

Davison Van Cleve PC

Attorneys at Law

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

April 15, 2016

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 COMPANY
Application for Deferral Accounting of Excess Pension Costs and Carrying Costs
on Cash Contributions
Docket No. UM 1623

Dear Filing Center:

Enclosed for filing in the above-referenced docket, please find the Reply Brief of the Industrial Customers of Northwest Utilities.

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 1623

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC)	
COMPANY,)	REPLY BRIEF OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
Application for Deferral Accounting of Excess)	UTILITIES
Pension Costs and Carrying Costs on Cash)	
Contributions.)	
_____)	

I. INTRODUCTION

Pursuant to the Administrative Law Judge’s prehearing conference memorandum in the above-referenced docket, the Industrial Customers of Northwest Utilities (“ICNU”) submits this reply brief to the Oregon Public Utility Commission (“Commission”).

Portland General Electric Company’s (“PGE” or the “Company”) opening brief does little but recycle the arguments made in its testimony. Fundamentally, then, the Company has not met its burden of proof. It has not demonstrated how its proposed deferral “appropriately” matches costs and benefits; has not shown how the deferral minimizes rate changes or fluctuations in rate levels; and has made no attempt to demonstrate that the amounts it seeks to defer had either a material or a substantial financial impact on the Company under the Commission’s established discretionary standard. While the Company presents a litany of statistics that allegedly show the magnitude of the expenses it seeks to defer, it avoids discussing their impact on the measurement the Commission has historically used to judge a deferral – the impact to return on equity (“ROE”). This impact is no more than 86 basis points, an amount the

Company has failed even to argue represents a material impact, and one that is far below the substantial impact the Commission has previously used to judge the appropriateness of a deferral of the type of expenditures at issue here. Those expenditures relate to accrued expenses under Financial Accounting Standard (“FAS”) 87 – expenses that are long-term in nature and are expected to balance out through the over- and under-forecasting process inherent to ratemaking absent extraordinary circumstances. The Company has not shown that an 86 basis point impact to its ROE is extraordinary. In fact, it experienced financial impacts in the same year that were greater than the impact of the expenses it seeks to defer here. ICNU agrees with Commission Staff and the Citizens Utility Board (“CUB”) that PGE’s application for deferred accounting should be denied.

II. ARGUMENT

A. PGE Has Not Met Its Burden of Proof to Satisfy the Statutory Requirements

PGE continues to claim that its deferral meets both of the alternative requirements for a deferral in ORS 757.259(2)(e).^{1/} However, its opening brief provides no new arguments that were not included in its testimony. Accordingly, ICNU’s opening brief fully responds to the Company on this issue.^{2/} With respect to its argument that its deferral minimizes the frequency of rate changes or fluctuations in rate levels, the Company states that its alternative to the deferral was to file for interim rate relief in 2012 and 2013.^{3/} It then claims that ICNU “attempts to criticize PGE for just that – saying the company could have filed subsequent rate cases rather

^{1/} PGE Opening Br. at 3-5.

^{2/} ICNU Opening Br. at 7-12.

^{3/} PGE Opening Br. at 5.

than this deferral.”^{4/} A rate case and interim rate relief, however, are not the same thing.^{5/} A rate case is a prerequisite for interim rate relief.^{6/} Thus, the Company is incorrect to claim that it could have filed for interim rates, because it did not file a rate case.

Moreover, at no point has PGE suggested that, absent a deferral, it would have filed rate cases in 2011 and/or 2012. In fact, it has said precisely the opposite. The Company’s witnesses testify that “[w]hen forecasting expenses for a general rate case, PGE generally needs to finalize forecasted expenditures over a year in advance of the test year in order to have time to analyze changes and prepare testimony and exhibits for filing.”^{7/} Thus, had the Company filed rate cases in 2011 and/or 2012, its forecasted pension expense would not have incorporated the lower discount rates PGE actually experienced in 2012 and 2013 and, therefore, it most likely would have filed this deferral anyway.^{8/} Thus, PGE’s deferral *increases*, rather than decreases, rate changes. Furthermore, as ICNU showed in its testimony, by refraining from filing rate cases in these years, the Company likely insulated itself from revenue reductions in other areas that would have offset much of the increased pension expense.^{9/}

Similarly, the Company’s opening brief asserts no new arguments with respect to its claim that its deferral appropriately matches costs and benefits. As its testimony did, the Company’s brief merely issues the conclusory statement that “[c]ustomers received the benefits of service during the deferral period and this deferral would match the costs with those benefits.

