

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 197

In the Matters of

PORTLAND GENERAL ELECTRIC
COMPANY

Request for a General Rate Revision

**PORTLAND GENERAL ELECTRIC
COMPANY'S OPPOSITION TO
CUB'S APPLICATION FOR
RECONSIDERATION**

I. INTRODUCTION

Portland General Electric Company ("PGE") submits this Opposition to the Citizens' Utility Board's ("CUB") Application for Reconsideration. CUB's application meets none of the legal requirements. It offers no new evidence, but repeats arguments the Commission considered and rejected. To the extent CUB offers new arguments, they are based on an alternative decoupling proposal that CUB failed to offer or support when the record was open. Neither the repetition of arguments rejected by the Commission nor a new alternative decoupling mechanism warrants reconsideration of the final order.¹

Aside from being legally deficient, CUB's application is full of mistakes and speculation. For example, CUB suggests that business failures and job losses result in "massive financial

¹ Ironically, the only material new development since the final order supports decoupling. Section 410 of the federal stimulus bill (the Recovery Act) provides that in order to receive certain state energy program funds, a state must certify that "(1) The applicable State regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility, with respect to which the State regulatory authority has ratemaking authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently."

windfalls" and benefit PGE. We take umbrage at this reckless misstatement. Decoupling mitigates the impact of declining load by permitting PGE to recover the fixed costs it has incurred to offer safe, reliable energy service. This does not constitute a financial windfall to PGE or mean that PGE benefits when customers go out of business or lose their jobs as CUB suggests. In addition, CUB's application misunderstands the most basic aspects of PGE's decoupling mechanism. CUB ignores or is unaware of the fact that PGE's load forecasts include vacant homes benefiting customers by reducing the forecasted usage per customer. CUB also fails to realize that customers for whom service has been disconnected are not included in the decoupling mechanism. These basic errors riddle CUB's application and vitiate the stated need for reconsideration. The Commission should reject CUB's reconsideration request.

II. REPEATING THE SAME ARGUMENTS THAT THE COMMISSION CONSIDERED AND REJECTED IS NOT "NEW EVIDENCE"

CUB's primary argument is that "PGE is experiencing a significant reduction in its load due to the current economic downturn rather than due to any voluntary efficiency measures taken by residential and other customers of the utility." (CUB App. at 2.) CUB claims that "this load reduction due to the recession is likely greater than the potential energy efficiency load reductions that were discussed during the case." *Id.* In short, CUB relies on (i) the fact that decoupling does not discriminate between load reductions attributable to the recession rather than energy efficiency and (ii) the recession. According to CUB, this is "new evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order." *Id.*

These arguments are not "new" and they certainly do not rely on evidence that was "unavailable and not reasonably discoverable before issuance of the order."² In fact, CUB made the same arguments in this docket and the Commission has already rejected them.

PGE filed the decoupling proposal in February 2008. Since that time it has been undisputed that the mechanism captures variations in load unrelated to energy efficiency. CUB raised this issue when it filed testimony:

The decoupling mechanism that applies to residential and small business customers would apply to reductions in load from a variety of causes, including the effect of a recession on load. (CUB/100, Jenks/44.)

Nonetheless, the Commission approved the decoupling mechanism over CUB's objection.

In an attempt to cover this defect, CUB acknowledges that there was evidence regarding the recession in the record but ventures that it was only a "*muted* discussion of an impending recession and the associated effects of decoupling." (CUB App. at 4; CUB/300, Jenks/2 (emphasis added).) In fact, CUB identified the recession as one of the main reasons it opposed decoupling, specifically highlighting the argument in briefs:

There are three reasons, that are pertinent to this case, that make decoupling inappropriate. . . . 3. The economy is heading into a recession, the duration and depth of which is unknown. Now is not a good time to shift the risk and cost of a recession onto customers. (CUB/100, Jenks/48-49.)

For example, **one significant risk that is removed from the utility and placed onto customers is the risk of a recession.** When a recession hits our economy, loads tend to be less than forecast and this reduces the revenue collected by a utility (utilities are not unique, in that many businesses have their sales volume

² For example, Maine's trial with decoupling in the early 1990s can hardly be described as new evidence. See CUB App. at 9-10; CUB/300, Jenks/15-16. The study of Maine's trial program, attached as CUB 305, was completed in January 2008, before PGE filed its decoupling proposal.

decline during a recession). **With decoupling in place during an economic downturn, however, a surcharge would be added to customers' bills to insure that utilities earned the same profit they would have earned if loads hadn't declined.** It insulates the utilities from the effect of an economic downturn, but **raises customers' rates at a time when customers can least afford it.** (CUB Opening Brief at 48-49; emphasis in original).

