

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 394

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Request for a General Rate Revision.

ORDER

DISPOSITION: MOTION FOR CLARIFICATION GRANTED

In this order, we grant Portland General Electric Company's (PGE) motion for clarification, as addressed below.

**I. INTRODUCTION**

On April 25, 2022, we issued Order No. 22-129, addressing PGE's request for a general rate revision. On May 10, 2022, PGE filed a motion seeking clarification of the Commission's directives regarding the earnings review for major deferrals associated with the Labor Day 2020 wildfire (2020 wildfire) and the February 2021 ice storm (2021 ice storm). On May 23, 2022, the Oregon Citizens' Utility Board and Staff filed responses. On May 25, 2022, PGE filed a reply.

**II. POSITIONS OF THE PARTIES**

**A. PGE**

PGE requests that the Commission clarify that its decision in Order No. 22-129 applies only to the 2020 wildfire and 2021 ice storm deferrals and does not establish binding precedent for future deferrals for emergency events or the procedures for evaluating deferral amortizations. Specifically, PGE requests that the Commission clarify that the earnings test of twenty basis points below authorized return on equity (AROE) applies only to the 2020 wildfire and 2021 ice storm deferrals and that for future deferrals, the Commission will consider the appropriate earnings review anew. PGE argues that its requested clarifications are consistent with the Commission's established practice of evaluating deferrals on a case-by-case basis.

PGE argues that clarification is warranted, because while the Commission adopted an earnings test of 20 basis points below AROE for the 2020 wildfire and 2021 ice storm deferrals in this case, analysts and investors have interpreted Order No. 22-129 as establishing a new regulatory standard for deferrals for major emergency events. Specifically, PGE asserts that investors have interpreted the order to mean that the company will not earn its AROE when catastrophic events occur. PGE maintains that due to the increased frequency of these events, this is seen to materially raise PGE's regulatory risk. PGE points to a drop in its stock price of approximately 11 percent, and argues that absent clarification, PGE's current credit rating is at risk and the company may continue to lose market capitalization. PGE asserts that customers would ultimately bear the resulting increases in financing costs. PGE contends that observers also viewed adoption of the structure for the earnings review separate from the prudence review and amortization as an unexpected departure from the practice of conducting earnings and prudence reviews at the time of amortization.

On reply, PGE contends that it appears that PGE, Staff, and CUB all agree that Order No. 22-129 did not predetermine either the earnings-review process or earnings threshold to be applied to future emergency deferrals. PGE asserts that the language of the order has nonetheless been interpreted by the investment community as establishing a new regulatory standard for deferrals for emergency events. PGE explains that it seeks a narrow order clarifying the Commission's case-by-case policy to stem investor concerns, which if left unaddressed could result in a credit downgrade, higher borrowing costs, and less access to capital. PGE disputes that the decrease in its stock was due to a broader decline, arguing that its stock price decreased approximately 8 percent more than peer utilities over the relevant period.

## **B. CUB**

CUB asserts that 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. CUB also asserts that the language of an order is generally not binding on future Commissions. As a result, CUB argues that the language in Order No. 22-129 will not impact the review of future emergency deferrals. Accordingly, CUB does not take a position on PGE's request for clarification but contends that clarification is unnecessary. However, CUB warns against the potential precedent of altering a regulatory decision based on the reaction of the investment community, arguing that the interactions between utilities and the investment community are generally outside of the regulatory process.

CUB raises concerns with the circumstances preceding PGE's request for clarification, arguing that the underlying issue is a lack of clarity in PGE's annual earnings report for its investors. CUB maintains that PGE is aware that deferral balances not yet subject to

amortization are at risk of non-recovery and that the company is compensated for this risk through the interest rate applied to deferral balances prior to amortization. Despite PGE's awareness of this risk, CUB states the company included the 2020 wildfire and 2021 ice storm deferral amounts in forecasting earnings to investors. CUB contends that the reaction of the investment community to the write down of the wildfire deferral could have been mitigated had PGE accurately represented the risk associated with deferred accounting instead of including the balances in the earnings report.

