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Douglas C. Tingey
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August 11, 2008

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
550 Capitol Street NE, #215
PO Box 2148
Salem OR 97308-2148

Re: UE 196 – Portland General Electric Company Application to Amortize the Boardman Deferral

Attention Filing Center:

Enclosed for filing on behalf of Portland General Electric Company in the above-referenced docket are an original and one copy of:

PGE RESPONSE TO MOTION TO HOLD MATTER IN ABEYANCE

An extra copy of the cover letter is enclosed. Please date stamp the extra copy and return to me in the envelope provided.

These documents are being served upon the UE 196 service list.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "D. C. Tingey", is written over a light blue horizontal line.

DOUGLAS C. TINGEY

DCT:cbm
Enclosures
cc: Service List-UE 196

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused **PGE RESPONSE TO MOTION TO HOLD MATTER IN ABEYANCE** to be served by electronic mail to those parties whose email addresses appear on the attached service list, and by First Class US Mail, postage prepaid and properly addressed, to those parties on the attached service list who have not waived paper service from OPUC Docket No. UE 196.

Dated at Portland, Oregon, this 11th day of August, 2008.



DOUGLAS C. TINGEY

SERVICE LIST

OPUC DOCKET # UE 196

<p>LOWREY R. BROWN (C) Citizen's Utility Board of Oregon Utility Analyst lowrey@oregoncub.org *Waived Paper Service</p>	<p>JASON EISDORFER (C) Citizen's Utility Board of Oregon Energy Program Director jason@oregoncub.org *Waived Paper Service</p>
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 196**

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY

Application to Amortize the Boardman
Deferral

**PGE RESPONSE TO MOTION TO HOLD
MATTER IN ABEYANCE**

Portland General Electric Company (“PGE”) submits this response to the Motion to Hold Matter in Abeyance. For the reasons set forth below, the motion should be denied.

PROCEDURAL HISTORY

This is the amortization phase of a deferral of excess power costs from an unexpected and extraordinary outage at PGE’s Boardman generating plant. The deferral period began on November 11, 2005, and lasted less than three months. In Docket UM 1234, the Commission addressed the deferral amount. After three rounds of testimony, briefing, and oral argument, the Commission issued an Order on February 12, 2007 (the “Deferral Order”). The Deferral Order found that PGE had incurred excess power costs of \$42.8 million that were eligible for deferral. The Deferral Order granted deferral of \$26.439 million.

This docket is the amortization phase of that deferral. PGE initiated this docket by filing testimony, exhibits and work papers on October 9, 2007. The parties agreed to, and the Administrative Law Judge set, a schedule that would have included three rounds

of testimony, followed by a hearing and briefing. At the request of Staff, CUB and ICNU, the schedule was extended to include two additional rounds of testimony.¹

A hearing was held on July 23, 2008. After all cross-examination was completed and the hearing was coming to a close, Staff indicated that it desired to make a motion to hold the matter in abeyance. The motion was filed on July 25, 2008.

Staff's motion requests that the ALJ hold this matter in abeyance pending the outcome of a circuit court case, *Turlock Irrigation District v. Portland General Electric Company*, (Multnomah County Circuit Court Case No. 0710-12156).

The *Turlock* litigation involves claims regarding two Boardman outages, lasting until April 2006. Complaint, pp. 5. The first of those outages is the subject of the deferral in this docket. The second outage is not the subject of this or any other PUC docket. The Complaint has three claims for relief, (1) breach of contract, (2) negligence, and (3) gross negligence. PGE has denied all allegations of wrongdoing in the Complaint.

No trial date is set in the circuit court matter, and one is not expected before Fall 2009 at the earliest.

ARGUMENT

Further delay is not reasonable. The deferred excess power costs at issue were incurred over two and one-half years ago. There have been two complete Commission proceedings addressing the deferral. There has been substantial discovery, multiple rounds of testimony, including expert testimony, and hearings. Now, after all of this

¹ See Prehearing Conference Report dated May 2, 2008. That Report set two schedules, one if Staff, CUB, and ICNU did not wish to file another round of testimony, and another schedule that allowed two more rounds of testimony. Staff, CUB, and ICNU filed an additional round of testimony, and PGE responded in accordance with the schedule.

Commission process, Staff seeks to hold the matter in abeyance for an unspecified time, but likely well more than an additional year, and possibly two years, to the completion of the *Turlock* matter. On its face, that is not a reasonable request.

