

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com
Suite 400
333 SW Taylor
Portland, OR 97204

October 31, 2012

Via Electronic and US Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PORTLAND GENERAL ELECTRIC Application for
Deferral Accounting of Excess Pension Costs and Carrying Costs on Cash
Contributions
Docket No. UM 1623

Dear Filing Center:

Enclosed please find the original and five (5) copies of the Comments on behalf
of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely,

/s/ Sarah A. Kohler
Sarah A. Kohler

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Comments on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, and via electronic mail.

Dated at Portland, Oregon, this 31st day of October, 2012.

Sincerely,

/s/ Sarah A. Kohler
Sarah A. Kohler

(W) PORTLAND GENERAL ELECTRIC

Patrick Hager – 1WTC0702
Douglas C. Tingey – 1WTC1301
Christopher A. Liddle
121 SW Salmon St.
Portland, OR 97204
pge.opuc.filings@pgn.com
doug.tingey@pgn.com
christopher.liddle@pgn.com

PUC STAFF – DEPARTMENT OF JUSTICE

Jason W. Jones
BUSINESS ACTIVITIES SECTION
1162 COURT ST NE
SALEM OR 97301-4096
jason.w.jones@state.or.us

(W) CITIZENS' UTILITY BOARD OF OREGON

OPUC Dockets
Robert Jenks
G. Catriona McCracken
610 SW BROADWAY, STE 400
PORTLAND OR 97205
dockets@oregoncub.org
bob@oregoncub.org
catriona@oregoncub.org

(W) REGULATORY & COGENERATION SERVICES, INC.

DONALD W. SCHOENBECK
900 WASHINGTON ST STE 780
VANCOUVER WA 98660-3455
dws@r-c-s-inc.com

PUBLIC UTILITY COMMISSION OF OREGON

Judy Johnson
Nicholas Cimmiyotti
PO BOX 2148
SALEM OR 97308-2148
judy.johnson@state.or.us
nick.cimmiyotti@state.or.us

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1623

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC)	COMMENTS IN OPPOSITION OF THE
)	INDUSTRIAL CUSTOMERS OF
Application for Deferral Accounting of Excess)	NORTHWEST UTILITIES
Pension Costs and Carrying Costs on Cash)	
Contributions)	
_____)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits the following comments regarding Portland General Electric Company’s (“PGE”) application for deferred accounting of pension costs (“Application”) in Oregon Public Utility Commission (“OPUC” or the “Commission”) Docket No. UM 1623. The Commission should reject PGE’s Application, because it constitutes impermissible single issue ratemaking and fails to meet the Commission’s standards for deferred accounting. PGE currently has a high return on equity (“ROE”) and is dramatically overearning. There is no reason for PGE to isolate one aspect of its costs (pensions), which may be higher, while not making corresponding adjustments in areas in which the Company’s costs have been significantly reduced. PGE also fails to recognize that the risk that its pension expense may exceed the amount forecast in rates is just part of the normal regulatory process, for which PGE is more than sufficiently compensated with its high ROE and its current overearning.

Finally, PGE's estimated \$12.9 million in pension costs are not eligible for deferred accounting treatment, as they do not have a significant or material impact on PGE's financial situation. If the Commission does not reject the Application, then the deferral should be expanded to include PGE's excessive earnings, and an investigation should be opened to consider whether PGE's cost of capital and overall authorized rate of return should be lowered to be more in line with current market conditions and other Northwest utilities. ICNU has not reviewed PGE's factual assertions and claims regarding its pension costs; such a review is not necessary, because, on its face, the Application is barred by the deferred accounting statute and Commission policies. It is egregious to file such a request to raise customers' rates while PGE is significantly overearning.

II. BACKGROUND

On December 9, 2009, PGE filed a pension deferral requesting deferred accounting treatment of 2010 pension expense. Soon thereafter, on February 16, 2010, PGE filed its last general rate case. Among other issues in the general rate case, PGE sought to increase its ROE to 10.5%, included revised pension costs, and proposed a new pension tracking adjustment mechanism (which PGE called the "PAM"). PGE requested that the Commission approve the PAM as a separate tariff similar to its power cost annual update tariff that would annually change rates based on a forecast of future expected pension expense and cash contributions. The PAM would have recovered the differences between forecast and actual expense. PGE explained that pension expense is typically forecast in its general rate cases, but argued that the standard ratemaking process was insufficient, because there will be large variations in pension over the next few years.

