

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 180**

In the Matters of	)	
	)	
PORTLAND GENERAL ELECTRIC	)	RESPONSE TO STAFF MOTION TO
	)	MAKE RATES PERMANENT
Request for a General Rate Revision,	)	OF THE CITIZENS' UTILITY BOARD
(UE 180)	)	OF OREGON
	)	
Annual Adjustments to Schedule 125	)	
(2007 RVM Filing), (UE 181)	)	
	)	
Request for a General Rate Revision	)	
relating to the Port Westward Plant,	)	
(UE 184).	)	
_____	)	

**I. Introduction**

In Order No. 07-015, the Commission said that if Port Westward were to come online more than 60 days after March 1, 2007, then parties would have 15 days from the online date to determine whether there is new information that requires a re-examination of PGE's costs in rates.<sup>1</sup> Port Westward did indeed come online more than 60 days after March 1, 2007. On June 14, 2007, the Commission signed Order No. 07-273, further clarifying the process parties should use to request a re-examination of PGE's costs in rates. In that Order, the Commission said, "Staff and intervenors have until the close of business on June 26, 2007, to submit a motion seeking a reopening of this docket for the

---

<sup>1</sup> OPUC Order No. 07-015 at 50.

re-examination of PGE's costs in light of changes since Order No. 07-015 was issued. The motion need not include an evidentiary showing, but should identify specific costs that have changed from the test year expenses and include an estimate of the cost impact."<sup>2</sup> As we read the Order, the Commission was saying that, if a party wants to reopen the proceeding, it should bring forth evidence supporting that action through a motion for re-examination of PGE's costs.

On June 26, 2007, Staff filed a motion entitled "Motion for Order Allowing Rates to Go Into Effect Permanently." In the motion, Staff did identify specific costs that have changed, but argued that UE 180 should not be reopened for re-examination. We think that Staff's Motion was not responsive to the Commission's process outlined in Order No. 07-273, which called for parties to present the *prima facie* case supporting a request to re-examine PGE's costs in rates. Therefore, we treat Staff's filing as a discrete, unilateral procedural motion, and as such, we take the opportunity to respond as set out in OAR 860-013-0050(3)(d).

## **II. Taxes Are A Unique Cost**

Staff fails to recognize that, as dictated by the legislature in SB 408, taxes are not one cost among many; they are a distinct cost. ORS 757.276 states:

(1) The Legislative Assembly finds and declares that:

(a) The alignment of taxes collected by public utilities from utility customers by taxes paid to units of government by utilities, or affiliated groups that include utilities, is of special interest to this state.

(b) Taxes are a unique utility cost because the tax liability is affected by the operations or tax attributes of the parent company or other affiliates of the utility.

---

<sup>2</sup> OPUC Order No. 07-273 at 5.

...

(f) Utility rates that include amounts for taxes should reflect the taxes that are paid to units of government to be considered fair, just and reasonable.

As taxes are a unique cost, it is not appropriate for the Commission to overcharge customers for taxes, reasoning that other costs may have gone up, and so, on balance, overall rates are just and reasonable. While this balance has traditionally been applied to the forecasts of the numerous costs included in a utility's revenue requirement, taxes are no longer an integrated piece of an overall balance, they are a distinct cost that the legislature has clearly dictated to be "of special interest to this state."

Therefore, regardless of whatever other costs may have risen or fallen, at a time when the Commission is recalculating PGE's rates, Staff's recommendation to continue to charge customers a state tax rate that we know to be incorrect does not comport with ORS 757.267, and would result in rates that do not meet the fair, just and reasonable standard set by the legislature. Utility rates that include amounts for taxes should reflect the actual tax rate that is expected to be applied to the utility. As SB 408 makes clear, an over-collection of taxes in rates is not an appropriate balance to offset costs either at the utility or at an affiliate. PGE's interim rates should be reduced by \$2.8 million to reflect the Company's current state tax rate.

### **III. Port Westward In Rate Base Should Reflect Actual Rate Base**

Port Westward became operational and available for dispatch on June 11, 2007, and, as Staff points out in Table 2, Port Westward's impact on PGE's rate base is \$3.2 million less than what was included in Commission Order No. 07-015.<sup>3</sup> It was

---

<sup>3</sup> Staff Motion at 4.

PGE’s decision to file its general rate case, UE 180, such that the rate case would be complete far in advance of the online date for Port Westward. In order to include Port Westward costs in rate base in UE 180, PGE provided a forecast of Port Westward’s costs. Had PGE timed the online date of Port Westward prior to the completion of the rate case, the rate base could have been adjusted for known and measurable actual project costs, not forecasted costs, and rates would follow accordingly. By choosing to flip the order of activities, and by relying on a forecast of costs, PGE overestimated the amount of Port Westward in rate base by \$3.2 million.