CUB also asserts that a publicly traded company's stock prices decline once its misses its earnings call, and here the investment community's reaction should be viewed in the context of PGE having missed its earnings in two of the last three years, including in 2020, resulting from an energy trading loss event. Additionally, CUB contends that stocks were generally declining during the period immediately following the issuance of the order, pointing to a decline of 7.1 percent in the Standard and Poor's 500 between April 25, 2022, and May 9, 2022. CUB argues that while the decline in PGE's stock value was larger, the decrease in PGE's stock values during this period cannot solely be attributed to investment community's reaction to the order.

Finally, CUB disputes PGE's claim that the 11 percent decline in stock price is harmful to customers, contending that the short-term stock price decrease only impacts shareholders and executives' bonuses. CUB contends that PGE's arguments of risk of losing its current credit rating and resulting exposure of customers to higher costs are speculative and unsupported by evidence. CUB acknowledges that there is a point at which customers may be harmed by credit rating deterioration or a loss of access to capital markets but contends that neither has occurred. CUB asserts that PGE is using these speculative claims of future potential harm to customers to persuade the Commission against including an earnings test at a threshold different than the AROE for future deferrals.

### **C. Staff**

Staff contends that rather than seeking clarification, PGE's motion appears to request that the Commission opine regarding the treatment to be afforded to future deferrals, and specifically to state that the same earnings test will not be applied to future deferrals. Staff contends that the Commission is not able to bind future Commissions and any such statement would be inappropriate.

Staff argues an order clarifying the Commission's policy that the parameters of an earnings test under ORS 757.259(5) are determined on a case-by-case basis is unnecessary. Staff contends that Order No. 22-129 contains no indication that the Commission is departing from its long-standing approach of determining the appropriate

earnings test on a case-by-case basis, and thus no clarification is warranted. Even so, Staff does not oppose clarification of this point. Staff requests that the Commission deny PGE's motion for clarification or clarify that the Commission will continue to apply the ORS 757.259(5) earnings test on a case-by-case basis.

Staff questions the connection between the language in Order No. 22-129 and the investor concerns that PGE seeks to address with its motion. Staff explains that in each of PGE's previous deferral requests for extraordinary events the Commission required the utility to absorb a share of the costs.<sup>1</sup> Staff asserts that because PGE has been required to absorb a portion of its deferred costs for every extraordinary event for which PGE sought a deferral, it was reasonable for PGE to ensure investors were informed of the possibility of a disallowance. Further, Staff notes that in PGE's 2021 10-K, PGE did inform its investors of the Commission's discretion to apply an earnings review that may result in disallowance of some of the costs of its wildfire and COVID-19 deferrals.

### III. DISCUSSION

We grant PGE's request for clarification to the extent that we reiterate a point upon which the parties agree: the Commission has an established practice of evaluating deferrals on a case-by-case basis and will continue to employ this fact-specific approach. The language of Order No. 22-129 should be viewed as an example of, rather than a departure from, this long-standing practice that considers the circumstances of each deferral.<sup>2</sup> The decision in Order No. 22-129 represents our determination of the appropriate earnings review based on the specific circumstances of these two deferrals, and is not binding on this Commission or future Commissions when other deferrals are considered under different circumstances. Similarly, we adopted parameters for the earnings review for these major deferrals based on the circumstances before us here, and did not establish a broadly applicable process for the sequence in which we will consider the elements associated with deferral amortization in future instances.

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<sup>1</sup> Staff Response at 2-3 (citations omitted).

<sup>2</sup> *In the Matter of Portland General Electric Company, Request for a General Rate Revision*, Docket No. UE 394, Order No. 22-129, at 54 (Apr. 25, 2022), citing *In the Matter of the Revised Tariff Sheets Filed by Portland General Electric Company to Implement the Provisions of Order No. 91-1781 and Application of Portland General Electric Company for an Order Approving Deferral of Costs*, Docket Nos. UE 82 and UM 445, Order No. 93-257 at 11-12 (Feb. 22, 1993).

**IV. ORDER**

IT IS ORDERED that:

Portland General Electric Company's motion for clarification is GRANTED.

Made, entered, and effective May 27 2022.



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**Megan W. Decker**  
Chair



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**Letha Tawney**  
Commissioner



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**Mark R. Thompson**  
Commissioner