

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 394**

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC COMPANY,	)	OREGON CITIZENS' UTILITY BOARD'S RESPONSE TO PORTLAND GENERAL ELECTRIC COMPANY'S
Request for a General Rate Revision.	)	MOTION FOR CLARIFICATION
_____	)	

**I. INTRODUCTION**

Pursuant to OAR 860-001-0420(4) and Administrative Law Judge Lackey's May 12, 2022 Ruling, the Oregon Citizens' Utility Board (CUB) hereby files this Response to Portland General Electric Company's (PGE or the Company) Motion for Clarification (Motion) of the Public Utility Commission of Oregon's (Commission) ruling in Order No. 22-129 in the above-captioned proceeding. In its Motion, PGE seeks clarification of a portion of the Commission's Order No. 22-129 regarding the earnings review threshold for the 2020 wildfire and 2021 ice storm deferrals.<sup>1</sup>

According to the Company, the investment community has interpreted the Commission's ruling as establishing a new regulatory standard for emergency event deferrals, ensuring that PGE will not earn its authorized return on equity when catastrophic events occur.<sup>2</sup> PGE believes this interpretation has increased uncertainty and concerns about future earnings volatility, undermining the financial health of the Company.<sup>3</sup> PGE asserts, without citation, that the 11 percent drop in stock the Company experienced is harmful to both PGE *and* its customers.<sup>4</sup> As

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<sup>1</sup> UE 394 – PGE's Motion at 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

such, PGE asks the Commission to clarify its ruling on earnings reviews for the wildfire and ice storm deferrals, specifying that the ruling applies only to the 2020 and 2021 ice storm deferrals, does not establish precedent for future deferrals, and does not establish precedent on the procedures for evaluating deferral authorizations or deferral amortizations.<sup>5</sup>

The Company's request for clarification is unnecessary. As PGE notes, the Commission has an established practice of dealing with deferrals on a case-by-case basis and addressing earnings issues concurrently with a prudence review.<sup>6</sup> Further, the Commission generally cannot bind future Commissions through language in an order.<sup>7</sup> The Commission has tremendous discretion and broad authority under which it reviews deferred accounting applications. Within this context, it considers "deferral applications on a case-by-case basis, and [considers] the particular circumstances of each request under [its] well-established deferral policy."<sup>8</sup> Therefore, the language in Order No. 22-129 has no impact on the Commission's review of future emergency deferral applications.

However, CUB takes no position on the Company's request for clarification. Should the Commission wish to clarify what PGE and the investment community already know to be true, it is free to do so. CUB takes issue with the circumstances that led to PGE's Motion in this proceeding, as well as its representations regarding harm to customers, even though the short-term stock price drop only impacts its shareholders and executives.

## II. ARGUMENT

### A. PGE erroneously reported amounts held in a deferred account as earnings to investors.

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<sup>5</sup> *Id.* at 1-2.

<sup>6</sup> *Id.* at 2 *see also* PGE's Motion at fn 24.

<sup>7</sup> *In re Portland General Electric Company*, OPUC Docket No. UE 189, Order No. 08-245 (May 5, 2008) ("CUB observes that this Commission cannot bind future commissions, in any event.").

<sup>8</sup> *In re Public Utility Commission of Oregon's Investigation into the Scope of the Commission's Authority to Defer Capital Costs*, OPUC Docket No. UM 1909, Order No. 20-106 at 12 (Apr. 6, 2020).

