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 REPLY BRIEF

June 27, 2019

I. Introduction.

Portland General Electric Company (PGE) seeks approval of an application to defer excess Level III storm damage restoration costs (hereinafter referred to as "Level III storm costs"). PGE filed the application under ORS 757.259(2)(e). All parties have described the Commission's two-stage review of deferral applications filed under ORS 757.259(2). Much of the dispute in this case is focused on the second, "discretionary stage of review." Although the Commission's analysis in the second stage has been described multiple times, Staff summarizes it here because it is not clear that PGE understands Staff's analysis.

In the second stage of its two-stage review, the Commission determines whether it should exercise its discretion to grant the requested deferral by considering two interrelated factors: the type of event giving rise to the deferral and the magnitude of the amount to be deferred. Typically, the Commission distinguishes the financial impact that is required by determining whether the underlying event or costs is a "stochastic risk" or "scenario risk."[1] To make this determination, the Commission examines whether and how the event is treated in the utility's rates effective at the time of the event.

If an event was modeled in rates, the Commission evaluates whether the event was within a foreseen range of risk, or whether extenuating circumstances were involved that rendered the event unforeseeable.[2] The former is classified as a stochastic risk and the latter classified as a scenario risk.[3]

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[1] *In the Matter of Portland General Electric Company, Application for Deferred Accounting of Excess Power Plant Costs Due to Plant Outage* (UM 1234), Order No. 07-049, p. 9.

[2] *Id.*

[3] It is Staff's understanding of this point that PGE did not perceive. PGE asserts that Staff categorizes the Level III storms as a stochastic because Level III storm costs are modeled in rates. PGE's Opening Brief, p. 17, lines 9-12. This is an oversimplification. Staff believes the 2017 Level III storms are a stochastic risk because they are modeled in rates *and within a foreseen range of risk.*

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If the event was not modeled in rates, the Commission assesses whether it was otherwise foreseeable in the normal course of business.[4] An event that is not modeled in rates but nonetheless foreseeable in the normal course of events is a stochastic risk. An event that is not modeled in rates and not foreseeable is a scenario risk.

If a deferral application is based on an event deemed to be a stochastic risk, deferral is warranted only if the financial magnitude of the event is "substantial."[5] If a deferral application is based on an event deemed to be a scenario risk, the financial impact must be "material."[6] As discussed in testimony and opening briefs, the Commission makes this determination on a case-by-case basis and has yet to adopt a bright-line rule as to what constitutes a "substantial" or "material" financial impact.

II. The costs at issue are not sufficient to warrant the extraordinary remedy of deferred accounting.

In this case, the costs for Level III storm damage restoration were modeled in rates based on a ten-year rolling average of the costs actually incurred by the Company. Because costs for Level III storms are modeled in rates, the appropriate question is whether the 2017 storm costs are within a foreseen range of risk or whether extenuating circumstances were involved that rendered the costs unforeseeable. The Association of Western Energy Customers (AWEC), Oregon Citizens' Utility Board (CUB), and Staff have submitted testimony and arguments to demonstrate that $10.6 million of Level III storm damage restoration costs falls within a foreseen range of risk captured by the 10-year rolling average methodology.[7] PGE has submitted testimony and argument attempting to demonstrate that the Level III costs at issue were not foreseeable.

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[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] See Staff/100, Moore/13.

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Staff will not reiterate its arguments as to why the 2017 Level III storms and their costs should be categorized as a stochastic risk in this Reply Brief. Whether the deferral is for a stochastic or scenario risk is not dispositive because the Commission must also take the financial impact to the Company into account. Importantly, the financial impact of the deferral amount ($8 million) is not sufficient to warrant deferral no matter whether the Level III storm costs are categorized as a stochastic or scenario risk.[8]

The Commission's previous orders make clear that even though the classification of an event as scenario or stochastic risk may turn on a comparison of the event's actual cost to what the utility recovers in rates for events of that nature, whether the financial impact of the event is sufficient to warrant deferral turns on the impact to the utility considering *all* the utility's costs and revenues.[9] So, even though costs of an event may be beyond the foreseen range of risk for that particular cost category, the costs may still be insufficient to warrant the extraordinary remedy of deferral when compared to the utility's overall revenue requirement.

The financial impacts at issue in at least the most recent cases involving scenario events were sufficient to warrant deferrals even if the events had been stochastic events.[10] Accordingly, what financial impact is "material" as opposed to "substantial" is not necessarily well defined.

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[8] AWEC/100, Hellman/14 ("Because 36 basis points is far less than the Order 07-049 materiality threshold of 100 basis points for scenario events, the PGE deferral application should be denied, regardless of whether the Commission determines 2017 Level III storm costs to be a stochastic or scenario event.")

[9] See e.g., *In the Matter of Portland General Electric Company Application for Deferral of Hydro Replacement Power Costs* (UM 1071), Order No. 04-108, p. 9 ("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.")