CUB gave full voice to the current recession and its implication for decoupling. We have heard CUB's testimony and briefs described in many ways but "muted" is not one of them. In any event, whether the discussion was muted or not is beside the point. The applicable law and Commission rules make no provision for reconsideration because an issue was given only "muted" discussion before the Commission. The Commission fully considered CUB's argument and rejected it in the final order. There is no "new evidence" justifying reconsideration.

CUB also claims that good cause exists for further examination of a matter essential to the decision. OAR 860-014-0095(3)(d). Good cause must be determined in each case based upon the specific facts. However, it is clear that repeating arguments already made, considered, and rejected is not "good cause" for reconsidering a Commission order.

III. CUB'S ATTEMPT TO SELECTIVELY UPDATE THE LOAD FORECAST IS UNPRINCIPLED AND VIOLATES ESTABLISHED RATEMAKING PRINCIPLES

At its core, CUB's application is based on the recognition that PGE's final load forecast no longer fits reality. In UE 197, PGE was able to update its load forecast with the final power cost update in November 2008. If PGE were allowed to update the load forecast when the Commission issued its final order in late January or today, the load forecast would be lower. That is a simple fact that no one can dispute.

CUB's reconsideration request explicitly asks the Commission to consider changed circumstances for one purpose and one purpose only: to reconsider its decision to implement decoupling. This type of selective updating runs counter to fundamental ratemaking principles.

Rates are set based upon forecasts for the test-year period. The forecasts are based on the facts and circumstances known at a particular point in time. After the rate order is issued, almost all forecasts turn out to be wrong. Actual conditions vary from forecasts; some forecasts are high, some are low. But rates are based on forecasts made at a particular point in time for all factors that impact rates. The Commission expressly discourages single issue updating that CUB proposes:

CUB is asking us to consider a single rate element in isolation. As discussed in Order No. 07-454, the process of examining whether to re-evaluate and adjust the rates adopted in Order No. 07-015 was fundamentally an exercise of the Commission's ratemaking authority. We therefore applied traditional ratemaking principles, including the general policy against single issue ratemaking, which discourages focusing on one cost element while ignoring others. (UE 180/UE 184, Order No. 08-118 at 3-4 (February 14, 2008).)

CUB's argument is doubly flawed. Not only does it seek to update one element of the ratemaking calculus (loads) without updating all others, CUB wants the Commission to update information about loads for the purpose of rejecting decoupling but not allow PGE or the Commission to reset base rates to reflect current load forecasts. CUB can't have it both ways. Either the load forecast is updated for all purposes or it is not updated at all. If the load forecast is updated for consideration of decoupling, then it must be updated to reset base rates. That would moot CUB's argument because the decoupling adjustment attributable to the recession would be forecasted to be zero or close to it. If the load forecast is not updated (which would be

consistent with general ratemaking principles), then CUB's argument has no substance. Under either assumption (updating loads or not), CUB's argument crumbles.

IV. CUB'S OTHER ARGUMENTS ARE UNPERSUASIVE AND OFFER NO NEW EVIDENCE THAT WAS NOT PREVIOUSLY DISCOVERABLE

CUB's remaining arguments are unpersuasive and offer no new evidence that was not previously discoverable. CUB's remaining arguments and requests for clarification target PGE's decoupling mechanism that has not changed since it was initially filed in February 2008. CUB has no excuse for not raising these arguments and seeking clarification sooner. In its application CUB had a chance to explain why it didn't raise these arguments before the Commission's final order, but declined to do so. In fact, CUB had full opportunity to conduct discovery, submit two rounds of testimony, engage in cross-examination, and file briefs regarding PGE's decoupling proposal. CUB simply neglected to raise the issues or made a strategic decision not to explore the issues or articulate its arguments. An application for reconsideration is not a free pass to create a new record and make new arguments in light of the Commission's order. On this basis alone, CUB's remaining arguments should be dismissed out of hand. They neither constitute "new" evidence nor good cause for re-examining the Commission's decision.

In any event, CUB's remaining arguments are riddled with errors and fallacies. For example, CUB claims that vacant homes alone may contribute \$18.8 million to the decoupling adjustment. (CUB App. at 9; CUB/300, Jenks/8.) CUB arrives at this number through a series of assumptions: It assumes about 24,000 homes are currently on the market (statewide); many homes on the market are vacant; energy usage in homes on the market should be assumed to be

zero; and therefore the entire decoupling adjustment of \$41.38 per month may be applied for each month such homes are for sale. Id.

CUB's argument succumbs on the basis of several unfounded assumptions. First, there is no factual evidence supporting CUB's claim that there are 24,000 houses currently on the market. CUB relies on the "Portland Housing Blog" which estimates that 1,235 homes are sold per month and the assumption that houses stay on the market on average for 19.2 months. (CUB/300, Jenks/7.) Is the 24,000 figure statewide or in Portland or a PGE service territory figure? CUB does not explain except that it often refers to it as a "statewide" figure. If so, it is vastly inflated and includes homes outside PGE's service territory.

