

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100917 / September 4, 2024

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4515 / September 4, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22065

In the Matter of

**Portland General Electric
Company,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Portland General Electric Company (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise from the failure of Portland General Electric Company, a publicly-traded regional utility company based in Oregon, to devise and maintain a system of internal accounting controls sufficient to reasonably assure that Respondent's derivatives and regulatory accounting transactions were recorded as necessary to permit preparation of its financial statements in conformity with U.S. Generally Accepted Accounting Principles ("GAAP") or to maintain accountability for its assets. Relatedly, Respondent's books and records did not accurately and fairly reflect its regulatory assets. Respondent also lacked disclosure controls and procedures to ensure that information required to be disclosed by Regulation S-K was captured and assessed by management and disclosure personnel.

2. In August 2020, Respondent disclosed that it suffered \$127 million in losses from energy trading involving financial derivatives. These losses represented 115 percent and 45 percent, respectively, of the utility's total net income for the third quarter and full year 2020. Since at least 2018 and leading up to the trading losses, Respondent's internal accounting and disclosure controls did not sufficiently record, process, summarize and report information about the nature, purpose, objective, context, volume, and market risk of its trading activity in derivatives within the time periods specified in the Commission's rules and forms. This information was necessary for Respondent's accounting personnel to determine how to account for and disclose derivatives trades under GAAP, including Accounting Standards Codification ("ASC") Topic 815, *Derivatives and Hedging*, as well as regulatory assets and liabilities under ASC Topic 980, *Regulated Operations*. The same information was necessary for Respondent's management and Disclosure Committee to determine what market risk disclosures needed to be made in Respondent's filings with the Commission pursuant to Item 305 of Regulation S-K.

3. As described in further detail below, Respondent's deficient internal accounting controls, inaccurate books and records, and deficient disclosure controls and procedures violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Exchange Act Rule 13a-15(a).

Respondent

4. **Portland General Electric Company** is a regulated electric power utility company incorporated in Oregon and headquartered in Portland, Oregon. Respondent is engaged in, among other things, the generation, wholesale purchase, transmission, distribution, and retail sale of electricity to customers in Oregon. Respondent's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

the symbol “POR.” Respondent files periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

Facts

5. Respondent trades in derivative instruments as one way to manage fluctuations in the cost of providing electricity to its customers. For more than a decade leading up to the summer of 2020, Respondent included in the market risk section of its periodic filings with the Commission an identical disclosure about its derivatives trading that explained that Respondent utilized derivative instruments to manage its exposure to commodity price and foreign exchange rate risks in order to manage volatility in the cost of providing electricity to its customers. Respondent noted that it may utilize derivative instruments as “economic hedges,” but maintained that it did “not engage in trading activities for non-retail purposes.”

6. Historically, Respondent’s electricity derivatives trading strategy had been primarily achieved by buying and selling electricity derivative instruments tethered to the Pacific Northwest region of the United States, where Respondent physically operates. However, beginning in early 2020, Respondent’s derivatives trading group began accumulating significant short positions in electricity financial futures in the California and Desert Southwest power markets, outside of Respondent’s operational footprint. Those short financial futures were intended to economically offset Respondent’s growing long positions in the Pacific Northwest power market.

7. By August 2020, Respondent was net short in its electricity financial derivatives positions and had material market price exposure to the Southwest region of the United States. Around that time, a major heatwave struck that region and caused electricity prices to spike, decreasing the market value of Respondent’s short futures. When Respondent closed out its Pacific Northwest, California, and Desert Southwest derivatives positions, Respondent sustained losses of \$127 million, which it disclosed in a press release and filing with the Commission on August 24, 2020.

8. Since at least 2018, Respondent’s system of internal accounting controls was not sufficient to reasonably assure that its derivatives transactions were recorded as necessary to permit preparation of its financial statements in conformity with GAAP or maintain accountability for its assets. ASC Topic 815, *Derivatives and Hedging*, requires entities to disclose material information about the nature, purpose, and objective of using or holding derivative instruments, the context for understanding those objectives, the strategies for achieving those objectives, and the volume of the trading activity. However, Respondent’s accounting department did not have the disclosure information set forth in ASC Topic 815 because Respondent’s internal accounting controls did not require the derivatives trading group or its supervisors to capture and document that information and convey it to the responsible accounting personnel. Instead, accounting personnel assumed that the nature, purpose, and objective of the derivatives trading remained static over time. Because of the lack of internal accounting controls, the accounting group was not able to contemporaneously identify the significant shift in derivatives trading strategy that took place between the first and the second quarters of 2020.