[10] *See e.g., In the Matter of Portland General Electric Company Application for Deferred Accounting of Excess Power Costs Due to Plant Outage, supra*, 07-049 (allowing deferral for Boardman Outage, which the Commission classified as a scenario risk with financial impact a little greater than 250 basis points of PGE's ROE); *In the Matter of the Application of PacifiCorp for an Accounting Order Regarding Excess Net Power Costs* (UM 995), Order No. 01-420 (allowing deferral for replacement power costs for volatile power markets combined with and poor hydro conditions and plant outage) and Order No. 02-503 (power costs eligible for deferral in UM 995 were approximately $131 million); and *In the Matter of Portland General Electric Company Application for Deferral of Hydro Replacement Power Costs, supra,* Order No. 04-108, pp. 8-9 (identifying events underlying PacifiCorp application in UM 995 as "scenario" risk).

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However, in the last several years, the Commission has defined the business risk that a utility is expected to absorb between rate cases as at least 100 basis points of the utility's ROE.[11] The Commission has required a utility to absorb costs that did not exceed this threshold no matter the categorization of the cost-causing event underlying a deferral application. In Docket No. UM 1623, the Commission denied PGE's request to defer excess pension costs concluding "the impact of the excess FAS 87 expense on PGE's earnings was 18 basis points in 2012 and 86 basis points in 2013, well within the bounds of acceptable risk between rate cases."[12] In Docket No. UM 1071, the Commission denied PGE's application to defer hydro replacement power costs, [13]

Even in cases in which the Commission has allowed deferrals, it has still required utilities to absorb a portion of the costs that the Commission deemed to be normal business risk.[14] In Docket No. UM 1234, the Commission addressed PGE's application to defer $45 million of replacement power costs related to an extended outage at its Boardman plant.[15] The Commission concluded the extended outage was a scenario risk and that the financial impact of slightly over 250 basis points of PGE's ROE was sufficient to warrant deferral.[16] However, the Commission did not allow PGE to defer all $45 million of replacement power costs. Instead, the Commission

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[11] See e.g., *In the Matters of Portland General Electric Company* (UE 180), Order No. 07-015, p. 18 (applying adjusted 150 basis points on ROE deadband in PGE's variable power cost adjustment mechanism as an explicit measure of normal business risk).

[12] See e.g., *In the Matter of Portland General Electric Company Application for Deferral Accounting for Excess Pension Costs and Carrying Costs on Cash Contributions* (UM 1623), Order No. 16-257, p. 4.

[13] *In the Matter of Portland General Electric Company Application for an Order Approving the Deferral of Hydro Replacement Power Costs, supra*, p. 9 (denying application to defer replacement hydro costs equal to approximately 95 basis points because the impact of the costs is not significant enough to warrant a deferral.)

[14] See e.g., *In the Matter of the Application of PacifiCorp for an Accounting Order Regarding Excess Net Power Costs, supra*, Order No. 01-420.

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

[16] *Id.*, pp. 10, 13 (finding that $42.8 million in replacement power costs were eligible for deferral and that the financial impact of this amount was equal to a few basis points over 250 points on ROE).

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allowed PGE to defer only the portion of the replacement power costs that exceeded PGE's "normal business risk," which the Commission deemed to equal 100 basis points of ROE. The Commission explained,

> [w]e must decide whether it is appropriate to apply a measure of normal business risk to a scenario risk such as the Boardman Outage. If so, then we must decide what the appropriate measure is. As we discussed above, we consider the Boardman Outage to be a scenario risk because we find the scope of the Boardman Outage to be outside of the range of foreseeable forced outages. * * *
>
> If an event is deemed a scenario risk because it is outside a range of normal risk, we find that it is appropriate to apply a measure of normal risk when allocating, for deferral purposes, the costs associated with the event. * * * However, as parties did not present evidence in this proceeding that would allow us to explicitly calculate this level of costs, we find it appropriate to approximate the financial impact of this range of risk. We determine that a 100 basis point deadband on ROE should be applied to costs eligible for deferral.[17]

Ultimately, PGE was allowed to defer $26.439 million of the $42.8 million of replacement power costs PGE incurred during the deferral period.[18]

Staff is aware of orders in which the Commission has determined that a larger amount represents normal business risk. For example in Docket No. UM 995 regarding PacifiCorp's deferral of excess power costs related to a scenario risk, the Commission "allowed no recovery of costs or refunds to customers within [a 250 basis point] deadband, reasoning that the band represented risks assumed, or rewards gained, in the course of the utility business."[19] However, Staff is aware of no orders in which the Commission has determined an amount equal to less than 100 basis points of a utility's ROE represents normal business risk a utility should absorb between rate cases. In light of the Commission orders consistently defining normal business risk as an amount equal to least 100 basis points of ROE, Staff does not think "material financial impact" can reasonably be 36 basis points of ROE, which is only a little over one-third of 100 basis points of ROE.