Second, CUB "assumes that most of these houses are not occupied" (CUB/300, Jenks/8) without any supporting evidence. In fact, as we all know, many houses for sale are occupied. CUB's argument stretches even this implausible assumption by calculating the adjustment amount assuming all (not most) for-sale homes are vacant.

Third, even a vacant home may use energy. In the winter, houses need to be heated so the pipes won't burst. For-sale houses often require at least minimal energy use and service, as CUB acknowledges. (CUB App. at 11.)

Fourth, if service is truly turned off for a vacant home, then the home is not considered a current active customer and therefore is not counted as part of the decoupling adjustment. PGE bears the risk that its customer count forecasted in UE 197 overestimated the number of customers.

Finally, and most importantly, CUB simply misunderstands how the decoupling mechanism treats vacant houses. PGE's decoupling mechanism compares the baseline usage per customer established in UE 197 against the actual usage per customer. CUB appears to assume that in setting the baseline usage per customer, PGE treats all active customers in the same manner. This is absolutely false and contradicted by the record. In developing its load forecast, which is used to establish the baseline usage per customer, PGE assumes 44,500 vacancies. (PGE Exhibit 1104 at 1.) PGE developed its load forecast recognizing that these vacant units contribute less in load than occupied units. (*See* PGE Exhibit 1105.) The inclusion of vacant units in PGE's load forecast benefits customers by lowering the baseline usage per customer used in PGE's decoupling mechanism. It is, therefore, untrue that vacant units cited by CUB should be attributed the full \$41.38 decoupling charge given that the load forecast used to set the baseline usage per customer already accounts for the reduced load associated with such units. In fact, PGE's decoupling proposal is more generous to customers than CUB proposes. CUB assumes only about 24,000 vacant homes whereas PGE's load forecast assumed vacancies of approximately 44,500.

a. There is no confusion over what is an active customer.

CUB claims that the definition of "active customer" needs to be clarified. (CUB App. at 10-12.) The term "active customer" was used in PGE's initial decoupling proposal and has not changed since February 2008. CUB submitted no testimony and made no arguments with respect to this issue when it had the opportunity to do so in UE 197.

In any event, there's nothing unclear about the definition. An active customer is one who signs up for service and receives a bill. Nothing more and nothing less is required. CUB argues that "houses to which electricity has been shut off should not be counted when determining decoupling benefits." (CUB App. at 12.) The Commission need not clarify or revise its order on this point. Houses to which service is shut off are not counted as customers under PGE's decoupling proposal. Accordingly, CUB's position is the one adopted in PGE's decoupling mechanism which the Commission has already approved. Finally, CUB claims that new homes that are unoccupied should not be counted as active customers. According to CUB, realty companies may have the power turned on in order to show houses to prospective buyers but "usage is minimal, as the homes are not occupied by residential customers." (CUB App. at 11.) The fact that usage may be "minimal" does not negate the fact that residential has been requested and has being provided to such unoccupied houses.

The same arguments apply to CUB's claim that closed small businesses should not count. (CUB App. at 13.) If service is cut off to a closed business, it is not an active customer and not counted under PGE's decoupling mechanism. However, if service is still provided to the customer and it receives a bill for electricity service, then it is an active customer. This treatment of active customers was the same when PGE filed its decoupling mechanism in February 2008, it was the same when the Commission approved it, and it is the same today. There is no need for clarification.

b. CUB's "used and useful" argument is ill-founded.

CUB also argues that the infrastructure used to serve "vacant new homes and vacant new businesses to which electricity has been connected, and vacant older homes and vacant older businesses -- languishing on the market" should not be considered "used and useful" under ORS 757.355 and should not be considered under PGE's decoupling mechanism. (CUB App at 14.)

CUB's argument is puzzling and unpersuasive on many fronts. With respect to new homes, PGE does not include such homes in the decoupling mechanism until such time as the owner establishes an account and begins receiving a bill. We know of no basis for CUB's suggestion that distribution facilities serving such customers are not "used and useful." As CUB also acknowledges, many of the vacant homes it identifies receive electric service albeit service which CUB identifies as "minimal." (CUB App. at 11.) Distribution infrastructure is "used and useful" even when service is "minimal." And as noted earlier, when service is disconnected vacant homes are not treated as active customers and are therefore not subject to the decoupling adjustment.

Moreover, with respect to homes that are temporarily vacant but which continue to have an account with PGE and receive a bill, it defies common sense to say (as CUB suggests) that the plant serving such homes is no longer used and useful. In such circumstances, the infrastructure is not retired and the costs do not disappear. The plant is "used and useful" when the home is occupied, when it is vacant, and when it is reoccupied again.