9. For many of the same reasons, Respondent’s internal accounting controls were also not sufficient to reasonably assure that Respondent was properly accounting for and disclosing

information about its regulatory assets and liabilities in conformity with GAAP. ASC Topic 980, *Regulated Operations*, allows utilities to defer incurred costs, which may include unrealized derivatives losses that would otherwise be charged to expense through the income statement. This deferral effectively permits the company to capitalize losses as part of its regulatory assets. But ASC 980 only permits the deferral of such unrealized gains and losses if the company determines that it is probable that it will be allowed to recover those gains and losses from its customers.

10. Respondent's state utility regulator allows Respondent to recover trading losses only if the losses are incurred for the benefit of customers and are deemed prudent. To assess whether trades are prudent, Respondent must determine – at the time trades are placed – that the trades are objectively reasonable and that the trading strategy involves reasonable hedging goals, methods, and targets. However, as explained above, Respondent's accounting personnel did not have information, either contemporaneously or subsequently, about the nature, purpose, objective, context, volume, and strategy behind the company's derivatives trades because of Respondent's deficient internal accounting controls. As a result, Respondent's accounting personnel did not have information to confirm that derivatives trade gains and losses were incurred for the benefit of customers, were prudent and probable of recovery, and therefore, could be recognized as regulatory assets.

11. Following the August 2020 losses, a senior manager at Respondent concluded that the derivatives trades leading to the losses were imprudent. Respondent ultimately decided not to seek recovery of the losses through its state utility regulator. Respondent also reversed any previously recognized regulatory assets based on the same derivative instruments, thereby correcting its books and records, and recognized the full \$127 million of losses in its income statement earnings.

12. Respondent also lacked disclosure controls and procedures designed to ensure that information about its derivative instruments required to be disclosed under Regulation S-K was recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms. Specifically, Item 305 of Regulation S-K required Respondent to disclose material quantitative and qualitative information about the market risks associated with its derivative instruments, including the trading purposes of the instruments and how management managed the associated risks. However, Respondent did not have effective disclosure controls and procedures to ensure that its derivatives market risk disclosures were materially accurate because it failed to adequately accumulate and communicate information about its derivatives trading purposes and strategy to management including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

13. Prior to August 2020, Respondent's Disclosure Committee did not receive sufficient information about the nature, purpose, objective, context, volume, market risk, or strategy of Respondent's derivatives trades. As noted above, there were no effective controls requiring the derivatives trading group to document or provide this information to management. And, even though the Disclosure Committee included the executive overseeing the derivatives trading group (the "Power Operations executive"), that executive was primarily focused on operational physical plant issues and had very little knowledge about derivative instruments or derivatives trading. Respondent's Risk Management Committee – which included the CEO, CFO, and Power

Operations executive – did receive detailed volume reports about derivatives positions. However, controls were not designed to ensure that the members of the Risk Management Committee reviewed this information to determine what disclosures should be made. Moreover, none of these reports conveyed information about the nature, purpose, objective, context, market risk, or strategy of Respondent’s derivatives trades. Accordingly, Respondent’s management, Disclosure Committee, and Risk Management Committee did not have the information necessary to assess the accuracy of Respondent’s long-standing disclosure about the market risk of its derivative instruments, or to determine whether any additional disclosures were warranted.

Violations

14. As a result of the conduct described above, Respondent violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Section 13(b)(2)(A) of the Exchange Act requires issuers with a security registered pursuant to Section 12 of the Exchange Act to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer. Section 13(b)(2)(B) of the Exchange Act requires such issuers, among other things, to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain accountability for assets.

15. Additionally, as a result of the conduct described above, Respondent violated Exchange Act Rule 13a-15(a), which requires issuers of a security registered pursuant to Section 12 of the Exchange Act, such as Respondent, to maintain disclosure controls and procedures designed to ensure that information required to be disclosed by an issuer in reports it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the Commission’s rules and forms.

Respondent’s Cooperation and Remedial Efforts

16. In determining to accept the Offer, the Commission considered the substantial cooperation provided by Respondent throughout the Commission’s investigation and the extensive remedial measures undertaken by Respondent. In particular, Respondent’s remedial measures included: (1) promptly forming an independent special committee of its Board of Directors to investigate the August 2020 losses and make recommendations; (2) revising its policies and procedures to restrict employees from engaging in certain trading strategies, including trades placed in energy markets outside of Respondent’s operational footprint, and to require employees to document their trading strategies; (3) enhancing the information collected concerning derivatives trades and improving the flow of that information to management and the appropriate accounting personnel; (4) adding a manager to the accounting department to oversee the impact of derivatives trading on regulatory accounting and review Respondent’s derivatives disclosures; and (5) withholding incentive compensation for the 2020 fiscal year from the CEO, CFO, and Power Operations executive.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act as well as Exchange Act Rule 13a-15(a).

B. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman
Secretary