the frequency or fluctuations of rate changes or match the costs and benefits received by ratepayers."² Satisfying either or both of these criteria is a prerequisite for the Commission to grant a deferral application under the statute. PGE asserts that its deferral application meets both of these criteria.³ CUB, Staff, and ICNU demonstrate that it fails to meet either.

¹ PGE's UM 1623 Opening Brief at 1.

² *In re Public Utility Commission of Oregon*, Docket No. UM 1147, Order No. 05-1070 at 5 (October 5, 2005).

³ PGE's UM 1623 Opening Brief at 3.

i. PGE’s Opening Brief Fails to Demonstrate that its Deferral Application would Match the Costs and Benefits Received by Ratepayers

In its opening brief, PGE fails to make a colorable argument that its deferral application, if granted, would adequately match the costs and benefits received by ratepayers. PGE is seeking recovery, in rates, of its FAS 87 pension expense during the deferral period from August 22, 2012 – December 31, 2013.⁴ PGE argues that “[c]ustomers received the benefits of service during the deferral period and this deferral would match the costs with those benefits.”⁵ This argument was similarly refuted in CUB’s opening brief, where we noted that the only ratepayer benefits discussed is supplying electricity service—an act that PGE is required to furnish as a utility.⁶ Further, PGE’s argument that granting its request would match the benefits customers received during the August 22, 2013 – December 31, 2013 period with costs levied onto ratepayers is unavailing. If granted, the costs from this deferral request would flow to PGE’s ratepayers in 2017. Electricity consumers are an inherently dynamic group, and are constantly moving in and out of various service areas. Because the ratepayers that would potentially bear the costs in 2017 are a different group than the group that received the “benefits” of service in 2012-2013, PGE cannot demonstrate that this deferral application, if granted, would match the costs and benefits received by ratepayers.

In support of its argument, PGE notes that the Commission’s Order No. 15-226 reaffirmed the use of FAS 87 for ratemaking purposes.⁷ Although technically a correct statement, PGE fails to note that the PUC affirmed using a forecast of FAS 87 for

⁴ *Id.*

⁵ *Id.* at 3-4.

⁶ CUB’s UM 1623 Opening Brief at 5, lines 12-13.

⁷ PGE’s UM 1623 Opening Brief at 4.

ratemaking purposes,⁸ not the actual amount through a true-up mechanism. Nowhere in the Order does the Commission contemplate the applicability of FAS 87 deferrals to true-up pension expense on a year to year basis in between general rate cases.⁹ Indeed, PGE’s deferral application in this matter, like those contemplated in Order No. 15-226, appears to be “opportunistic and does not fairly reflect the history of pension recovery under FAS 87.”¹⁰ PGE fails to meet this prong of the ORS 757.259(2)(e) test.

ii. PGE’s Opening Brief Fails to Demonstrate that its Deferral Application would Minimize the Frequency of Rate Changes

Similarly, PGE’s opening brief fails to demonstrate how its deferral application meets the other prong of the two-part test laid out in ORS 757.259(2)(e). PGE’s argument hinges on the fact that the “alternative to this deferral request was to file for interim rate relief in 2012 and 2013, which would have caused additional rate changes and fluctuation.”¹¹ However, this argument adds unnecessary complexity to what is a simple and straightforward issue. As CUB discussed in its opening brief, this deferral application inherently fails to minimize the frequency of rate changes because, were the Commission to grant it, it would result in a rate change that would otherwise not occur.¹²

Further, PGE’s argument that this deferral application is in lieu of two separate interim rate relief filings is misguided, as a request for interim rate relief would very likely have been denied. Interim rates are an extraordinary tool that has rarely been used

⁸ *In re Public Utility Commission of Oregon*, Docket No. UM 1633, Order No. 15-226 at 4 (August 3, 2015).

⁹ *See generally Id.*

¹⁰ *Id.* at 9.

¹¹ PGE’s UM 1623 Opening Brief at 5.

¹² CUB’s UM 1623 Opening Brief at 4, lines 10-12.

since the inception of the Commission's three Commissioner structure in 1986.¹³ As a general matter, Commission policy "is to grant interim rate relief only where the utility demonstrates that it faces severe financial distress that jeopardizes the continuing operation of the utility."¹⁴ PGE's annual revenue requirement is approximately \$1.8 billion, and the amount included in this deferral totals \$16.5 million.¹⁵ It is hard to imagine that in 2012 and 2013 the Commission would have found that this FAS 87 forecasting error created "severe financial distress" that jeopardized PGE's ability to operate.

B. The Commission's Discretionary Criteria to Approve Deferral

i. PGE's Opening Brief Fails to Demonstrate that the Increase in its Pension Expense Does Not Represent a Stochastic, Foreseeable Risk

In its opening brief, PGE argues that the events that led to this deferral application were unforeseen and caused a significant increase in its pension expense.¹⁶ However, in testimony and prior briefing CUB and other parties demonstrated that the event that led to the increase in PGE's pension expense is a stochastic risk in that pension expenses are a normal cost forecasted in every rate case.¹⁷ PGE asserts that the most significant event leading to its increase in pension expense was "an unexpected, significant, and continuing

¹³ *Id.* at 4, lines 18-20.

