

# Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • jog@dvclaw.com  
Suite 450  
1750 SW Harbor Way  
Portland, OR 97201

June 27, 2019

## *Via Electronic Filing*

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High St. SE, Suite 100  
Salem OR 97301

Re: In the Matter of PORTLAND GENERAL ELECTRIC CO.  
Application for the Deferral of Storm-Related Restoration Costs  
**Docket No. UM 1817**

Dear Filing Center:

Please find enclosed the Closing Brief of the Alliance of Western Energy Consumers in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch  
Jesse O. Gorsuch

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1817**

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC	)	CLOSING BRIEF OF THE ALLIANCE
COMPANY,	)	OF WESTERN ENERGY CONSUMERS
	)	
Application for Deferral of Storm-Related	)	
<u>Restoration Costs.</u>	)	

**I. INTRODUCTION**

Pursuant to the Administrative Law Judge’s prehearing conference memorandum in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) submits this closing brief.

Portland General Electric Company’s (“PGE” or the “Company”) opening brief implicitly requests that the Commission reassess years of Commission precedent, which would unsettle a well-founded framework that has created predictability and consistency for all stakeholders. It also states that PGE should be able to recover its 2017 Level III storm recovery costs specifically, when in fact the Company is only owed an opportunity to earn a fair rate of return generally. The Company does not address how the requested deferral would appropriately match costs and benefits and attempts to distinguish prior Oregon Public Utility Commission (“Commission”) deferred accounting orders based on irrelevant factual differences. Finally, PGE implies that public policy considerations support allowing a deferral, when in fact doing so would encourage economically inefficient behavior.

## II. ARGUMENT

### A. Granting PGE's requested deferral would contravene longstanding Commission policy.

Over the course of several decades, the Commission has developed a clear, broadly applicable policy regarding the use of deferred accounting. First, a deferral must meet the statutory standard discussed in ORS 757.259.<sup>1/</sup> Second, the applicant (usually the utility) must show that “the magnitude of the financial effect on the utility” would either be material or substantial, depending on the type of risk prompting the deferral application.<sup>2/</sup> The Commission adopted this framework for assessing deferral applications in 2005 with Order 05-1070, but the theory dates back at least a decade earlier. For example, in 1995, the Commission considered “the impact of [the underlying event] upon [a utility’s] financial results” when considering Idaho Power’s request to defer a portion of increased power costs resulting from a six-year drought.<sup>3/</sup> PGE’s deferral application seeks to dismantle this framework.

The Commission’s long-standing deferral standard is fair to utilities and ratepayers, and it should not be changed. It allows utilities to recover costs that genuinely threaten their financial health, and it also protects ratepayers from assuming responsibility for normal cost variations that would be within the range of expected business risk for a utility.

As discussed in AWEC’s opening brief, the sheer number of deferrals PGE has open indicates that it is not content with this approach.<sup>4/</sup> As it did in Docket No. UM 1623,

---

<sup>1/</sup> In Re Staff Request to Open an Investigation Related to Deferred Accounting, Docket No. 1147, Order No. 05-1070 at 4-5 (Oct. 5, 2005).

<sup>2/</sup> Re PGE Application for an Order Approving the Deferral of Hydro Replacement Costs, Docket No. UM 1071, Order No. 04-108 at 9 (Mar. 2, 2004).

<sup>3/</sup> In Re Idaho Power Co., 95-690, 1995 WL 468178 (Or PUC July 5, 1995).