Staff's motion is not adequately supported. Staff relies on one allegation in the *Turlock* complaint to support its motion. That is indeed the only allegation in the Complaint that directly addresses the first Boardman outage. In its Motion, Staff did not quote all of the two sentences it relied on. The complete sentences are:

On information and belief, Turlock alleges that the crack in the turbine generator shaft was caused by PGE's failure to properly operate and maintain Boardman in accordance with Prudent Utility Practice. On information and belief, Turlock further alleges that the crack in the turbine generator shaft was caused by PGE's failure to ensure the adequate staffing, engineering and operation of Boardman.

Complaint, paragraph 17. Staff's motion is based on an allegation that Turlock itself has no knowledge or evidence to support.² It is the barest of allegations. PGE has denied the allegations in this paragraph. And as the first part of this complaint paragraph makes clear, Turlock had not obtained the root cause analyses reports that were completed regarding the first outage.³

² In its motion Staff omitted from the first quoted sentence the phrase "on information and belief". That phrase appears in the second quoted sentence as well. These two allegations are the only allegations in the entire complaint that have this limitation.

The Oregon Civil Litigation Manual explains the use of this phrase:

(1) Insufficient Knowledge. A pleader, lacking sufficient knowledge or information to form a belief regarding the truth of an allegation, may allege it anyway on "information and belief."

1 Oregon Civil Litigation Manual §7.33 (2004).

Staff's motion is thus based on an allegation that Turlock lacks sufficient knowledge or information to form a belief regarding the truth of the allegation.

³ The first two sentences in paragraph 17 of the Complaint are:

PGE commissioned an independent engineering consultant to perform an analysis and prepare a report addressing why the turbine generator shaft cracked. PGE has refused to provide the engineering consultant's report to Turlock.

The allegations have, however, been addressed in this proceeding. Three substantial root cause analyses were performed and are part of the record in this proceeding. All concluded that the operation and maintenance of the Boardman plant by PGE was not a cause of the LP1 turbine crack. Staff agreed with that assessment. ICNU hired an expert witness, John Martin, to offer his opinion in this case. He also agreed that PGE's operation and maintenance of the Boardman plant was not a major cause of the turbine crack.

Notwithstanding this, Staff postulates that information "may be adduced during the Turlock litigation that was not adduced in connection with this administrative proceeding." Staff Motion, p. 3. Staff has proffered no potential new evidence or even suggested what might be found. Nor has Staff pointed to any information it requested in this docket that it did not receive. There were no discovery disputes brought to the Commission in either of the Commission proceedings regarding the Boardman power cost deferral. Nor has Staff cited any precedent for its motion.

There has been full and adequate discovery. Staff does not contend that it lacked time to conduct discovery in this docket. But, Staff states, "whether the Commission staff had the resources to undertake such discovery is a different question." Staff Motion at 3.⁴ In answer to the question posed, Staff lists some discovery it could have pursued, and then concludes: "staff's decision to expend its resources in this manner would have come at the expense of staff's efforts in other dockets." *Id.* at 4. Staff states, then, that it

⁴ PGE does not interpret Staff's argument as saying that between the Commission and the Attorney General's office, it does not have the resources to adequately and professionally do its job. Likewise, PGE does not expect CUB and ICNU to argue that they lack the ability to adequately represent their constituents, or that they have failed to do so.

made a reasonable choice about what discovery it would pursue, and proceeded according to that choice. Yet now Staff seeks a lengthy delay in this proceeding.

Staff also ignores the substantial discovery efforts of other parties to this docket, which have been shared with Staff. The Citizens' Utility Board and Industrial Customers of Northwest Utilities also pursued discovery and offered testimony. As discussed earlier, ICNU hired John Martin, an expert to analyze the outage and offer his opinion. Mr. Martin filed two separate pieces of testimony, and at no time did he claim he had not received all the information he had requested from PGE. There has been full and adequate discovery in this matter.

The Turlock litigation is not a new development. The *Turlock* Complaint was filed in October 2007. It is also not the first time it has been raised in this docket. On April 23, 2008, a Notice of Ex Parte Communication was issued in this docket, giving notice of an *ex parte* communication by Larry Weiss, the General Manager of Turlock Irrigation District ("TID"), with Chairman Beyer. One of the incorrect assertions made by Mr. Weiss in that communication was that PGE was in settlement discussions with TID. PGE's response, supported by the Affidavit of Stephen Quennoz, stated:

PGE is not in settlement discussions with TID. Nor is PGE in settlement discussions with the other owners of Boardman. To the contrary, TID has sued PGE in a matter currently pending in Multnomah County Circuit Court concerning the Boardman outages and PGE is vigorously defending.

