BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1633

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation into Treatment of Pension Costs in Utility Rates	**STAFF PREHEARING BRIEF**

1. In the beginning, there was a NW Natural rate case that requested a change to long-established Commission policy related to pension recovery.

For almost 30 years, the Public Utility Commission of Oregon (Commission) "has allowed regulated utilities to recover in rates its pension expenses based upon an actuarial calculation of the utility's 'Net Periodic Pension Costs,' using the standards established by the Federal Accounting Standards Board in its Financial Account Statement (FAS) 87."[1] In its last rate case, Northwest Natural Gas Company (NW Natural) argued that the Commission should change its policy related to pension costs and allow not only a recovery of its pension expense, but also to allow it to recover its pension contributions made in excess of FAS 87 expense in rate base, which would provide NW Natural with a return of and on its contributions in excess of the FAS 87 expense.[2]

The Public Utility Commission of Oregon Staff (Staff) argued that NW Natural's change to pension policy should be rejected and that the Commission should maintain the status quo, which was using the actuarial calculation of NW Natural's "Net Periodic Pension Costs" established through FAS 87 as an estimate of the pension expense to be included into rates.[3] In the specific case of NW Natural, Staff notes that NW Natural also has a Commission-approved balancing account, which was established in Docket No. UM 1475, and allows NW Natural to

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[1] *See In the Matter of Northwest Natural Gas Co.*, Docket No. UG 221, Order No. 12-437 at 18.
[2] *See Id.*
[3] *See Id.* at 19.

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account for and earn a rate of return on the differences between pension costs in rates and its actual pension costs.[4] The fact that the pension costs in rates do not match the actual pension costs of the utilities (*e.g.* the utility may collect more money from ratepayers for its estimated pension expense in rates than it actually pays, or vice versa) is an important consideration later in this brief when Staff discusses its recommendations for the appropriate pension policy going forward.

Staff argued that ratemaking is holistic in nature and that when costs fluctuate between rate cases both the utility and ratepayers gain or lose with respect to various categories, some costs go up and some costs go down, but what ultimately matters is the "end result" in overall rates and that NW Natural's overall rates were just and reasonable at the time that it made the additional cash contributions to its pension plan.[5] Staff argued that if pension costs were to be considered in isolation of all other costs, it would amount to single-issue ratemaking or "cherry picking."[6]

Alternatively, Staff argued that NW Natural's request would require a significant change to the Commission's long-standing pension policy and that any change in policy would affect many of the rate-regulated utilities in Oregon.[7] As a result, Staff suggested that if the Commission desired to revisit its long-standing policy on the ratemaking treatment of pension costs, it should open a generic docket so that it could consider and better understand the impacts that its policy choice would have on all applicable utilities that it regulates.[8]

The Commission decided that it was not convinced that it should change its long-standing policy of pension cost recovery and, furthermore, was not convinced that NW Natural's proposal

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[4] *See Id.*
[5] *See Id.*
[6] *See Id.; see also Id.* at 26 ("[c]oncerns 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.")
[7] *See Id.* at 19.
[8] *See Id.*

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was the most appropriate.[9] Specifically, since 1986, the Commission has treated pension costs as ordinary, recurring expenses, rather than assets to be included in rate base.[10] The Commission stated that so long as the Commission continues to treat pension costs as expenses, retroactive ratemaking principles would prohibit NW Natural's attempt to recover its out-of-period pension contributions that occurred prior to an application for deferral or an accounting order.[11] Furthermore, the Commission explicitly found that the cash contributions, while not technically FAS 87 expenses, were properly considered "expenses" under Commission policy and, therefore, without a deferral or accounting order, NW Natural was prohibited from collecting the cash contributions as expenses.[12]

NW Natural proposed an alternative by suggesting that the Commission allow it to include "prepaid pension costs" in rate base, thus avoiding the retroactive ratemaking problem.[13] The Commission denied this request.[14] The Commission stated that it was not yet convinced that a change to its existing policy was warranted, but that it was willing to explore the possibility of different pension cost recovery methodologies in the context of a general, non-utility-specific proceeding.[15] Consistent with the Commission's order, this proceeding, Docket No. UM 1633 – Investigation into treatment of pension costs in utility rates – was opened.[16]