<sup>4/</sup> AWEC Opening Brief at 15-16.

where it requested a deferral of \$16.4 million in pension expenses, PGE is asking the Commission to allow it to defer an amount with very little impact on its overall financial results, which would depart from the Commission’s consistent practice of only allowing a deferral of expenses with either a substantial or material impact.<sup>5/</sup>

By all appearances, PGE now seeks what it failed to get in Docket No. UM 1623 – a relaxed deferral standard allowing utilities to shift the risk of specific expenses to ratepayers, including costs that are “well within the bounds of acceptable risk between rate cases.”<sup>6/</sup> Here, PGE asks to shift the risk of almost all of its 2017 Level III storm costs to ratepayers, because otherwise, “PGE will not have the opportunity to recover the full extent of its prudently-incurred costs over time.”<sup>7/</sup> But PGE is wrong because it can recover those costs when the “total effect of the rate” is considered.<sup>8/</sup> A deferral is not appropriate just because a specific cost might not be recovered.<sup>9/</sup> In effect, PGE is asking the Commission to normalize single-issue ratemaking and consider whether specific utility expenses exceed forecasted levels to determine if a deferral is appropriate, an activity in which “[t]he Commission does not engage.”<sup>10/</sup> AWEC agrees with the Citizens’ Utility Board’s (“CUB”) view that allowing this deferral “would open the door for PGE

---

<sup>5/</sup> Re PGE Application for Deferral Accounting of Excess Pension Costs and Carrying Costs on Cash Contributions, Docket No. 1234, Order No. 16-257 at 4 (Jul 7, 2016).

<sup>6/</sup> Id. at 3.

<sup>7/</sup> PGE Opening Brief at 12. As discussed in AWEC’s Opening Brief, PGE’s request is limited to costs incurred after it filed its deferral request. The Company is prohibited from seeking deferral of the \$0.8 million of costs it incurred before it filed its deferral application on January 11, 2019. AWEC Opening Brief at 2. However, it surely would have included these costs as well had the law allowed it.

<sup>8/</sup> Federal Power Comm’n v. Hope Nat. Gas, 320 U.S. 591, 602 (1944).

<sup>9/</sup> See Order No. 04-108 at 10 (rejecting PGE’s argument that “it will not recover its [hydro] losses for 2003.”).

<sup>10/</sup> See City of Portland v. PGE, Docket No. UM 1262, Order No. 06-636 at 7 (Nov. 17, 2006).

and other utilities to seek deferral of all manner of unexpected costs, regardless of the magnitude of the harm.”<sup>11/</sup>

If PGE’s application is granted, the resulting precedent would not just expose ratepayers to increased risk, it would also add considerably to the Commission’s workload. Under a relaxed standard, utilities would have a tremendous incentive to file deferral applications for expenses that historically would have been treated as normal variation. This Commission is obligated to consider every deferral application, which requires public notice, comment, and a hearing if requested.<sup>12/</sup>

Finally, granting PGE’s application would have impacts far beyond how deferrals are considered. As the Commission has explained, “[i]f 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.”<sup>13/</sup> The ratemaking process assumes a certain amount of variability in costs between rate cases,<sup>14/</sup> and if utilities can avoid cost risk by filing deferrals, it would be necessary to reassess the assumptions about cost variability that are included in those rates. This includes reassessing a reasonable return on equity that is in part designed to compensate for the risk of cost and revenue variability between rate cases.

---

<sup>11/</sup> CUB Opening Brief at 12.

<sup>12/</sup> ORS § 757.259(2).

<sup>13/</sup> Re Northwest Natural Gas Co., d/b/a NW Natural, Request for a General Rate Revision, Docket No. UG 221, Order No. 12-437 at 26 (Nov. 16, 2012).

<sup>14/</sup> In Re Utility Reform Project and Ken Lewis, Application for Deferred Accounting, Docket No. UM 1224, Order No. 09-316 at 13 (Aug. 18, 2009).

**B. PGE has not shown that the requested deferral appropriately matches costs and benefits.**

As a threshold matter, a utility applying for a deferral under ORS 757.259(2)(e) must either show that the deferral will “minimize the frequency of rate changes or the fluctuation of rate levels” or that its deferral will “match appropriately the costs borne by and benefits received by ratepayers.” PGE bears the burden of proof to show that its application meets this standard.<sup>15/</sup> Notably, however, PGE’s opening brief contains no explanation of how deferring the 2017 Level III storm recovery costs would either minimize rate changes or match appropriately customer costs and benefits. Accordingly, the Company has failed to meet its burden to demonstrate that its application meets the threshold statutory criteria and should be denied on this ground alone.

