

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 394

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Request for a General Rate Revision.

RULING

DISPOSITION: MOTION TO STRIKE DENIED

I. Introduction

On October 7, 2021, the Alliance of Western Energy Consumers (AWEC) and the Oregon Citizens' Utility Board (CUB) filed a motion to consolidate their application for a deferral of the expenses and capital costs associated with the Boardman Power Plant (Boardman deferral), docket UM 2119, with this general rate case (GRC). In a ruling issued on October 25, 2021, I denied the request to consolidate. Also on October 25, 2021, AWEC, CUB, and Staff filed testimony in this docket addressing the Boardman deferral. AWEC and CUB's joint testimony addresses the substance of the Boardman deferral request, explaining the need for the requested deferral, identifying the amount accrued, and recommending a three-year amortization period through Schedule 145. AWEC's separate testimony also includes a proposal that the Boardman deferral amortization could offset amortization of other PGE deferrals. Portland General Electric subsequently filed a motion to strike the testimony regarding the Boardman and other deferrals. CUB, AWEC, and Staff (Joint Parties) filed a joint response to PGE's motion on November 4, 2021. PGE filed its reply on November 8, 2021.

II. Positions of the Parties

a. PGE

PGE asserts that the testimony addressing the Boardman deferral is outside of the scope of this case, per the ALJ ruling denying the request to consolidate this case with docket UM 2119. PGE opposes the Joint Parties' testimony as an attempt to relitigate the motion to consolidate. PGE contends that allowing this testimony would result in litigation of the Boardman deferral, despite the ruling determining that there is insufficient time for such litigation under the procedural schedule. PGE contends that the

ruling included language confirming that it did not preclude a settlement of this case that also addresses pending deferrals, but did not indicate that the Boardman deferral may be litigated in this case, and that as a result the deferral testimony does not relate to any fact at issue in this case. PGE asserts that allowing parties to file substantive testimony regarding the Boardman deferral would bring that application into this case and require parties to respond. PGE argues that to the extent that AWEC and CUB contend the testimony is provided as a part of a settlement process, doing so is improper under the rules governing the confidentiality of negotiations.

PGE asserts that since the Boardman deferral will not be resolved in this case allowing this testimony would unfairly prejudice PGE by requiring it to develop substantive testimony addressing the policy issues and intervenor recommendations regarding this issue. PGE contends that allowing testimony in this docket about an issue to be resolved in docket UM 2119 will add to a lengthy record and confuse the issues in an already broad GRC.

PGE argues that contrary to the Joint Parties' assertion, PGE did seek to strike AWEC's testimony recommending amortization of PGE's wildfire and ice storm deferrals.¹ PGE contends that similar to the Boardman deferral, the other deferrals are being addressed in separate dockets and are not relevant to this case. PGE asserts that just because the ruling found that pending deferrals may be addressed in a comprehensive settlement, this does not open the door for AWEC's testimony regarding these deferrals.

PGE also argues that bringing substantive consideration of the Boardman deferral into this case would likely result in delay. PGE maintains that the Boardman deferral is a very large, and completely unprecedented request, which will require significant process to resolve. PGE contends that the Commission must initially determine whether the deferral is appropriate before PGE could respond to AWEC and CUB's amortization proposals. PGE explains that a Commission decision denying the deferral in whole or in part could moot or change current amortization proposals. PGE maintains that fully litigating the Boardman deferral in this case would have required AWEC and CUB, as the parties with the burden of proof, to file their opening testimony four months ago and that the schedule revisions to include this additional process are not possible within the current rate case schedule.

b. CUB, AWEC, and Staff

The Joint Parties contend that the Boardman testimony was filed in alignment with the ALJ's ruling and consistent with the Commission's practice of addressing pending deferrals in GRCs. The Joint Parties dispute PGE's assertion that the testimony was

¹ PGE Reply at 3 n.5, citing AWEC/100, Mullins/45-50.

provided as part of settlement negotiations and argue that the testimony was provided to develop a robust evidentiary record upon which the Commission could assess the reasonableness of any future potential settlement. The Joint Parties maintain that if the ruling enabled potential settlement of the Boardman and other deferrals, parties must be able to submit substantive testimony on these issues so that any stipulation would be supported by robust evidence to ensure its terms result in “just and reasonable” rates.