PGE cannot lawfully make this request. ORS 757.355 states: “a public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property not presently used for providing utility service to the customer.” While the Commission is struggling with the meaning of *Dreyer v. Portland General Electric*<sup>4</sup> in another docket, the one clear directive that emerges from that case is that ORS 757.355 creates an ongoing legal obligation for a utility to not charge customers for the costs of construction not being used to serve customers through any device or charge. The Supreme Court found in the *Dreyer* case that ORS 757.355 creates a prohibition directed at the utilities and that the Commission cannot relieve the utility of this legal obligation through a rate order.<sup>5</sup> PGE chose to separate the Port Westward online date from the UE 180 general rate order determining rate base and rates, but PGE may not profit from that tactical decision by overestimating and over-collecting on Port Westward’s rate base.

---

<sup>4</sup> 341 Or 262, 142 P3d 1010 (2006).

<sup>5</sup> *Id.* at 279.

The rate base value of Port Westward on the date it became available for dispatch is the appropriate value to use when bringing the plant into rates. It is unclear why Staff believes customers should be charged a revenue requirement based on a rate base value that is \$3.2 million greater than their analysis indicates the value should be. PGE's interim rate change of June 15<sup>th</sup> should be reduced to reflect the amortization and return on unamortized rate base of the appropriate value in rate base of Port Westward coming online on June 11<sup>th</sup>.

#### **IV. Staff Analysis Is Flawed**

In its UE 180 Order, the Commission states:

If Port Westward becomes operational on or after April 30, and before September 1, 2007, Staff and intervenors will have 15 days from the online date to determine whether there is new information that requires a re-examination of PGE's costs in rates.

UE 180 OPUC Order No. 07-015 at 50.

Two approaches to the Commission's Order would be to either look for distinct costs in rates that have changed and warrant updating (updating the test year for known and measurable changes), or to look at the Company's costs and revenues overall to see if they are significantly out of balance (creating a new test year). Staff appears to have done both and neither. Staff identifies clear-cut cost changes, such as PGE's state tax rate and Port Westward's rate base value, that have changed, yet recommends not updating them. Staff also analyzes PGE's current financial performance to see if the Company's revenues and expenses are out of balance, acknowledges that PGE's rate "forecasts varied widely from the actual results of operations reports,"<sup>6</sup> yet omits over

---

<sup>6</sup> Staff Motion at 5.

50% of the Company's costs in analyzing PGE's projected performance, and further recommends that nothing should be done.

**A. Staff Omits Over 50% Of PGE Costs When Analyzing Costs & Revenues**

Table 1 of Staff's Motion demonstrates that variable power costs are 73% of PGE's operation and maintenance expense, and 56% of the Company's costs overall.<sup>7</sup> Yet Staff, when reviewing PGE's current revenues and costs, omits variable power costs from the analysis, including only "Total Fixed O&M" in Table 3.<sup>8</sup> The variation between PGE's actual results of operations and those costs forecast for rates is due largely to variable power costs.<sup>9</sup> To submit an analysis of the Company's performance (*i.e.* its results of operations forecasts and reports) that doesn't include variable power costs is incomplete at best. It makes sense to look for discrete cost changes and it makes sense to look at PGE's overall revenue requirement, but looking at less than half of the Company's revenue requirement tells us nothing about the Company's balance of costs and revenues.

Staff follows this disjointed analysis of costs and revenues with a look at power costs, but only from the perspective of Port Westward dispatch benefits, not from the perspective of the Company's power costs as a whole.<sup>10</sup> As the Commission's direction was to look for "new information that requires a re-examination of PGE's costs in rates," Staff's failure to account for PGE's variable power costs when examining PGE's costs in rates is a peculiar oversight. The Staff proposal to hold customers harmless due to "an impact to power costs caused by the delay of the Port Westward facility," rather misses

---

<sup>7</sup> Staff Motion at 3.  $787,384 \div 1,080,493 = 0.73$ .  $787,384 \div (1,080,493 + 319,392) = 0.56$ .

<sup>8</sup> Staff Motion at 6.

<sup>9</sup> CUB Motion to Reopen at 7.

<sup>10</sup> Staff Motion at 7.

the point.<sup>11</sup> The point here is to remedy any disconnect between the overall forecast of costs in UE 180 that are in rates, with the, now stale, Port Westward cost forecast. The Port Westward dispatch benefits are a tiny piece of the Company's overall power costs and cannot be used as a surrogate for an actual examination of power costs for the purposes of arguing for or against reopening UE 180.