^{4/} *Id.*

^{5/} *See* ORS 757.215.

^{6/} *Id.* 757.215(5).

^{7/} PGE/100 at 10:6-8.

^{8/} *See id.* at 10:13-19 (noting that “long-term corporate bond yields were forecast to rise from 2010 to 2011”).

^{9/} ICNU/100 at 4:5-13.

Though other parties would like to make the issue more complex, it is not.”^{10/} The Company’s argument does not give appropriate consideration to the fact that FAS 87 expense is an accrual expense in which an isolated period’s expenditures do not necessarily reflect the actual costs of the benefits incurred during that period.^{11/} FAS 87 expense must be considered over the long-term to determine whether amounts included in rates are matching the costs of the pension plan. The Company’s long-term collection of FAS 87 expense from customers and associated expenditures shows that the amounts it seeks to defer are well within the normal over- and under-collection of this expense in rates.^{12/}

The issue, then, is more complex than the Company asserts. As ICNU argued in its opening brief, the statute requires the Company to demonstrate not simply that its deferral matches costs and benefits, but that it “appropriately” matches costs and benefits.^{13/} If the statute authorized the Company to defer any expenditure that was different from the amount it collected in rates, then every cost the Company incurs would theoretically be eligible for a deferral.^{14/} Surely the statute establishes a higher threshold than that. Yet, that is the only threshold the Company can meet in this case. Granting a deferral of excess FAS 87 expense would insulate the Company from normal discrepancies in cost recovery that go against it while giving it the benefit of discrepancies that benefit it.^{15/} This does not “appropriately” match costs and benefits.

^{10/} PGE Opening Br. at 3-4.

^{11/} See ICNU Opening Br. at 4-5, 10-12.

^{12/} See ICNU/102 at 1-2; CUB/100 at 7:12-14.

^{13/} ORS 757.259(2)(e); ICNU Opening Br. at 9-12.

^{14/} Although such deferrals would, of course, continue to be subject to the Commission’s discretionary criteria.

^{15/} See ICNU/102 at 1-2; CUB/100 at 7:12-14.

B. PGE Has Not Satisfied the Commission's Discretionary Criteria

Attempting to demonstrate that its deferral request satisfies the Commission's discretionary criteria, the Company's opening brief lists the same statistics as its testimony.^{16/} It then claims that, "[r]egardless of whether the standard for magnitude of these costs is 'substantial' or something less, these costs qualify for deferral."^{17/} As with its testimony, however, the Company's brief avoids addressing the criteria the Commission has actually used to judge the magnitude of deferred costs – namely, the impact of these costs on a utility's ROE.^{18/} As ICNU showed in its opening brief, the statistics the Company uses to attempt to demonstrate the magnitude of its deferred costs are misleading and irrelevant.^{19/} Simply put, the Company has not satisfied its burden to demonstrate that an ROE impact of 18 basis points in 2012 and 86 basis points in 2013 constitutes either a material or a substantial financial impact.^{20/}

It also appears as though the Company is seeking to modify unilaterally the Commission's test for distinguishing between stochastic and scenario risks. It states that:

Parties claim that [fluctuations in FAS 87 expense] is a stochastic risk, one capable of being modeled in rates. But, with pension expense, as with other expenses, a point estimate is used in ratemaking. To actually model in rates the potential for such variation, pension expense would need to be modeled stochastically – with assumptions that divergence from the point estimate could be as large as seen here Rates are not set that way."^{21/}

^{16/} PGE Opening Br. at 8.

^{17/} *Id.*

^{18/} *Re PGE Application for an Order Approving the Deferral of Hydro Replacement Power Costs*, Docket No. UM 1071, Order No. 04-108 at 9 (Mar. 2, 2004).

^{19/} ICNU Opening Br. at 16-17.

^{20/} Staff/100 at 15:5-7.

^{21/} PGE Opening Br. at 8-9.