2. The "Joint Utilities"[17] proposal for pension cost recovery.

The Joint Utilities began this new general proceeding by proposing that the Commission continue its long-standing policy of using FAS 87 expense to estimate the pension expense to be included in rates, but they also request that the Commission change its policy to allow the

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[9] *See Id.* at 21-22.
[10] *See Id.* at 21.
[11] *See Id.*
[12] *See Id.* at 21-22.
[13] *See Id.* at 22.
[14] *See Id.*
[15] *See Id.*
[16] *See In the Matter of Northwest Natural Gas Co.*, Docket No. UG 221, Order No. 12-408 at 12.
[17] The Joint Utilities include Portland General Electric, Pacific Power, Avista, Northwest Natural, and Cascade. Idaho Power did not file opening testimony.

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utilities to include, on a prospective basis, a prepaid pension asset balance in rate base, which would allow them to earn a return on the prepaid pension asset balance.[18] The Joint Utilities describe the prepaid pension asset balance "as the difference between the cumulative contributions and the cumulative accounting costs incurred."[19]

According to the Joint Utilities, the Pension Protection Act[20] (PPA) has resulted in more front-loaded cash contributions to satisfy the funding rules. Under previous funding requirements, the portion of unfunded liability of a pension plan would generally be amortized over a 10-15 year period, resulting in a fully funded plan after 10-15 years on an expected basis. However, the PPA requires that the unfunded liability of a pension plan be amortized over seven years, which means that the unfunded liability of the pension plan will have to be amortized sooner than under previous funding requirements.[21]

In addition, the Joint Utilities argue that the stock market crash of 2008 and the decline in interest rates operated to increase the unfunded liability of many pension plans, which in conjunction with the PPA requirement that unfunded liability must be amortized more quickly over seven years, has required many pension plans to have to make substantial cash contributions to their pension plans, which in turn has resulted in large prepaid pension asset balances.[22]

The Joint Utilities admit that the accounting cost and the cash cost will be equal over the life of the plan ("a fundamental characteristic of the accounting cost is that the accumulated contributions will equal the accumulated pension costs over the life of the plan.")[23] Therefore, the Joint Utilities term their request to put the prepaid pension asset balance into rate base as one

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[18] *See* Joint Testimony/100; Joint Parties/2 at line 18 through Joint Parties/3 at line 2; *see also Id.* at Joint Parties/10, lines 1-11. Herein, Staff refers to a "prepaid pension asset balance," but recognizes that it can also be an "accrued pension liability account balance," as well. However, the Joint Utilities (not Idaho Power) currently have prepaid pension asset balances so, for simplicity, Staff refers to prepaid pension asset balances, but notes here that it can also be or become an accrued pension liability account.

[19] *See* Joint Testimony/200; Vogl/12, lines 5-7.

[20] The Pension Protection Act become law in 2006, but its requirements related to unfunded liabilities went into effect in 2008. *See* Joint Testimony/200, Vogl/6 at line 22.

[21] *See generally Id.* at Vogl/8, lines 3-14.

[22] *See Id.*at Vogl/9, lines 1-15.

[23] *See Id.* at Vogl/11, line 17 through Vogl/12, line2.

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that would allow them to recover in rates "the financing costs that the Joint Utilities incur as a result of timing differences between cash contributions to their pension plans and the recognition of the expense."[24]

In sum, the Joint Utilities' proposal is to include the balance of the prepaid pension asset in rate base to earn a regulated rate of return (what they term "financing costs"). The prepaid pension asset balance, however, is not the difference in actual utility pension costs versus the amount of pension costs collected in rates, i.e. the prepaid pension asset balance is a function of accounting, not ratemaking.

After several rounds of testimony, a Commission workshop was held to discuss the alternative of using cash contributions as a basis for pension cost recovery as that option was not adequately addressed in the record. Specifically, Chief Administrative Law Judge Grant issued a Prehearing Conference Memorandum that requested the parties to address this question:

> If the Commission decides to transition to cash contributions to account for pension expense on a going forward basis, then what recommendations do you have to address the existing prepaid pension assets, the transition period, the mechanism to recover the cash contributions, and the mechanism to implement the transition?