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[17] *Id.*, p. 19.

[18] *Id.*, p. 13 (finding there is $42.8 million in replacement power costs eligible for deferral), and p. 20 (authorizing PGE to defer $26.49 million in replacement power costs).

[19] *In the Matter of Portland General Electric Company Application for Deferral of Hydro Replacement Power Costs, supra* Order No. 04-108, p. 9, *citing* Order No. 01-420.

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III. PGE's reliance on Staff's positions in other cases is misplaced.

In its Opening Brief, PGE relies on the Commission's approval of a 2012 application to defer storm damage restoration costs filed by PacifiCorp as support for the request at issue in this docket.[20] In that case (Docket No. UM 1634), PacifiCorp filed a request to defer an unspecified amount of costs incurred to restore service after a severe storm.[21] PacifiCorp filed the application on November 20, 2012. On December 13, 2012, Staff posted a Staff Report for the Commission's regular public meeting on December 18, 2012, recommending the Commission approve the deferral request on the ground it met the criteria for deferrals the Commission articulated in Docket No. UM 1147. The Commission adopted the recommendation at its December 18, 2012 public meeting.[22] PacifiCorp subsequently withdrew the application because its self-insurance reserves covered the costs at issue.[23]

PGE's reliance on the Staff Public Meeting Memorandum and Commission order in the 2012 PacifiCorp case is misplaced because the Commission's review of PacifiCorp's application did not take into account the amount at issue. In the cases relied on by Staff and the intervenors in this docket, the Commission considered the interrelated impact of the foreseeability of the deferral event and the financial impact. Because Staff presented its recommendation to the Commission prior to the end of the deferral period in the PacifiCorp case, or even prior to the time PacifiCorp had an estimate of the costs at issue, the Commission could not conduct this analysis. Accordingly, the Commission's order in the case is not probative on the issue presented in this case.

If PGE is relying on the Commission's order regarding PacifiCorp's 2012 deferral request for the proposition that restoration costs for severe storms are always deferrable, no

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[20] PGE's Opening Brief, pp. 10-11, 18.

[21] UM 1634 Pacific Power's Request for Deferred Accounting Order for Network Damage from November 2012 Storm.

[22] *In the Matter of PacifiCorp dba Pacific Power's Request for Deferred Accounting Order for Network Damage from November 2012 Storm* (UM 1634), Order No. 12-489.

[23] UM 1634 PacifiCorp Withdrawal of Application (January 25, 2013).

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matter the financial impact, Staff urges the Commission to reject the proposition. If PacifiCorp had not withdrawn its deferral, Staff and other parties still would have had opportunity at the time PacifiCorp asked to amortize the costs to assert some or even all the deferred costs should be absorbed by the Company.

Also, Staff's testimony and briefs in this case make clear that Staff's position in the 2012 PacifiCorp matter was anomalous. In other cases concerning deferrals like the deferral at issue in this case, Staff has based its recommendation regarding deferral on a consideration of the event at issue and its financial impact.

PGE's argument that Staff and intervenors "do not challenge the extraordinary nature of the 2017 storm events, the prudence of PGE's restoration efforts, or the reasonableness of the costs expended[,]"[24] is also misplaced. Whether PGE acted prudently and reasonably is not at issue. The prudence of any deferred amounts is determined when the utility seeks to amortize them.[25] The questions presented are whether the costs were foreseen, whether their impact on the Company's earnings is sufficient to warrant the extraordinary ratemaking treatment of deferred accounting, and whether if deferral is allowed, the Company should still absorb some of the costs because the Company bears normal business risk between rate cases.

Finally, PGE's argument that Staff's opposition to PGE's deferral request is inconsistent with Staff's position in Docket No. UE 319 is incorrect. In that docket, Staff opposed PGE's request to modify the Level III storm cost accrual to allow the account to go "negative" so that PGE would be assured of dollar for dollar recovery of all Level III storm costs. Staff opposed this ratemaking treatment, but stipulated to PGE continuing to accrue unspent revenues collected for Level III storm damage restoration from year-to-year. However, Staff has always

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[24] PGE's Opening Brief, p. 1.

[25] ORS 757.259(5); See e.g., *In the Matter of Portland General Electric Company Application to Amortize the Boardman Deferral* (UE 196), Order No. 10-051, pp. 13-14 (Commission finding PGE's imprudent actions contributed to Boardman Outage and allowing PGE to amortize only 50 percent of the $26.4 million PGE was allowed to defer).

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acknowledged that PGE may seek to defer extraordinary Level III storm costs.[26] The costs at issue in this case are not extraordinary.

IV. Conclusion.

Staff recommends that the Commission deny PGE's application to defer 2017 Level III storm costs.

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Respectfully submitted,

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