ICNU opposed the ROE increase, the pension deferral and the PAM, and the parties eventually reached settlements on these and other issues. The parties agreed to an authorized ROE of 10% and an overall rate of return of 8.033%. Re PGE, Docket No. UE 215, Order No. 10-478 at 9 (Dec. 17, 2010). PGE also agreed to withdraw both its pension deferral and its proposed PAM. Id. at 11; Re PGE, Docket No. UE 215, Stipulating Parties' Testimony/100, Johnson-Jenks-Tinker/5 (Jul. 1, 2010). Specific ratemaking adjustments were also made to PGE's pension expenses and an agreement was reached on the amount of pension costs to be included in rates. Stipulating Parties' Testimony/100, Johnson-Jenks-Tinker/5.

On August 22, 2012, PGE filed its current Application requesting deferred accounting treatment for alleged excess pension costs and the carrying cost on cash contributions. PGE claims that its actual pension expense is higher than the amount included in rates and is expected to be higher until 2018. PGE states that the main reason that its pension expense has increased is that interest rates have declined, but PGE fails to note that this same interest rate decline has significantly lowered its cost of capital. PGE also proposes to establish a separate balancing account for future recovery of the carrying costs and states that an earnings review is not necessary. PGE estimates that the amount that would be deferred for 2012 would be approximately \$12.9 million.

III. COMMENTS

A. PGE's Application Should Be Rejected As Impermissible Single Issue Ratemaking

PGE has proposed that the Commission establish a balancing account to revise one aspect of its rates while not reviewing or adjusting other aspects of PGE's declining costs. Although couched as a deferred account, PGE essentially wants to revise its pension costs that

exceed the amount set in rates without any consideration for whether the Company's overall operations and earnings are appropriate. This constitutes single issue ratemaking in its worst form, which is highly disfavored by the Commission and should be rejected.

The Commission has stated that it "does not engage in single issue ratemaking." City of Portland v. PGE, Docket No. UM 1262, Order No. 06-636 at 7 (Nov. 17, 2006). The Commission has explained that "the general policy against single-issue ratemaking" is designed to discourage "focusing on one cost element while ignoring others" as "a change in one cost element does not, by itself, require an adjustment to rates because increases elsewhere may offset decreases." Re PGE, Docket Nos. UE 180/UE 184, Order No. 08-118 at 4 (Feb. 14, 2008). Ratemaking should evaluate all of the utility's expenses to ascertain whether an overall rate increase is warranted. Docket No. UM 1262, Order No. 06-636 at 7; Re Qwest, Docket No. UT 125, Order No. 06-515 at 10 n.19 (Sept. 11, 2006).

The Commission's policy against single issue ratemaking is particularly relevant as it relates to PGE's pension deferral. PGE's overall rates appear to have been set too high, as the Company is currently significantly overearning. After accounting and regulatory adjustments, PGE has about \$260 million in operating income, which translates to about an 11.22% ROE. Re PGE, Docket No. UE 256, PGE/100, Hager-Tooman/9 (PGE's 2011 ROE was 11.22%). For example, PGE's power costs in rates were \$34.3 million less than forecast, and while PGE is returning \$5.5 million, the Company is keeping about \$28.8 million because of the deadbands and earnings tests associated with its power cost adjustment mechanism ("PCAM"). Id. at Hager-Tooman/7; Re PGE, Docket No. UE 256, Order No. 12-402 at 1-2 (Oct. 24, 2012). ICNU is not disputing the operation of the Company's PCAM, as PGE should absorb the risks

and benefits of actual power costs differing from the amount set in rates, but it illustrates that PGE's overall rates are providing more than adequate compensation, and a deferred account is unnecessary.