Instead of explaining why PGE’s request is statutorily supportable, the Company explains that the Commission has “emphasized the value of using ‘a flexible, fact-specific review approach that acknowledges the wide range of reasons why deferred accounting might be beneficial to customers and utilities.’”<sup>16/</sup> AWEC agrees that there are probably a wide range of reasons that deferred accounting could benefit customers and utilities, but those potential benefits are irrelevant if PGE does not meet the statutory standard. Regardless of how the Commission chooses to approach its analysis of PGE’s application, that analysis must focus on “whether either of these standards [ORS 757.259(e)(1) and (2)] is satisfied.”<sup>17/</sup> As PGE has not

---

<sup>15/</sup> Order No. 05-1070 at 5.

<sup>16/</sup> PGE Opening Brief at 8-9.

<sup>17/</sup> Order No. 05-1070 at 5.

explained how its application meets either of these standards, it has not met its statutorily required burden of proof and its application should be denied.

**C. The nature of the underlying event is irrelevant when determining if a deferral should be granted.**

PGE's brief attempts to dismiss the significance of the Commission's previous orders regarding deferred accounting on the grounds that they discuss net power costs. PGE argues that these cases are irrelevant because power cost cases are a "unique category of deferrals that create 'controversy and uncertainty.'"<sup>18/</sup> This is a plain misreading of Commission precedent. The framework that the Commission has created does not distinguish between deferral applications based on the nature of the underlying event, as borne out in several Commission orders and the theories underpinning the standard.

Most importantly, Order 05-1070, which PGE relies on and which established the framework for deferred accounting applications that exists to this day, was the result of a generic investigation that was intended to "broadly examine the use of deferred accounting, to evaluate the successes and failures of the practice, and to establish how the Commission should use deferred accounting in the future."<sup>19/</sup> No part of the order indicates that these practices should be limited to power cost deferrals – the Commission merely noted that "[m]uch of the controversy and uncertainty surrounding deferrals relates to excess power costs" because these are "the largest category of costs for which this Commission has granted deferred accounting."<sup>20/</sup> It did not suggest that power cost deferrals should somehow be treated differently from deferrals of

---

<sup>18/</sup> PGE Opening Brief at 20.

<sup>19/</sup> Order No. 05-1070 at 3, PGE/100, 4:4-16.

<sup>20/</sup> Order No. 05-1070 at 10.

other costs. It is true that several cases that followed Order 05-1070 considered requests to defer power costs. However, it makes no sense to judge the intended effect of an order by the nature of the cases that have followed it, especially when Order 05-1070 evinces no intent to be so limited.

PGE's primary argument in favor of distinguishing power cost cases is that the Commission has imposed "deadbands" in power cost cases to prohibit recovery of immaterial or insubstantial expenses.<sup>21/</sup> But these deadbands are just a numerical representation of the Commission's longstanding substantial/material standard. In other words, they may provide an administratively efficient mechanism for determining if the Commission's discretionary criteria have been satisfied, but they do not change those criteria.

This consistent approach to deferral applications is not affected by Order 12-489, which PGE cites to argue that storm deferrals should be judged by a different standard.<sup>22/</sup> Order 12-489 is not persuasive because (1) it merely adopted Staff's recommendation at an open meeting and was not subject to a contested case process, and (2) it provides no actual alternative standard. All the case proves is that storm recovery costs could potentially be considered "an unanticipated event" subject to deferral, as AWEC, Staff, and CUB have all acknowledged.<sup>23/</sup> Without an actual standard, and without Commission reasoning to support it, Order 12-489 provides no support for PGE's position beyond what all other parties have already conceded.

---

<sup>21/</sup> PGE Opening Brief at 19-20. PGE's 2017 Level III storm recovery costs represent just 36 basis points, well under the 100- and 250-point deadbands established in Order Nos. 07-49 and 04-108.