In response to the Commission's request, the Joint Utilities reiterated their support for pension cost recovery through FAS 87, plus its new request in this proceeding that the Commission allow them to rate base the prepaid pension asset balances, which will allow them to collect in rates more money than they currently do under the status quo.[25] If the Commission transitioned to cash contributions to account for pension expenses going forward, the Joint Parties propose that each prepaid pension asset (or accrued liability) balance as of the date of the transition, be amortized and recovered over a five-year period.[26] Additionally, the Joint Utilities propose that during the five-year amortization period, the unrecovered balance should earn interest equal to each utility's cost of capital.[27]

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[24] *See* Joint Testimony/100; Joint Parties/2, lines 19-22.
[25] *See* Joint Testimony/500; Joint Parties/3, lines 16-25.
[26] *See Id.* at Joint Parties/11, lines 11-15.
[27] *See Id.* at lines 16-18.

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On a going forward basis, the Joint Utilities propose that cash contributions be included in rates based on either a three-or-five year average of forecasted cash contributions.[28] The Joint Parties also propose that the difference between each utility's actual contributions and the amount in rates would be included in a balancing account that would accrue interest at the utility's authorized cost of capital.[29]

In general, the Joint Utilities provide a recommendation for how they would like a transition to cash contribution pension recovery to work if the Commission were inclined to change its policy, but the Joint Utilities would prefer to retain the current FAS 87-based policy because it is inherently less volatile than cash contributions, it better matches pension costs over the period service is provided, and, if the Commission allowed, could provide for recovery of the prepaid pension asset balance (which would be an issue in a switch to cash contributions as well as under a FAS 87-based policy).[30]

<u>3. Staff recommends that the Commission affirm its long-standing policy on pension cost recovery, i.e. use FAS 87 as an estimate of the pension expense to be included in rates.</u>

As in NW Natural's rate case, Staff continues to believe that the Commission should generally maintain the status quo, which is using a FAS 87 accounting pension cost as an estimate of the pension expense to be included in rates.[31] Staff agrees that a cash contribution pension cost recovery policy offers the benefits of simplicity, transparency, and could allow utility's to recover their actual pension costs, no more or no less.[32]

However, Staff contends that the current FAS 87 pension cost policy is the most equitable to ratepayers because it is less volatile than cash contributions, which seem to be highly correlated with market returns, and FAS 87 smooths the lumpiness so as to avoid generational

[28] *See Id.* at Joint Parties/12, lines 11-17.
[29] *See Id.* at line 18 through Joint Parties/13, line 2.
[30] *See Id.* at Joint Parties/21, lines 12-16.
[31] *See Id.* at Staff/300; Bahr/2, lines 4-8.
[32] *See Id.* at Bahr/6, lines 5-10.

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inequities.[33] In addition, a transition to cash contribution pension recovery related to the prepaid pension asset balances would be difficult.[34]

<u>4. Collection of the prepaid pension asset balance is prohibited retroactive ratemaking.</u>

The Commission has determined that:

> [t]he cash contributions [a utility] was required to make were not technically 'FAS 87' expenses, as they were not calculated under the FAS methodology. They were, however, properly considered 'expenses' under existing Commission policy.[35]

Cash contributions are considered expenses under the Commission's existing policy. As expenses, the cash contributions are subject to the rule against retroactive ratemaking.[36] The Oregon Legislature has created an exception to the prohibition against retroactive ratemaking, which is the deferred accounting statute, Oregon Revised Statute 757.259.[37] However, only cash contributions made after an appropriate deferred accounting application was filed would be subject to rate recovery consideration.

Likewise, if the cash contributions are expenses, it seems illogical to conclude that utility expenses (*i.e.* cash contributions) that were not fully recovered in rates, and that cannot be recovered in future rates because of the rule against retroactive ratemaking, are entitled to earn a rate of return by placing them in future rate base. If the prepaid pension asset balance is created by the difference between the cumulative cash contributions and FAS 87 accounting expense, the prepaid pension asset balance itself is an accounting creation related to the cash contributions, which have already been determined to be an expense. It does not make sense to conclude that a past expense that cannot be lawfully recovered in future rates should be allowed to earn a rate of

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[33] *See generally Id.* at Bahr/6, line 14 through Bahr/10, line 17.