PGE's overall rates are also too high because the Company's cost of capital has not been reset to incorporate lower borrowing costs in the current market. PGE's current ROE is 10%, but borrowing costs have declined significantly since 2010. This is particularly relevant to PGE's pension filing, as the Company claims that its pension costs have increased because discount rates have declined. Application at 2. The same reductions in interest rates have simultaneously reduced PGE's cost of capital. It is highly inappropriate to consider only the cost increases, but ignore the cost savings, associated with changed interest rates.

The Commission should reject both PGE's Application and its request for a balancing account as inconsistent with the policy against single issue ratemaking; however, if the Application is not denied, then the Commission should also expand the deferral to include all cost savings associated with the decline in interest rates. The Commission should aggressively investigate all reasons why PGE's earnings are excessive, and reset PGE's cost of capital to be more in line with the current market conditions.

B. The Application Is Inconsistent with the Deferred Accounting Statute and Commission's Deferred Accounting Standards

The Commission should reject PGE's Application because it violates the deferred accounting statute and is outside the Commission's well-established standards for allowing deferrals. The Commission has established a two-stage process for evaluating deferred accounting requests: 1) it must fit within the deferred accounting statute; and 2) it must be

consistent with the Commission's established process for granting deferrals. Re PGE, Docket No. UM 1234, Order No. 07-049 at 8-9 (Feb. 12, 2007); Re Staff Request to Open an Investigation Related to Deferred Accounting, Docket No. UM 1147, Order No. 05-1070 at 10 (Oct. 5, 2005). PGE's Application fails on both accounts. First, the Application violates the law, as PGE has not established that it will minimize the frequency of rate changes, appropriately match costs and benefits, or survive an earnings review. Second, the Application does not fit within the Commission's established policies, because the risk that PGE's pension costs could increase is not extraordinary, it was considered in PGE's last general rate case, and it is well within the risks that PGE expected to absorb as its normal business operations. Singling out recovery of increased pension costs is also inconsistent with Commission precedent; the alleged financial harm to PGE is not substantial or material, especially given the Company's current overearnings.

1. PGE Has the Burden of Proof to Open a Deferred Account

PGE retains the burden of persuasion and the burden of production in all aspects of its deferred accounting request. Docket No. UM 1147, Order No. 05-1070 at 5, 7. PGE cannot meet its burden "merely by presenting un rebutted evidence. The evidence must be persuasive enough to satisfy all requirements required by statute." Id. at 5-6. PGE's cursory statements that its deferral will satisfy both legal pre-conditions and the Commission's deferral policies are insufficient to establish that its deferral is warranted and authorized by law.

2. PGE's Application Fails to Meet the Statutory Standards for Establishing a Deferral Account

The Application fails to present sufficient evidence to meet the statutory standards set forth in ORS § 757.259(2)(e) that would allow the Commission to authorize this deferral. Specifically, the Application must be rejected as contrary to the law, because PGE has not explained or provided sufficient evidence to demonstrate that its deferral will either minimize the frequency of rate changes, appropriately match costs and benefits, or satisfy an earnings test.

Oregon's deferred accounting statute authorizes deferrals for two purposes: 1) to minimize the frequency of rate changes; and 2) to appropriately match the costs and benefits borne by, and the benefits received by, ratepayers. ORS § 757.259(2)(e); Docket No. UM 1234, Order No. 07-049 at 8-9. The Commission has explained that the Commission does "not grant deferral unless it is clearly within the reach of the statute." Re PacifiCorp, Docket No. UE 76, Order No. 92-1128 at 8 (Aug. 4, 1992). In addition, unless subject to an existing automatic adjustment clause, no deferred amounts can be included in rates after a "review of the utility's earnings at the time of the application to amortize the deferral." ORS § 757.259(5).

Finally, the Commission has recognized that deferred accounting should be used sparingly, since it upsets the typical regulatory risk upon which rates are set. Docket No. UM 1147, Order No. 05-1070 at 10. PGE has not provided any justification or explanation regarding why the Commission should depart from the law or its past practices to allow this pension deferral.

a. PGE’s Application Will Not Minimize the Frequency of Rate Changes

To determine whether a utility’s request for a “deferral will minimize the frequency of rate changes depends primarily on the size of the cost to be deferred and the utility’s options for rate filings, including requests for interim rate relief.” Docket No. UM 1147, Order No. 05-1070 at 5. For example, “a utility might meet this standard by showing that the deferral would prevent an interim rate filing.” Id. The Commission will consider granting an interim rate increase if “the utility can show a compelling need for immediate rate relief.” Re PGE, Docket Nos. UE 47/UE 48, Order No. 87-1017 at 53 (Sept. 30, 1987) (internal citations omitted). In such instances, “the utility should show severe financial stress or some other such reason to gain approval” and that “its ability to serve the public at reasonable rates will be jeopardized.” Id.