## **B. PGE Loss Of Property Tax Exemption**

The Commission's Order in UE 180 correctly includes \$0 for Columbia County property taxes for Port Westward, due to a County property tax exemption. In 2007, because of Port Westward's delay, the County disallowed Port Westward's property tax exemption, and the Company had to pay property taxes on the facility. Staff correctly points out that the Company's loss of the Columbia County property tax exemption in 2007 due to the delay is a one-time event, and therefore not appropriate for a forecast test year.<sup>12</sup>

However, Staff then appears to contradict itself, by including in its analysis the 2007 property tax impact over a 5-year period.<sup>13</sup> The delay in Port Westward becoming operational and the resultant loss of the Columbia County tax exemption for 2007 is a one-time event, results directly from the delay in the plant's online date, and is not appropriately used here to evaluate the Company's costs in rates. The question regarding property taxes here is: How did Port Westward's delay change the ongoing Port Westward property tax in PGE's revenue requirement established in UE 180? The answer is: It didn't. The Company's loss of the property tax exemption for 2007, as a one-time event, is not forecast to be repeated, and therefore does not need to be changed

---

<sup>11</sup> Staff Motion at 7.

<sup>12</sup> Staff Motion at 4.

<sup>13</sup> *Ibid.*

from the \$0 value included in the Commission’s original Order, as that value is correct. Staff’s use of the loss of the tax exemption in analyzing the need for re-examination of PGE’s costs is misplaced.

### **C. The Critical Comparison Is Actual Performance Versus UE 180 Rate Forecast**

When addressing PGE’s revenues and costs, Staff comments that the “forecasts varied widely from the actual results of operations reports that were provided for January through April of 2007.”<sup>14</sup> In our Motion to Reopen, we raised a similar concern about the variation between the Company’s actual results and those forecast in rates.<sup>15</sup> In Staff’s Motion, Staff compares the UE 180 forecast for the Company’s 2007 performance, with a Staff forecast of that performance that combines PGE’s January through April actual performance with updated PGE budgets.<sup>16</sup>

Neither Staff nor any other party has had the chance to explore PGE’s forecasts for the remainder of the year, and those forecasts, therefore, do not allay our concern over the actual imbalance of revenues and costs for the period of January through April 2007. We are not comfortable that the combination of PGE’s actual results for the first third of 2007 and the Company’s forecast for the remainder of 2007 is an adequate representation of what the balance between costs and revenues might be.<sup>17</sup> Given the gulf between PGE’s forecasted performance included in rates for January through April versus the Company’s actual performance, we are not comfortable combining the actual data with

---

<sup>14</sup> Staff Motion at 5.

<sup>15</sup> CUB Motion to Reopen at 6-8.

<sup>16</sup> Staff distinguishes between two post-UE 180 PGE projections for the Company’s costs and revenues: PGE’s “budgets” that were prepared in late 2006 and early 2007 with the presumption that Port Westward would be operational in March; and PGE’s “forecasts” that were prepared in May with the presumption that Port Westward would be operational in June. In its analysis, Staff used the “budgets,” as those more closely resembled the Company’s actual performance. Staff Motion at 5.

<sup>17</sup> CUB’s Motion to Reopen used PGE’s forecast provided in response to CUB data request 35. See CUB’s Motion to Reopen Attachment B-1.



PGE's forecast, that closes the gulf, to conclude that the balance of costs and revenues included in rates is reasonable.

## **V. CUB Recommendation**

Staff and CUB have put three options before the Commission:

1. Reopen UE 180 to examine PGE's costs and revenues;
2. Update the 2007 test year as established in Order No. 07-015 for clear, known and measurable cost changes; or
3. Allow PGE's interim rates to go into effect permanently.

First, we recommend that the Commission reject Staff's Motion for a Commission order allowing PGE's current rates to go into effect permanently. Accepting Staff's Motion would maintain PGE's costs, based on a 2007 test year, as they were established by the Commission in January, though the Company's state tax rate is known to have changed and the used and useful value of Port Westward in rate base is known to have changed.

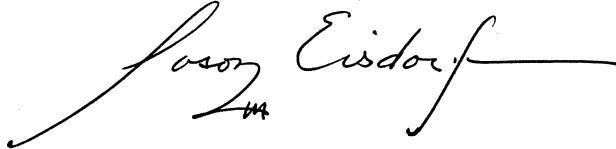
Second, given the variation between PGE's actual performance and its forecast performance, we recommend that UE 180 be reopened. The significant difference between the Company's forecast performance for rates and its actual results indicates that a more thorough review of PGE's costs should be performed in order to better forecast the Company's current overall costs including Port Westward.