[34] *See generally Id.* at Bahr/13, line 14 through Bahr/17, line 8.

[35] *See In the Matter of Northwest Natural Gas Co.*, Docket No. UG 221, Order No. 12-437 at 21-22.

[36] *See In Re Portland Gen. Elec. Co.*, Order No. 87-1017, 1987 WL 257942 at 479, 86 P.U.R. 4th 463 (Or. P.U.C. Sept. 30, 1987) ("retroactive ratemaking is prohibited, unless expressly authorized by the Legislature.)

[37] *See Re Portland General Elec. Co.*, Order No. 08-487 at 30 (the Oregon Legislature provided the Commission with authority under ORS 757.259 to consider past costs and revenues in future rates in limited circumstances.)

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return that could be recovered in future rates.[38] The Joint Utilities would argue that their request is for a return on an investment (*i.e.* cash contributions that created a prepaid pension asset balance), but the Commission has already determined that those past cash contributions are expenses, not investments.

<u>5. The Joint Utilities' proposal to recover a rate of return on their prepaid pension assets violates the policy against single-issue ratemaking.</u>

Staff continues to argue that ratemaking is holistic in nature and what ultimately matters is the end result in overall rates. The Joint Utilities can assert that a rate of return on the prepaid pension asset balance, which accrued in the past, is not single-issue ratemaking because they will be granted that rate of return through a future rate proceeding on a prospective basis only.

If it were not for pension accounting under FAS, a utility that experienced a rising cost would have to absorb that cost and, if overall rates could not absorb that cost, file a general rate revision and request an increase for those costs going forward (or seek to defer those costs under ORS 757.259). Staff does not believe that pension accounting should alter traditional ratemaking.[39]

In this case, the utilities had to pay cash contributions to their pension plans because of new legislation (*i.e.* the PPA), the stock market crash of 2008, and the decline in interest rates. New legislation, stock market volatility, and changing interest rates are factors that could impact many aspects of a utility's business, causing costs to go up or down.[40]

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[38] Staff acknowledges that the Commission has the discretion to change its policy of treating pension costs as expenses and instead treating pension costs as investments. However, that policy would only be changed going forward and would not operate to allow a rate of return on the prepaid pension asset balances accrued before the change in policy.

[39] Staff believes that ratemaking should drive accounting, rather than accounting drive ratemaking.

[40] Related to the concept of holistic rates, consider that the PPA's seven year amortization period for unfunded liabilities started in 2008 and we are now in 2015, the stock market has generally rebounded, and interest rates have risen and are likely to rise more. The cash contributions that resulted in the increased prepaid pension asset balances were caused by factors that are no longer relevant, or as relevant, but the utilities propose to charge future ratepayers for them.

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The cash contribution expenses that create the prepaid pension asset balance, however, were incurred in the past. In considering holistic ratemaking and the overall end result of rates, Staff continues to believe that it is important to ask whether or not these additional pension costs were costs that could have been absorbed and still resulted in overall just and reasonable rates.[41] For example, deferred accounting applications for expenses outside of a general rate revision require an earnings test before the costs can be amortized for this reason.[42] Staff acknowledges that single-issue ratemaking, unlike retroactive ratemaking, is a policy limitation. Therefore, the Commission is not legally prohibited from considering the prepaid pension asset balance in isolation; even though Staff contends that the Commission should apply the limitation in this proceeding.

6. The financing of cash contributions in excess of those recognized under accrual accounting and regulatory recovery mechanisms represents a real cost to the utilities.[43]

Aside from retroactive ratemaking and single-issue ratemaking considerations, Staff does not dispute that cash contributions and the financing of those cash contributions are a real cost to a utility.[44] Staff believes that the current prepaid pension asset balance should not be included in future rates based upon the arguments above.

However, Staff does believe that financing costs are a real cost to the utility so its recommendation is that in future rate proceedings a utility can seek to recover the financing costs of a prepaid pension asset balance accruing prospectively to the extent they are not associated with a return on the pension investment above the amount that is used to calculate FAS 87 expense, but that the utilities should not be able to include any of their current prepaid pension balances in future rates.[45]

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[41] Without an appropriate deferred accounting application, this question cannot be determined. However, Staff assumes that, if overall rates were unjust and unreasonable because of these cash contributions, the respective utilities would have filed for relief.
[42] *See* Staff/100; Bahr/15, line 22 through Bahr/16, line5.
[43] *See Id.* Bahr/20, lines 9-15.
[44] *See Id.*
[45] *See* Staff/100; Bahr/2, lines 1-8; *see also* Staff/200; Staff/1, line 17 through Staff/2, line 7.