<sup>22/</sup> PGE Opening Brief at 20.

<sup>23/</sup> See AWEC Opening Brief at 10; CUB Opening Brief at 10; Staff/100, 11:7-9.

Finally, even if the nature of the underlying event were relevant when considering a deferral application, PGE has not cited a single case where the Commission expressly considered deferring an expense simply because it was larger than expected, as PGE requests here. The Commission has consistently assessed whether to grant a deferral based on the expense's impact on a utility's overall finances.<sup>24/</sup>

**D. PGE's policy arguments in favor of allowing deferral contradict its own testimony and would discourage economically efficient behavior.**

In its Opening Brief, PGE argues that the Commission should “encourage utility behavior consistent with good regulatory policy.”<sup>25/</sup> AWEC agrees, but disagrees about how deferrals should be used to promote good utility behavior. PGE argues that allowing deferral of storm costs encourages good utility behavior because it would “prioritize prompt and prudent restoration of service.”<sup>26/</sup> First, AWEC notes that PGE already has an obligation to promptly restore service due to its obligation to serve, so an added incentive in favor of doing so is unnecessary.<sup>27/</sup> Second, PGE's argument appears to contradict the position it took in rebuttal testimony, where it effectively argued that the Company would not modify its storm response if there was a potential financial benefit in the form of a deferral available.<sup>28/</sup> How is it that good policy would allow a deferral to encourage prompt restoration of service, yet PGE would still respond the same way it always has?

In fact, requiring PGE to bear a reasonable level of storm restoration costs encourages economically efficient behavior. PGE objected to Dr. Marc Hellman's position that

---

<sup>24/</sup> AWEC Opening Brief at 11-12.

<sup>25/</sup> PGE Opening Brief at 13.

<sup>26/</sup> Id.

<sup>27/</sup> PGE/100, 9:8-12, 10:2-5.

<sup>28/</sup> PGE/200, 17:3-16.

guaranteed recovery of all of its storm restoration costs could incentivize the Company to increase those restoration costs,<sup>29/</sup> and the Company likely has an incentive to invest in the reliability of its distribution system since it can rate base those investments and earn a return. However, even if PGE would not have an incentive to maximize storm restoration costs (since these ultimately would be a pass-through and provide no incremental benefit to shareholders), guaranteed recovery of all storm recovery costs would provide no incentive for PGE to minimize those costs to the extent possible, which is precisely the economic incentive PGE should have when engaging in storm restoration efforts.<sup>30/</sup>

### III. CONCLUSION

For the foregoing reasons, AWEC recommends that the Commission deny the Company's application to defer for later ratemaking treatment the \$8 million of 2017 Level III storm recovery costs. PGE has not met its burden of proof because it has failed to even to argue that its application meets the statutory requirements for a deferral. Further, granting the Company's application would fundamentally alter a longstanding standard that promotes predictability in the ratemaking process and has served ratepayers and utilities well for years.

---

<sup>29/</sup>

Id.

<sup>30/</sup>

It is also possible that allowing a deferral in this case could encourage PGE to inflate future storm recovery costs to some degree. If the Commission finds that \$8 million is sufficient to justify a deferral, PGE might have an incentive to make sure its recovery costs reach that level again in the future. For example, if PGE incurs \$6 million of storm recovery costs in 2020, knowing that \$8 million was previously subject to deferral, it would have an incentive to incur \$2 million more to justify deferral – and with it, to potentially transfer \$6 million of operating costs from shareholders to ratepayers.

Dated this 27th day of June, 2019.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Riley G. Peck

Tyler C. Pepple

Riley G. Peck

Davison Van Cleve, P.C.

1750 SW Harbor Drive, Suite 450

Portland, OR 97201

(503) 241-7242 (phone)

(503) 241-8160 (facsimile)

tcp@dvclaw.com

rgp@dvclaw.com

Of Attorneys for the

Alliance of Western Energy Consumers