PGE has presented no evidence that the deferral will minimize the frequency of rate changes or meet the Commission’s standards for filing interim rate relief. For example, the Application contains a two-paragraph explanation of the “Reasons for Deferral,” which only contains a conclusory statement that it will minimize the frequency of rate changes. Application at 4. There is neither explanation for how the deferral will actually minimize rate changes or what other options PGE has for obtaining rate relief, nor is there any attempt to demonstrate that granting the application will prevent any rate changes or is required to prevent financial harm. The complete lack of any support or explanation is likely because, given the fact that PGE is significantly overearning, it would be very difficult for PGE to make any such demonstration.

b. PGE’s Application Will Not Appropriately Match Costs and Benefits

The Commission is also authorized to allow deferrals to match the costs and benefits received and paid for by ratepayers. ORS § 757.259(2)(e); Docket No. UM 1234, Order No. 07-049 at 8-9. This statutory standard does not merely mean that a utility can defer cost increases between rate cases; it is intended to address the narrow situation in which a cost being experienced by a utility today is “related to a benefit which may be received by a customer in the future.” Order No. 92-1128 at 9. In this situation, the Commission “may defer recovery of such cost until such time as the related benefit can be delivered to the customer.” Id.

In the legislative history of ORS § 757.259, former OPUC Commissioner Charles Davis used as an example of the appropriate matching of costs and benefits weatherization programs that “would produce benefits lasting for some time,” stating that spreading the costs of such a program over an extended period may be appropriate under this section. Hearing on HB 2145 before the House Committee on Energy and Environment, Exhibit B at 8 (Mar. 11, 1987) (testimony of OPUC Commissioner Davis). Thus, this provision is intended to allow the deferral of a current cost into the future so that it will be paid by the future ratepayers who will actually benefit from the cost.

Other than another conclusory statement, PGE’s Application also fails to provide any explanation regarding how the deferral would appropriately match costs and benefits. PGE is seeking a deferral because it claims that its actual current pension expense is higher than the amount assumed to be in rates. PGE’s current pension expense is a responsibility of the Company to fully fund right now. Deferral of these costs would simply shift costs into the future, not match costs and benefits.

c. PGE’s Application Must Be Subject to an Earnings Test

PGE requests that the Commission not subject the deferral to an earnings review, because the Company has proposed that the amounts eventually be recovered through a balancing account. PGE Application at 5. PGE is incorrect—its deferred amounts should not only be subject to an earnings review, but the entire deferral request should be rejected because PGE cannot demonstrate that it has experienced poor earnings, warranting the need for a deferred account.

Oregon law requires that deferrals be subject to earnings reviews, unless subject to an automatic adjustment clause under ORS § 757.210(1). ORS § 757.259(5). The purpose of an earnings review is that a utility has the responsibility “to operate within a fixed level of rates despite actual costs or revenues while striving to earn a certain level of return” Re PGE, Docket No. UM 1224, Order No. 09-316 at 14 (Aug. 18, 2009). The Commission has explained that, “[i]f a utility operated within its fixed rates, then the need to amortize the deferred funds is obviated” and an earnings review allows the Commission “to confirm whether costs or revenues that were deferred were truly exceptional, or whether they were absorbed by the utility.” Id.