In other words, it appears that the Company is arguing that there is no such thing as a stochastic risk in ratemaking because rates are always set by fixing an assumed amount. But that is beside the point. The purpose of distinguishing between “stochastic” and “scenario” risks in evaluating a petition for deferred accounting is to determine whether the cost the utility incurred is one that will balance out through the normal ratemaking process or is one that is not likely to be recovered through this process.^{22/} The Commission has labeled the former “stochastic,” though the name is irrelevant – the Commission could have used any number of other terms to describe this risk. The fact that PGE can claim that it collected an amount of FAS 87 expense in rates that was different than its actual expense in a given year does nothing to identify whether the cost associated with that expense will be recovered through the long-term over- and under-forecasting of pension expense in rates. The evidence in the record, however, demonstrates that the expense the Company seeks to defer *will* be recovered through the normal ratemaking process.^{23/}

Finally, without making an explicit argument, the Company appears to suggest that its earned ROE in 2013 of 6.43% should be a factor in the Commission’s determination of whether to authorize deferred accounting for excess pension expense in this year.^{24/} While this likely would be relevant when the Commission applied an earnings test at the time it authorized amortization of the deferred amount, it is not relevant when determining whether to authorize deferred accounting in the first place. The statutory requirements do not consider a utility’s earnings – they merely ask whether a deferral will minimize rate changes or appropriately match

^{22/} Order No. 04-108 at 8-9; *Re Commission Staff Request to Open an Investigation Related to Deferred Accounting*, Docket No. UM 1147, Order No. 05-1070 at 6-7 (Oct. 5, 2005).

^{23/} ICNU/102 at 1-2; CUB/100 at 7:12-14.

^{24/} PGE Opening Br. at 8 & 9-10 (noting earnings below authorized ROE).

costs and benefits.^{25/} Nor do the Commission’s discretionary criteria consider a utility’s earnings in determining whether to authorize a deferred account. While the Commission has looked at the deferred cost’s impact to the utility’s ROE, it has done so as a proxy for determining the magnitude of the financial impact of that cost on the utility.^{26/} PGE’s earned ROE in 2013 was below its authorized ROE primarily for reasons other than its pension expense.^{27/} Indeed, despite the Company’s assertion of the extraordinary nature of its under-recovery of pension expense in 2013, it experienced far greater under-recoveries in that year that are not the subject of this deferral, including a \$52 million write-off for an abandoned transmission project.^{28/} Including a utility’s earned ROE in the consideration of whether to authorize a deferred account would effectuate an end-around the statutory and discretionary tests. If earned ROE were a factor, then a utility that earned far below its authorized ROE would be able to justify deferral of minor expenses on the basis of its earnings alone. This would be a license to use deferred accounting to offset risks that are unassociated with the deferred cost.

Moreover, even if PGE’s 2013 ROE of 6.43% were relevant, this is, in the Commission’s words, “far from a dire figure.”^{29/} PGE is not guaranteed to earn its authorized ROE – it is only guaranteed an opportunity to earn that ROE. As the Supreme Court stated in *Hope Natural Gas*, “regulation does not insure that the business shall produce net revenues.”^{30/} Being a regulated utility, in other words, does not insulate the Company from all risk. PGE

^{25/} ORS 757.259(2)(e).

^{26/} Order 04-108 at 9 (using basis point impact on ROE to determine magnitude of deferred expenditure, not the earned ROE itself).

^{27/} ICNU/103 at 1.

^{28/} *Id.*

^{29/} Order No. 04-108 at 9.

^{30/} 320 U.S. 591, 603 (1944).

operated with rates in 2013 that no party ever challenged to be anything other than just and reasonable. That it did not earn the return that those rates were designed to produce because of reasons largely unrelated to the expenditures proposed to be deferred in this docket does not in any way validate the deferral.

III. CONCLUSION

For the foregoing reasons, and for the reasons stated in ICNU's opening brief as well as the briefs of Commission Staff and CUB, PGE's application for deferred accounting to recover FAS 87 expense in 2012 and 2013 should be denied.

Dated this 15th day of April, 2016.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

S. Bradley Van Cleve

Tyler C. Pepple

Davison Van Cleve, P.C.

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

bvc@dvclaw.com

tcp@dvclaw.com

Of Attorneys for the Industrial Customers
of Northwest Utilities