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	)

COMMENTS

OF THE

CITIZENS' UTILITY BOARD OF OREGON

October 30, 2012

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

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

I. Introduction

On August 22, 2012, PGE filed an Application for Deferral Accounting of Excess Pension Costs and Carrying Cost on Cash Contributions. According to that application:

> PGE seeks to defer the difference between actual costs and the amounts included in general rates for FAS 87 expense and carrying costs on excess cash contributions. The granting of this Application will minimize the frequency of rate changes and match appropriately the costs borne by and benefits received by customers.[1]

PGE estimates that the deferral will be $12.9 million in 2012.[2] The Company also places a number of conditions on the application:

[1] UM 1623, POE Application for Deferred Accounting, page 4.
[2] *Ibid*. page 5.

> A. Earnings Review: PGE believes that an earnings review is not necessary for excess FAS 87 pension expense and carrying costs on cash contributions due to the use of a balancing account
>
> B. Prudence Review: A financial review will be submitted by PGE as part of its general rate case submission. OPUC Staff may audit the account at any time.
>
> C. Sharing Percents: One hundred percent (100%) of the deferred costs should be subject to utility recovery, pending prudence review.[3]

CUB recently argued in UG 221 that NW Natural could not seek recovery of past pension contributions in excess of FAS 87 because NW Natural failed to file a deferral, and without a deferral its request violated the general prohibition on retroactive ratemaking. PGE avoids this general prohibition on retroactive ratemaking by filing a deferral, thus allowing CUB and other parties to consider its application on its merits. As discussed below, CUB believes the application and its conditions are not consistent with current PUC policy on deferrals and should be denied. In addition, with the Commission's decision to open a generic proceeding to discuss Oregon's ongoing treatment of pension expenses, CUB believes that this application is premature.

II. Deferred Accounting Principles

There are two primary problems associated with deferred accounting that have led the PUC to develop a set of principles associated with deferred accounting. First, it is an exception to the general rule against retroactive ratemaking. Second, it is a one-sided tool—while costs go both up and down between rate cases, utilities rarely file deferrals to share savings, and customers rarely have the information about costs to support a deferred accounting application. After concerns arose regarding the overuse of deferred

[3] *Ibid*.

accounting, the Oregon PUC discussed the principles that it would use to guide its exercise of discretion associated with deferred accounting.

A. Stochastic and Scenario Risk

In Order No. 04-108, the Commission described its approach to that discretion:

> The deferral statute sets out a two stage decision process. One stage entails an exercise of Commission discretion ("the commission by order may authorize ... "). The other stage, delineated in subsections (a) to (e) of ORS 757. 259, requires that we determine that the proposed deferral is authorized by law. In this proceeding, PGE has proposed a deferral under subsection (e). Therefore, to grant PGE's request, we must determine whether the application either minimizes the frequency of rate changes or the fluctuation of rate levels or appropriately matches the costs borne by and benefits received by ratepayers.
>
> Depending on the facts of a case, we may decide a case in the negative at either stage. If we conclude that a case does not warrant a deferral, we can elect not to exercise our discretion without further inquiry. Similarly, if a case does not meet any of the criteria set forth in subsections (a) to (e), we can elect not to discuss the conditions under which we exercise our discretion to grant deferrals. On the other hand, if we find that a case meets our standards for granting deferral, we cannot authorize deferral unless the case also meets one of the subsection (a) to (e) criteria. Thus, meeting one of the subsection (a) to (e) criteria is a necessary but not a sufficient condition for granting a deferred accounting application.
>
> Our previous deferred accounting orders do not discuss the exercise of our discretion. Therefore, we raise the question here: Under what circumstances do we elect to consider a deferral? We note first that our discretion is constrained by the statutory scheme that creates and governs the Commission. That is, the deferral statute must be read to grant us a sphere of discretion that does not conflict with regulatory practice. The deferral statute is a specific grant of authority to make rates retroactively. It must be read so as to avoid conflict with the other statutory provisions governing ratemaking.
>
> We look at two interrelated considerations for our initial determination whether to exercise our discretion. We consider both the type of event that caused the request for deferral and the magnitude of the event's effect. These considerations interact with each other such that neither one is dispositive without the other.
>
> Staff has established a distinction between the risks that can be predicted as part of the normal course of events and those that are not susceptible to

> prediction and quantification. Staff calls the former stochastic risks and the latter, paradigm or scenario risks. An example of a stochastic risk is variation in hydro availability over time. An example of a scenario risk is the "perfect storm" of 2000-2001, a cascade of effects that included poor hydro conditions, cold weather, and extremely volatile power markets (UM 995). We find this distinction useful to characterize the type of risk we consider appropriate for deferral.[4]

In its application, PGE failed to address the issue of what kind of risk it was seeking protection from. Instead, the Company simply stated that:

> The granting of this Application will minimize the frequency of rate changes and match appropriately the costs borne by and benefits received by customers.[5]

As the PUC stated in the above order, meeting this criteria is necessary, but is not on its own a sufficient condition for the Commission to act on its discretion with regard to a deferred accounting application.