In the alternative, we recommend that the Commission, while maintaining the 2007 test year established in January, recognize the two distinct, known and measurable cost changes since its Order No. 07-015 in UE 180:

- The used and useful value of Port Westward in rate base, as per ORS 757.355; and

- The Oregon State tax rate as applied to PGE, a cost the legislature has determined to be “unique” and “of special interest”, and, in accordance with ORS 757.267, should be forecast to the best of our ability whenever setting rates.

Dated this 10<sup>th</sup> Day of July, 2007  
Respectfully submitted,

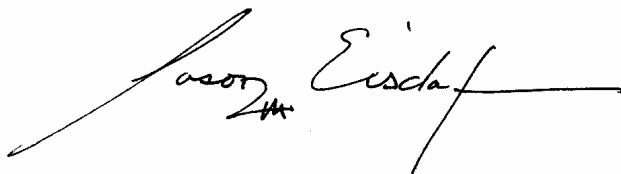
A handwritten signature in black ink that reads "Jason Eisdorfer". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Jason Eisdorfer #92292  
Attorney for Citizens' Utility Board of Oregon

## CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of July, 2007, I served the foregoing Response to Staff Motion of the Citizens' Utility Board of Oregon in docket UE 180 upon each party listed below, by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending 6 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

Respectfully submitted,



Jason Eisdorfer Attorney #92292  
The Citizens' Utility Board of Oregon

**W=Waive Paper service. C=Confidential. HC=Highly Confidential**

JIM DEASON (C)  
ATTORNEY AT LAW

1 SW COLUMBIA ST, SUITE 1600  
PORTLAND OR 97258-2014  
jimdeason@comcast.net

ROBERT VALDEZ

PO BOX 2148  
SALEM OR 97308-2148  
bob.valdez@state.or.us

### **AF LEGAL & CONSULTING SERVICES**

ANN L FISHER (C)  
ATTORNEY AT LAW

PO BOX 25302  
PORTLAND OR 97298-0302  
energlaw@aol.com

### **BOEHM KURTZ & LOWRY**

KURT J BOEHM (C)  
ATTORNEY

36 E SEVENTH ST - STE 1510  
CINCINNATI OH 45202  
kboehm@bkllawfirm.com

MICHAEL L KURTZ (C)

36 E 7TH ST STE 1510  
CINCINNATI OH 45202-4454  
mkurtz@bkllawfirm.com

### **BONNEVILLE POWER ADMINISTRATION**

GEOFFREY M KRONICK LC7 (C)

PO BOX 3621  
PORTLAND OR 97208-3621  
gmkronick@bpa.gov

CRAIG SMITH

PO BOX 3621--L7  
PORTLAND OR 97208-3621  
csmith@bpa.gov

**BRUBAKER & ASSOCIATES INC**

JAMES T SELECKY (C)

1215 FERN RIDGE PKWY - STE 208  
ST. LOUIS MO 63141  
jtselecky@consultbai.com

**CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP**

TAMARA FAUCETTE

1001 SW 5TH AVE STE 2000  
PORTLAND OR 97204  
tfaucette@chbh.com

EDWARD A FINKLEA

1001 SW 5TH - STE 2000  
PORTLAND OR 97204  
efinklea@chbh.com

CHAD M STOKES

1001 SW 5TH - STE 2000  
PORTLAND OR 97204  
cstokes@chbh.com

**COMMUNITY ACTION DIRECTORS OF OREGON**

JIM ABRAHAMSON (C)  
COORDINATOR

PO BOX 7964  
SALEM OR 97301  
jim@cado-oregon.org

**CONSTELLATION NEWENERGY INC**

WILLIAM H CHEN  
REGULATORY CONTACT

2175 N CALIFORNIA BLVD STE 300  
WALNUT CREEK CA 94596  
bill.chen@constellation.com

**DANIEL W MEEK ATTORNEY AT LAW**

DANIEL W MEEK (C)  
ATTORNEY AT LAW

10949 SW 4TH AVE  
PORTLAND OR 97219  
dan@meek.net

**DAVISON VAN CLEVE PC**

S BRADLEY VAN CLEVE (C)

333 SW TAYLOR - STE 400  
PORTLAND OR 97204  
mail@dvclaw.com

**DEPARTMENT OF JUSTICE**

STEPHANIE S ANDRUS (C)  
ASSISTANT ATTORNEY GENERAL

REGULATED UTILITY & BUSINESS  
SECTION  
1162 COURT ST NE  
SALEM OR 97301-4096  
stephanie.andrus@state.or.us