The Joint Parties contend their testimony is relevant to the determination of overall just and reasonable rates and that its probative value is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. They assert that in a GRC, to determine whether rates are just and reasonable, the Commission must look at overall rates, rather than cost recovery of individual rate elements. The Joint Parties state that they will argue that amortization of the Boardman deferral in this case is a necessary component of establishing just and reasonable rates, and contend that whether the Commission will ultimately agree with that position or not, they have the right to advance their position. They assert that PGE has proposed to amortize separately docketed deferrals in prior GRCs, and it would be inequitable to prohibit other parties from doing the same. The Joint Parties argue that AWEC submitted testimony recommending amortization of PGE’s wildfire and ice storm deferrals (dockets UM 2115 and UM 2156, respectively), and that PGE has not similarly sought to strike that testimony.

The Joint Parties also contend that issues related to Boardman are highly relevant to this proceeding and are included in PGE’s direct testimony, and that the Joint Parties would be denied procedural due process if they did not have the opportunity to respond. The Joint Parties maintain that they have begun the development of that record with their opening testimony in this case, enabling the issues to be addressed using the existing procedural schedule. As a result, the Joint Parties contend the proceeding will not be delayed, and PGE will have ample opportunity to respond. The Joint Parties also dispute PGE’s position that the Commission must first authorize the deferral before reaching the issue of amortization, and argues that many deferrals accrue costs or benefits without Commission action until they are eligible for amortization.²

III. Resolution

Within a GRC, the Commission is charged with establishing just and reasonable rates. In denying AWEC and CUB’s motion to consolidate, I noted that deferrals and their associated amortizations are frequently addressed in GRCs, as well as the potential that a comprehensive settlement might address any pending deferrals or amortizations. Contrary to PGE’s position, the ruling denying consolidation did not determine that the

² Joint Response at 8, citing *In the Matter of Portland General Electric Company, Application for the Deferral of Storm-Related Restoration Costs*, Docket No. UM 1817.

Boardman deferral is outside the scope of this case. In establishing just and reasonable rates, the Commission considers the overall effect of rates, which includes the flexibility to consider any pending deferrals, amortizations, or other elements including carrying costs of deferrals. Here, the Joint Parties represent that they will argue that amortization of the Boardman deferral in this case is a necessary component of establishing just and reasonable rates. I agree that the Joint Parties testimony regarding the Boardman and other deferrals, is thus relevant to this docket.

I previously recognized that formal consolidation could serve to further complicate the already broad scope of the GRC, in effect requiring resolution of a second docket within the statutory period for the rate case. By allowing the parties to develop a record on these issue without formal consolidation, the Commission remains free to resolve the issues related to the Boardman and other deferrals in this docket, as appropriate. Any issues not resolved within this proceeding may be subsequently addressed in their separate dockets.

Finally, I find that allowing this testimony will not result in undue delay of this proceeding. In denying consolidation, I noted concerns that consolidation would require amending the schedule to add a separate track for testimony.³ The Joint Parties have subsequently filed opening testimony in this case, raising issues related to the Boardman and other deferrals, allowing this issue to be addressed within the existing schedule. Additionally, I find unpersuasive PGE's position that the Commission cannot address the deferral and any amortization proposals simultaneously, and that a two-step process is required. Accordingly, I deny PGE's motion to strike.

Dated this 10th day of November, 2021 at Salem, Oregon.



Alison Lackey
Administrative Law Judge

³ The motion to consolidate was filed shortly before the deadline for opening testimony and did not make clear that the parties were prepared to address the Boardman deferral issue within that opening testimony.