With only one sentence of explanation, PGE asserts that the earnings test is not necessary because it simultaneously filed the deferral with a request to establish a “balancing account.” Although PGE’s rationale is unclear, the Company appears to believe that the filing of a request for a balancing account satisfies the exception to an earnings test allowed for deferrals subject to an “automatic adjustment clause” under ORS § 757.210(1). The most basic problem with PGE’s position is that the Commission has not yet approved an automatic adjustment clause for PGE’s pension costs, and there is no “rate schedule that provides for rate increases or

decreases or both, without prior hearing” ORS § 757.210(1). In other words, PGE must have an approved automatic adjustment clause before it can request deferral of costs that can potentially avoid an earnings test. PGE’s request also puts form over substance. If PGE were correct, then all a utility would need to do to avoid an earnings test is to also file some sort of “balancing account” with its deferral. This type of exception would swallow the rule, and is inconsistent with the plain meaning and language of the deferred accounting statute.

3. The Application Violates the Commission’s Deferred Accounting Standards

For deferrals of costs that allegedly exceed the amount assumed to be in rates, the financial impact must be significant before a deferral is warranted. The Commission will first determine whether the event that triggers the deferral application is a stochastic or scenario risk. Docket No. UM 1234, Order No. 07-049 at 9. Stochastic risks are those that “can be predicted to occur as part of the normal course of events, whereas a scenario risk is not susceptible to prediction or quantification.” Id. The Commission similarly considers whether the event was modeled in rates and, if it was not, whether it should be expected to occur during the normal course of business. Id.; Docket No. UM 1147, Order No. 05-1070 at 7. The Commission has explained that events that are modeled or foreseen, without extenuating circumstances, must show a more substantial magnitude of harm to warrant the opening of a deferred account. Docket No. UM 1147, Order No. 05-1070 at 7.

Absent extraordinarily large harms, deferrals are not appropriate for the types of costs that were modeled in rates or otherwise foreseen. The nature of PGE’s pension costs are foreseeable stochastic risks that can be predicted to occur during the ordinary course of business, and the risk that PGE’s pension costs would increase was specifically considered in the last PGE

rate case. In UE 215, PGE proposed a pension balancing account to address pension cost variations and testified that its pension costs were likely and expected to increase over the next few years. Re PGE, Docket No. UE 215, Order No. 10-478 at 11; Docket No. UE 215, Stipulating Parties' Testimony/100, Johnson-Jenks-Tinker/5. The parties eventually agreed to a specific amount of pension costs to be included in rates. Id. Thus, PGE must demonstrate that the financial harm is "substantial" because the risk that PGE's pension costs would increase was explicitly considered in the settlement of its last rate case, and is the quintessential example of a foreseeable stochastic risk.

The Commission has not adopted a hard rule regarding estimating the financial harms deemed to be "significant" or "material," but in previous proceedings the Commission has used 250 basis points around the utility's ROE for estimating a significant harm and approximately 100 basis points around the utility's ROE for a material harm. Docket No. UM 1234, Order No. 07-049 at 10, 18-20. PGE's pension deferral costs are neither substantial nor material. Based on PGE's current average rate base of about \$3.05 billion and a 50% equity ratio, 100 basis points equals to about \$26 million of gross revenue, after taking into account taxes, and 250 basis points would be about \$65 million in gross revenue. Docket No. UE 256, PGE/102 (PGE's average 2011 rate base was \$3.05 billion). PGE's \$12.9 million in estimated pension costs are far less than either a significant or material harm, and are well within the normal business risk that PGE should be expected to absorb during normal operations.

IV. CONCLUSION

The Commission should reject PGE's pension deferral, as it is impermissible single issue ratemaking and inconsistent with both the deferred accounting statute and the

Commission's deferred accounting standards. In addition to violating the law and regulatory policy, PGE's request shows a profound disregard and insensitivity to the circumstances in its service territory. The Portland-Salem metro area, like the rest of the nation, is slowly climbing out of the worst economic recession since the Great Depression. In contrast, PGE's financial condition is excellent, with the Company exceeding its authorized ROE and able to benefit from extremely low capital costs and power markets. PGE's pension deferral is a one-sided attempt to protect shareholders from one category of cost increases that result from regulatory lag, while simultaneously allowing shareholders to keep all the cost decreases. As a matter of law and policy, PGE's application should be rejected.

Dated this 31st day of October, 2012.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Melinda J. Davison

Melinda J. Davison

Irion A. Sanger

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

mjd@dvclaw.com

ias@dvclaw.com

Of Attorneys for Industrial Customers
of Northwest Utilities