PGE Rebuttal of Ex Parte Communication, ¶ 2 (copy attached). Staff submitted a copy of the complaint as an exhibit to its testimony on June 5, 2008.

The affidavit, dated July 25, submitted with Staff's motion references correspondence with counsel for Turlock "within the last week." The substance of the affidavit is information counsel for Turlock gave to counsel for Staff. But Staff does not

explain why this correspondence did not occur sooner, or what events have caused its sudden interest in the *Turlock* litigation. The parties have gone to the expense of multiple (and additional) rounds of testimony, discovery, and hearings. Abating this case would require all parties to devote additional time and money to reviewing the *Turlock* discovery, and possibly to produce additional testimony and briefing as well. Waiting until months of testimony, discovery and hearings were complete to raise this issue has unnecessarily exposed the parties and the Commission to expense and delay. Staff is apparently concerned with saving time and money by limiting its discovery in this matter. It is unfortunate that Staff does not display the same regard for other parties' time and money.

There may be harm to customers if resolution is delayed. Staff states that it does “not believe PGE would be prejudiced by the proposed delay because PGE proposes to recover the Boardman deferral by offsetting it against an existing credit owed to customers. Both the Boardman deferral and the credits with which PGE proposes to offset the Boardman deferral will continue to earn interest if this matter is held in abeyance.” Staff Motion p. 4. This is incorrect as to the number of credits to be used, and the interest rate on at least one of the credits. It also does not address harm to customers.

As explained in PGE's testimony, PGE proposes to offset the deferred amount with \$20 million from the Trojan Decommissioning Trust, pursuant to Commission Order 07-015, and \$11.6 million from a deferral associated with the independent spent fuel storage installation tax credits. In addition, PGE proposes to apply the residual balances

of 11 prior deferrals and the unamortized balances of two smaller deferrals. UE 196/Tooman-Hager/PGE 200/9.

The \$20 million credit to come from the Trojan Decommissioning Trust was authorized by the Commission in UE 180, Order 07-015. That order allows the future withdrawal from the trust and credit to customers of \$20 million. That money will not be withdrawn from the trust until an order is received directing the disposition of the funds. Until that time it will remain in the trust. The funds do earn interest in the trust, but at a lower rate than that authorized for deferrals. In addition, whatever interest is earned will stay in the trust.

The eventual withdrawal from the trust will be \$20 million. The Boardman deferral amount, however, continues to earn interest at PGE's overall cost of capital, currently 8.29%. A delay in ordering the amortization of the Boardman deferral will then cause the deferred amount to continue to grow, while the amount of the largest credit available for offset will stay fixed. If the substantial delay sought by Staff is granted, the ability to offset the deferral with credits will need to be reevaluated at the time of amortization. In any event, the amount of the deferral will be larger, to the detriment of customers.

Inconsistent outcomes. When Staff indicated its intent to file this motion, after the hearing in this docket, one of the reasons indicated was the concern about possibly inconsistent outcomes between this docket and the circuit court litigation. PGE does not believe that will occur – it has shown that it acted prudently in this docket, and it believes it will prevail against Turlock's claims in circuit court, if Turlock even decides to pursue its "information and belief" allegations about PGE's operations once it has reviewed the

various expert reports in this case. There is, however, the potential for outcomes that appear inconsistent. One possible reason are the differing issues and legal standards for the various claims.

The potential for apparently inconsistent outcomes is not a reason for delay. Staff cannot be suggesting that the Commission cede its authority to the circuit court to decide issues about the prudence of PGE's regulated operations. The Commission exists to make this type of ratemaking decisions, regardless of what a circuit court may do in a different matter, applying a different standard.

Procedural problems. Granting Staff's motion would raise procedural questions and problems. If information is obtained, the issue arises of how that information is brought before the Commission. This docket has been fully litigated. It is PGE's position that any additional information must be brought in in the same manner as other testimony – including prefiled testimony submitted by witnesses subject to data requests and cross-examination. This would necessitate an entirely new testimony schedule and an additional hearing. Anything less than this would not comply with the Commission's rules, practices and procedures. As discussed above, this would involve additional expense and delay in a docket that has already been expanded to allow for additional testimony.

CONCLUSION

The motion to hold this matter in abeyance for a significant period of time should be denied.

DATED this 11th day of August, 2008.

Respectfully submitted,

/S/ DOUGLAS C. TINGEY

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