CUB believes that pension expenses clearly fall into the category of stochastic risk. PGE proposed a balancing account for pensions because “FAS 87 pension expense increases and then decreases rapidly.” History shows that returns on pension investments vary widely from year-to-year. While this has been a severe and lengthy recession, investment markets are not outside of normal conditions. As of the date CUB is writing these comments, the Dow Jones Index is up 7.28% for the calendar year to date.

According to Commission Order No. 04-108, for “a stochastic risk to justify deferred accounting, the financial impact must be substantial.”[6] In that docket (UM 1071), PGE was seeking deferral of $31.6 million in excess power costs. The PUC found

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[4] Order No 04-108, page 8-9.
[5] UM 1623, PGE Application for Deferred Accounting, page 4.
[6] Order 04-108, page 9.

that this amount was "well short of the 250 basis points of return on equity within which we allowed no recovery in UM 995."[7]

In this docket PGE is expecting to deferral $12.9 million. CUB believes that this amount falls well short of a "substantial" financial impact. For this reason, the request for deferred accounting should be rejected.

B. Earnings Test

With the exception of automatic adjustment clauses, Oregon requires an earnings test before deferred accounts can be amortized. While PGE is not proposing amortization, it has proposed, as a condition of the application, that no earnings test apply. PGE seems to believe that by later establishing a balancing account, the deferred amounts can be considered part of an automatic adjustment clause.

CUB strongly disagrees. The same issue arose in UG 221 relating to NW Natural's environmental remediation costs. CUB, Staff, and NWIGU all argued that the amounts that were deferred were required to be subject to an earnings test, and that a utility cannot avoid this by later establishing an automatic adjustment clause.

More importantly, an earnings test should be required as a matter of good policy. The primary function of the PUC is to set rates. Rates are set on a forecasted basis based on a single test year and normalized weather. But because forecasts are never fully accurate, costs and revenues will always vary from the forecast. If rates are at a sufficient level to cover the utility's costs and allow it to earn its allowed return, then the utility has been fairly compensated and is not entitled to additional revenues, even if one of the forecasted costs grew. If PGE's 2012 earnings are sufficient to cover its costs, including

[7] *Ibid*.

the additional $12.9 million at issue here, then it has been fairly compensated and there is no justification for collecting the additional costs associated with this deferral. Alternatively, if the Commission grants the application for a deferral, it should reject the requested condition prohibiting an earnings test.

III. New Proceeding

On October 26, 2012, the Commission issued Order No. 12-408. This order denied NW Natural's request to include pension contributions in excess of FAS 87 in rate base and allow that company recovery of and recovery on the rate-based asset. The Commission states that:

> We are not yet convinced that a change to the Commission's existing policy is warranted or that the changed proposed by NW Natural would be the correct policy choice even if a change is warranted. We will open a docket to review the treatment of pension expense on a general, non-utility-specific, basis. NW Natural will continue to recover its existing FAS 87 expense, and as well as use of the balancing account established in docket UM 1475 as it currently exists.[8]

CUB agrees with this sentiment. While CUB is not convinced that Oregon's policies and procedures on pensions need to be revised, CUB supports opening a generic docket to examine pension expense on a going-forward basis. CUB recognizes that the Pension Protection Act of 2006 did affect pension funding requirements, and agrees that it is worth considering whether Oregon's approach to pension recovery needs to be adjusted. CUB believes, however, that for a generic, non-utility specific docket such as the one described to succeed there must be no open deferrals hanging over it. Thus, it is CUB's position that this docket is most likely to be successful if PGE's requested pension deferral is rejected. Having an open deferral overhanging the generic investigation docket

[8] Commission Order No. 12-408, page 4.

could fundamentally change it. Instead of a non-utility specific general docket looking at methods of cost recovery going forward with a goal of trying to determine what is fair to customers and shareholders, the docket would be viewed in terms of allocating the dollars in the deferred account. Short-term economic interests will make it more difficult to look at a long term fair allocation of risk and reward.

Respectfully Submitted,
October 31, 2012

Bob Jenks
Executive Director
Citizens' Utility Board of Oregon

UM 1623 – CERTIFICATE OF SERVICE

I hereby certify that, on this 31st day of October, 2012, I served the foregoing **COMMENTS OF THE CITIZENS' UTILITY BOARD OF OREGON** in docket UM 1623 upon each party listed in the UM 1623 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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