The main issue leading to PGE’s prayer for relief is not a lack of clarity in the Commission’s order. Rather, it is a lack of clarity in the annual earnings report PGE prepared to share with its investors. PGE knows that all deferrals carry a risk of disallowance. The Company is compensated for this risk—deferrals earn interest at PGE’s authorized rate of return prior to amortization. This bedrock principle was established in the Commission’s UM 1147 investigation into deferred accounting. There, the Commission found that:

there is a different risk of recovery of deferred amounts before and after amortization is approved. Before amortization has been authorized, recovery of a deferred account balance may be subject to a prudence review and earnings test. Once an amount is approved for amortization, the risk of recovery is lower.<sup>9</sup>

In a subsequent investigation into the interest rates after amortization of deferred accounts, the Commission noted that “[u]ntil a deferred account is authorized for collection by amortization, we recognize that there are attendant risks. Consequently, in Order No. 05-1070, we directed that the utility’s [authorized rate of return] be applied to deferred accounts until amortization.”<sup>10</sup>

All deferrals—even those filed in response to an emergency event—are subject to some level of regulatory disallowance risk. This can take the form of a full disallowance due to imprudence or a haircut being taken in the application of an earnings test. PGE itself acknowledged this fundamental concept in its Prehearing Brief in this case. There, the Company noted that:

[t]he Commission applies a lower rate after amortization because ‘the amortized amount differs from an investment in terms of the risk associated with it.’ That is, as long as the unamortized balance is at risk of recovery (i.e., the balance is still subject to a prudence review or an earnings test), then that balance should be earning interest at PGE’s rate of return, not the modified blended Treasury Rate.<sup>11</sup>

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<sup>9</sup> *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1147, Order No. 05-1070 at 14 (Oct. 5, 2005).

<sup>10</sup> *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1147, Order No. 06-507 at 4 (Sep. 6, 2006).

<sup>11</sup> UE 394 – PGE’s Prehearing Brief at 47 citing Docket UM 1147, Order No. 06-507 at 6.

Despite being aware of this risk, PGE included the wildfire and ice storm deferral amounts in forecasting earnings to the investment community. The reaction of the investment community to the write down of the wildfire deferral could have been mitigated had the Company accurately portrayed deferred accounting risk, rather than including these amounts in their earnings report.<sup>12</sup> While PGE would like to lay the blame on the Commission’s order for its slight drop<sup>13</sup> in stock price, it could have mitigated the reaction of the investment community by providing a clear and accurate earnings report that accounted for well-accepted regulatory risk.

Further, the reaction of the investment community to the small deferral write off should not be viewed in isolation. PGE has now missed its earnings in two of the last three years.<sup>14</sup> In 2020, PGE’s earnings were off the mark due to a well-documented energy trading mishap. PGE itself notes that the reaction of the investment community stems, in part, from concerns “with PGE’s earnings volatility due to one-time but significant write-offs[,]” such as the trading loss event.<sup>15</sup> The Company should have been more careful to accurately report its earnings in the wake of this event. However, it failed to do so. It is well-documented that a publicly traded company’s stock prices decline once it misses its earnings call. Now, it seeks to leverage the reaction of the investment community to seek a desired regulatory outcome—clarification of the

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<sup>12</sup> Portland General Electric announces 2021 financial results and initiates 2022 earnings guidance *available at* <https://investors.portlandgeneral.com/node/18091/pdf> (Feb. 17, 2022). This initial earnings report includes the amounts held in the deferred accounts at issue in the Motion.

<sup>13</sup> CUB disputes that an 11 percent drop in short-term stock price is significant.

<sup>14</sup> Portland General Electric Announces First Quarter 2022 Results *available at* <https://investors.portlandgeneral.com/node/18266/pdf> (Apr. 28, 2022) (“Revising 2022 earnings guidance from \$2.75 to \$2.90 to \$2.50 to \$2.65 per diluted share, to reflect reductions to 2020 regulatory deferrals.”) *see also* Portland General Electric Provides Business Update *available at* <https://investors.portlandgeneral.com/node/17076/pdf> (Aug. 24, 2020) (“Third Quarter Realized Losses of \$104 Million and Unrealized Mark-to-Market Losses of \$23 Million in the Company’s Energy Trading Portfolio as of August 24, 2020”).

<sup>15</sup> UE 394 – PGE’s Motion at 7, lines 3-4 citing PGE/900/Jaramillo-Ferchland-Villadsen/12.

order at issue to influence the Commission's decision surrounding deferred accounting earnings tests in the future.