¹⁴ *In re Portland General Electric Company*, Docket No. UE 204, Order No. 09-108 at 1 (March 30, 2009). *See, e.g., In re Fish Mill Lodges Water System*, Order No. 07-439 (noting that, as a general matter, interim rate relief is granted only where a utility is in dire financial need and unable to continue providing adequate service to its customers without the additional funds); *In re Long Butte Water System, Inc.*, Order No. 05-1141 (noting that interim rate relief acts as a safety valve in circumstances where there is an important reason for deviating from the normal suspension and review process).

¹⁵ CUB's UM 1623 Opening Brief at 9, lines 15-16.

¹⁶ PGE's UM 1623 Opening Brief at 6.

¹⁷ CUB's UM 1623 Opening Brief at 7, lines 17-19.

decline in the discount rate used to determine annual pension expense.”¹⁸ This argument fails to account for the fact that pension expenses historically fluctuate over time. During periods where PGE and other utilities benefit under the Commission’s current FAS 87 policy for pension deferrals—such as from 1997 – 2004 in PGE’s case—it seems content to refrain from filing for a deferral.¹⁹

As recently as 2008, PGE over-collected pension expense by \$3.5 million.²⁰ PGE’s shareholders benefitted from this over-collection, and customers, absent a deferral, did not have a mechanism to rectify this discrepancy.²¹ Ever since the Commission adopted FAS 87, “utilities recover their pension contributions through an annual FAS expense *forecast* in a test year period.”²² Recently, in UM 1633, the Commission examined pension ratemaking, including the allegation that current circumstances require a change in pension ratemaking and the Commission was “not persuaded that the new federal funding requirements under the PPA, coupled with the 2008 economic recession, constitute sufficiently changed circumstances to warrant modifications to our FAS 87-based recovery.” This left Oregon with pension ratemaking based on forecasts of FAS 87.

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¹⁸ PGE’s UM 1623 Opening Brief at 6.

¹⁹ CUB’s UM 1623 Opening Brief at 8, lines 15-17; *see also In re Public Utility Commission of Oregon*, Docket No. UM 1633, Order No. 15-226 at 9 (August 3, 2015).

²⁰ UM1623 – CUB/100/McGovern/7, lines 16-17.

²¹ *Id.* at lines 18-19.

²² *In re Public Utility Commission of Oregon*, Docket No. UM 1633, Order No. 15-226 at 4 (August 3, 2015) (emphasis added).

ii. The Amounts at Issue are not of Sufficient Magnitude to Warrant Deferral

PGE argues that—whether the standard for magnitude of the costs that it incurred were “substantial” or something less—the costs qualify for deferral.²³ PGE’s main basis for supporting this argument is that CUB and other parties have argued that, in order for a deferral to be granted, the harm must cause a change in ROE in excess of 250 basis points.²⁴ It asserts that, because that threshold is framed in the context of power cost deferrals, it should not apply in the context of pension deferrals.²⁵ Regardless of whether the deferral sought is in the context of power costs or pension costs, the fact remains that the amounts sought in this matter are well within the threshold that PGE and other utilities’ shareholders have historically absorbed. To show the effect of the deferral amounts on PGE’s 2012 and 2013 ROE, Staff calculated that the amounts of \$2.9 million for 2012 and 2013 are equal to approximately 18 and 86 basis points of PGE’s authorized ROE, respectively.²⁶ If a utility’s shareholders can absorb costs of up to 250 basis points on ROE—as established in Order No. 04-108—there is no reasonable explanation why PGE should not be able to absorb costs of 18 and 86 basis points—regardless of whether it is a power cost or a pension deferral.²⁷ Pension is an inherently negligible expense, and does not merit relief in between rate cases.

Importantly, CUB acknowledges that the Company earned well below its authorized ROE in 2013. However, as the Company’s Annual Report to Shareholders demonstrated, this was due to the write-off of Cascade Crossing, Replacement Power due

²³ PGE’s UM 1623 Opening Brief at 8.

²⁴ *Id.* at 9.

²⁵ *Id.*

²⁶ CUB’s UM 1623 Opening Brief at 11, lines 7-10.

²⁷ See *In re Portland General Electric Company*, Docket No. UM 1071, Order No. 04-108 at 9 (March 2, 2004).

to plant outages, and a refund to industrial customers.²⁸ The Annual Report does not reference pension expense as a “primary driver” of the reduced earning.²⁹

CUB, Staff, and ICNU all agree that PGE’s pension expense does not rise to sufficient magnitude to warrant deferral by the Commission in this matter.

C. Policy Considerations

Beyond the aforementioned arguments that support a denial of this deferral application, CUB would also like to point out that policy and legal precedent considerations also support denial of PGE’s request. If the Commission grants PGE’s application in this matter, it has the potential to set a dangerous precedent. FAS 87 was never designed to be a year-to-year true up mechanism in between general rate cases. If PGE is able to collect on its deferral in this matter, then the door will be open for other utilities to apply for deferrals in other years when actual pension expense is greater than forecasted pension expense. CUB and other advocacy groups will then have to request and apply for deferrals in years when utilities actual pension expense is less than the forecasted amount. Therefore, both sides will begin to use deferrals to adjust for forecasting errors related to FAS 87, which will result in even more rate changes, in contravention of ORS 757.259(2)(e).

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²⁸ UM 1623 – CUB/100/McGovern/10, lines 4-13.

²⁹ *Id.*

IV. Conclusion

For all of the reasons discussed above, CUB strongly believes that the Commission should deny PGE's application for deferral accounting of excess pension costs and carrying costs on cash contributions.

Respectfully submitted,

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