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7. <u>If the Commission is inclined to consider inclusion of the current prepaid pension asset balance in future rate base, Staff recommends reasonable parameters to determine the appropriate balance to be included.</u>

Staff's recommendation would allow the utilities the opportunity to seek recovery of some of the current accumulated prepaid pension asset balances under certain reasonable parameters, including a lower rate of return on the allowed balance, if the Commission were to determine that retroactive ratemaking or single-issue ratemaking did not prohibit its inclusion.[46] In consideration of this recommendation, Staff considered several facts and recommends the following:

- Pension costs in rates do not match the actual pension costs of the utilities (*e.g.* the utility may collect more or less money in rates from its estimated pension expense than it pays). Ratepayers should not pay twice, so the current prepaid pension asset account balance should be netted against the difference between pension costs collected in rates and the actual FAS 87 expense.[47]
- The utility should not be able to collect a rate of return on the portions of the prepaid pension balance that are associated with a return on the pension investment above the amount that is used to calculate FAS 87 expense. For example, successful investment management of the pension fund does not represent an actual cost to utilities that should be borne by ratepayers.[48]
- The Joint Utilities assert that the drivers for the increase in the prepaid pension asset balance were the PPA, which went into effect in 2008, the market crash of 2008, and lower interest rates. While this seems to correlate to Avista's and PacifiCorp's increased prepaid pension asset balances, over 50 percent of NW Natural's, PGE's, and Cascade's, balances were accumulated prior to 2008. Therefore, Staff would exclude the portion accumulated before 2008.[49]
- Because Staff contends that ratepayers have funded the prepaid pension asset balance, unless the utilities can demonstrate otherwise (*i.e.* it was funded by shareholders and such funding was prudent), ratepayers should receive the tax benefits associated with the prepaid pension asset balance. This provides consistent treatment for the prepaid pension asset balance and tax benefits associated with it.[50]

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[46] *See* Staff/100; Bahr/2, lines 13-23.
[47] *See Id.* at lines 16-18; *Id.* Bahr/19, lines 7-15.
[48] *See Id.* at Bahr/18, lines 12-19.
[49] *See Id.* at Bahr/6, line 12 through Bahr/7, line 1; Staff/200; Bahr/11, lines 10-12.
[50] *See* Staff/400; Bahr/6, line 1 through Bahr/7, line2.

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- If the Commission were to allow recovery on a portion of the current prepaid pension asset balances, it should not apply the utility's authorized rate of return to the balance. Instead, it should apply a lower rate, such as the rates applied to a balancing account, because the prepaid pension asset balance is more akin to a balancing account than a utility investment.[51]

Conclusion

For the foregoing reasons, Staff respectfully requests that the Commission continue its long-standing policy of allowing regulated utilities to recover, in rates, their pension expenses using the standards established by FAS 87. Furthermore, Staff respectfully requests that the Commission find the Joint Parties' proposal on the inclusion of prepaid pension asset balance into rate base to be unlawful retroactive ratemaking and inconsistent with the limitation of single-issue ratemaking.

Because Staff agrees that the financing costs of the utilities' cash contributions are true costs to the utilities, it recommends that the utilities be allowed to argue, in future rate proceedings, for the inclusion of the financing costs of prepaid pension asset balances accruing prospectively to the extent they not associated with a return on the pension investment above the amount that is used to calculate FAS 87 expense. Finally, Staff offers a recommendation that would allow a return on current prepaid pension asset balances, within reasonable parameters, if the Commission were inclined to allow some of the current prepaid pension balances into future rates.

DATED this 30th day of January 2015.

Respectfully submitted,

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[51] *See* Staff/100; Bahr/19, line 22 through Bahr/20, line 5.

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CERTIFICATE OF SERVICE

I certify that on January 30, 2015, I served the foregoing Staff Prehearing Brief upon the parties in this proceeding by electronic mail only as all the parties waive paper service.

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