**B. CUB is concerned with the potential precedent of allowing utilities to leverage investment community reactions to gain a desired regulatory outcome.**

The goal of the regulatory process is to set just and reasonable rates that fairly balance the interests of the utility investor and utility customers.<sup>16</sup> The Commission has broad authority to set rates. These rates must merely provide the utility the opportunity to both collect enough revenue to recover reasonable operating expenses and to earn a reasonable rate of return on investments.<sup>17</sup> The interaction between utilities and the investment community are generally outside of the regulatory process. Put another way, the Commission is in no way beholden to consider a slight drop in short-term stock price in its regulatory decision-making. Indeed, altering regulatory decisions based upon the reaction of the investment community has the potential to set a dangerous precedent.

**C. Despite PGE's contention, its customers have not been harmed by the short-term stock price drop.**

At numerous points in its Motion, PGE argues that the 11 percent decline in its stock price is harmful to the Company's customers.<sup>18</sup> According to the Company, the investment community's reaction has caused PGE to risk losing its current credit rating.<sup>19</sup> PGE asserts that, if it loses an investment grade credit rating, customers will be exposed to higher costs.<sup>20</sup> While there is some truth to these statements, they are misleading. PGE is speculating about potential

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<sup>16</sup> ORS 756.040.

<sup>17</sup> OPUC Order No. 08-487 at 7 (According to the Commission, its "ultimate goal is to set rates that provide the utility the opportunity to collect enough revenue to recover reasonable operating expenses and to earn a reasonable rate of return on investments it had made to provide service.").

<sup>18</sup> UE 394 – PGE's Motion for Clarification at 1, lines 8-10; 2, lines 8-10; 6; 7.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.* at 7.

harm that may accrue in the future, rather than focusing on the present impacts of its slight stock price drop. The Company has provided no evidence that an 11 percent stock value drop will lead to a reduction in its investment grade credit rating. Further, PGE has provided no evidence that the stock price dip has led to an inability to access capital markets. This is because neither of these events have occurred.

CUB does not dispute that there is a threshold at which customers may be harmed if the Company's credit rating deteriorates, or if it loses the ability to adequately access capital markets. However, PGE has not demonstrated that these circumstances are occurring. The 11 percent decrease in stock price represents a short-term reaction by the investment community that *only* has a negative impact on the Company's shareholders short-term earnings and executives' bonuses at this point. PGE is weaponizing a speculative and future potential harm to customers in order to influence future decisions around deferred accounting earning tests. CUB is concerned that the Company is using the Motion to warn the Commission to not set future earnings tests at thresholds different than the Company's authorized return on equity. The Commission must evaluate claims based on the facts before it, and must review deferrals on a case-by-case basis. CUB urges the Commission not to be persuaded by the Company's vague threat of harm to customers when no harm has materialized.

**D. Stocks were generally declining during this period.**

The Standard and Poor's 500 (S&P 500), is a stock market index tracking the performance of 500 large companies listed on stock exchanges in the United States. On April 25, when the Commission issued its order, the S&P 500 was trading at 4296.12. On May 9, the day before PGE filed its request for reconsideration, the S&P 500 was trading at 3991.24, a decline

of 7.1 percent.<sup>21</sup> While PGE's decline was larger, declining stock values was a common occurrence during this time. PGE cannot reasonably blame the reaction of the investment community solely upon the order at issue in its Motion.

### III. CONCLUSION

For the reasons discussed above, the Commission should not be persuaded by the arguments made by PGE. Clarification is not necessary. CUB takes issue with the fact that PGE is considering an 11 percent reduction in its share prices as harming customers. The Commission should not make decisions based on the on the whims of wall street analysts.

Dated this 23<sup>rd</sup> day of May, 2022.

Respectfully Submitted,



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<sup>21</sup> UE 394 – PGE's Motion at Attachment 3.