**EPCOR MERCHANT & CAPITAL (US) INC**

LORNE WHITTLES  
MGR - PNW MARKETING

1161 W RIVER ST STE 250  
BOISE ID 83702  
lwhittles@epcor.ca

**GRESHAM CITY ATTORNEY'S OFFICE**

DAVID R RIS  
SR. ASST. CITY ATTORNEY

CITY OF GRESHAM  
1333 NW EASTMAN PARKWAY  
GRESHAM OR 97030  
david.ris@ci.gresham.or.us

**GRESHAM CITY OF**

JOHN HARRIS (C)  
TRANSPORTATION OPERATIONS  
SUPERINTENDENT

1333 NW EASTMAN PKWY  
GRESHAM OR 97030  
john.harris@ci.gresham.or.us

**KAFOURY & MCDUGAL**

LINDA K WILLIAMS (C)  
ATTORNEY AT LAW

10266 SW LANCASTER RD  
PORTLAND OR 97219-6305  
linda@lindawilliams.net

**KIRKPATRICK & LOCKHART PRESTON  
GATES ELLIS LLP**

HARVARD P SPIGAL  
ATTORNEY AT LAW

222 SW COLUMBIA ST STE 1400  
PORTLAND OR 97201-6632  
hspigal@prestongates.com

**LEAGUE OF OREGON CITIES**

ANDREA FOGUE (C)  
SENIOR STAFF ASSOCIATE

PO BOX 928  
1201 COURT ST NE STE 200  
SALEM OR 97308  
afogue@orcities.org

**MCDOWELL & RACKNER PC**

KATHERINE A MCDOWELL  
ATTORNEY

520 SW SIXTH AVE - SUITE 830  
PORTLAND OR 97204  
katherine@mcd-law.com

**W NORTHWEST ECONOMIC RESEARCH INC**

LON L PETERS (C)

607 SE MANCHESTER PLACE  
PORTLAND OR 97202  
lpeters@pacifier.com

**NORTHWEST NATURAL**

ELISA M LARSON (C)  
ASSOCIATE COUNSEL

220 NW 2ND AVE  
PORTLAND OR 97209  
eml@nwnatural.com

**NORTHWEST NATURAL GAS COMPANY**

ALEX MILLER (C)  
DIRECTOR - REGULATORY AFFAIRS

220 NW SECOND AVE  
PORTLAND OR 97209-3991  
alex.miller@nwnatural.com

**PACIFICORP**

OREGON DOCKETS

825 NE MULTNOMAH ST  
STE 2000  
PORTLAND OR 97232  
oregondockets@pacificorp.com

**W PORTLAND CITY OF - OFFICE OF CITY ATTORNEY**

BENJAMIN WALTERS (C)

1221 SW 4TH AVE - RM 430  
PORTLAND OR 97204  
bwalters@ci.portland.or.us

**W PORTLAND CITY OF - OFFICE OF TRANSPORTATION**

RICHARD GRAY (C)

1120 SW 5TH AVE RM 800  
PORTLAND OR 97204  
richard.gray@pdxtrans.org

**W PORTLAND CITY OF ENERGY OFFICE**

DAVID TOOZE

721 NW 9TH AVE -- SUITE 350  
PORTLAND OR 97209-3447  
dtooze@ci.portland.or.us

**PORTLAND GENERAL ELECTRIC**

RATES & REGULATORY AFFAIRS

RATES & REGULATORY AFFAIRS  
121 SW SALMON ST 1WTC0702  
PORTLAND OR 97204  
pge.opuc.filings@pgn.com

DOUGLAS C TINGEY (C)

121 SW SALMON 1WTC13  
PORTLAND OR 97204  
doug.tingey@pgn.com

**PUBLIC UTILITY COMMISSION**

JUDY JOHNSON

PO BOX 2148  
SALEM OR 97308-2148  
judy.johnson@state.or.us

**SEMPRA GLOBAL**

THEODORE E ROBERTS

101 ASH ST HQ 13D  
SAN DIEGO CA 92101-3017  
troberts@sempra.com

LINDA WRAZEN

101 ASH ST HQ8C  
SAN DIEGO CA 92101-3017  
lwrazen@sempraglobal.com

**SMIGEL ANDERSON & SACKS**

SCOTT H DEBROFF

RIVER CHASE OFFICE CENTER  
4431 NORTH FRONT ST  
HARRISBURG PA 17110  
sdebroy@sasllp.com