Finally, Ballot Measure 9 does not apply to the type of distribution infrastructure that serves individual homes. As the Commission has recognized, Ballot Measure 9 "was intended to apply to CWIP that reflects preconstruction commercial operating plants" and not smaller projects "attached to an operating plant" (Order No. 02-227 at 15 (March 25, 2002)³) or distribution facilities. The language of Ballot Measure 9 confirms the law's limited reach by specifically enumerating the type of investment to which it applies: "construction, building, installation, or real or personal property." It does not apply to PGE's distribution system serving individual homes.

c. Rate spread issues are no reason to reconsider the order.

CUB understands that the decoupling adjustment will be assigned to the customer class that causes the adjustment (CUB App. at 15), but believes the issue is unclear and seeks reconsideration and clarification. This is an administrative issue that does not warrant reconsideration. In any event, PGE intends to recover decoupling adjustment amounts based upon the customer class' contribution to the decoupling adjustment balance, as CUB suggests.

d. Use of average fixed cost/kwh (not marginal fixed cost/kwh) is appropriate.

Next, CUB complains that PGE's decoupling mechanism is based on an average amount of forecasted fixed costs recovered per kilowatt hour and not "marginal fixed costs per kilowatt hour." (CUB App. at 21.) PGE's decoupling proposal compares the monthly fixed cost forecasted per customer of \$41.38 against the amount of fixed costs recovered based on actual loads with fixed costs being recovered at a rate of 4.646 cents per kilowatt hour. The amount of

³ Citing *PP&L v. Department of Revenue*, 308 Or 49 (1989)("When a utility constructs new property, such as a generating facility, that property is not included in the utility's rate base until it actually is placed into service").

fixed costs recovered per kilowatt hour (4.646 cents) is an average based on forecasted fixed costs recovered per kilowatt hour. CUB believes this figure should be calculated using what it calls "variable fixed costs" and not average fixed costs. Id. CUB's proposal is ill founded on at least three grounds. First, the notion of variable fixed costs over a short period of time is an oxymoron. By definition, fixed costs are not variable, particularly when considered over the two-year period that the decoupling mechanism will be in place.

Second, the Commission does not set rates based on marginal costs or marginal pricing, but rather on the basis of average forecasted costs. The decoupling mechanism is consistent with this fundamental ratemaking principle. CUB's suggestion that decoupling should be calculated using marginal costs and marginal pricing is completely inconsistent with how the Commission has traditionally set rates and how it set PGE's base rates in this case.

Finally, CUB's model for its alternative is baseless and speculative at best. It assumes that in response to a reduction in load, PGE can sell its excess power at \$.07 per kilowatt hour and that the variable costs of a gas CCT is \$.06 per kilowatt hour. (CUB/300, Jenks/27.) CUB offers no actual support for these unfounded assumptions. In fact, the final Monet run in UE 197 forecasted the flat wholesale power price of 5.3 cents per kilowatt hour. Wholesale prices today are between 3 and 4 cents per kilowatt hour, well below retail rates. As is characteristic of its arguments generally, CUB selectively updates certain factors (load) while not updating others (wholesale market prices) or by simply making up these figures out of thin air. CUB is not offering new evidence. It is offering new speculation, with no supporting basis, for reconsideration of the Commission's final order.

- e. **The remainder of CUB's arguments constitute a new alternative decoupling mechanism that is unsupportable and inappropriate given that CUB failed to offer such an alternative in the UE 197 docket**

CUB makes the following proposed changes to the decoupling mechanism:

- Imposing a two percent hard cap on the decoupling adjustment amount (CUB App. at 17);
- Decoupling should be subject to a cost effectiveness test (CUB App. at 24); and
- The decoupling mechanism should be suspended when there is a "severe economic recession." (CUB App. at 23.)

CUB's alternative decoupling proposal is too little too late. The procedural schedule in this docket provided more than ample opportunity for parties to propose alternative decoupling mechanisms. The record in the proceeding was open for over seven months. The procedural schedule included five rounds of testimony and provided CUB two opportunities to file written testimony. CUB had the opportunity to cross examine witnesses regarding decoupling but declined to do so. CUB was also afforded the opportunity to file two separate briefs. During this entire proceeding, CUB's position on decoupling was consistent and clear. It opposed decoupling in any form. The Commission rejected CUB's position and approved decoupling subject to the conditions contained in the final order.

The Commission rules do not permit a party to take advantage of the opportunity to file for reconsideration as a pretext for submitting evidence and proposals that a party should have submitted and proposed in the underlying proceeding. CUB offers no "new evidence" supporting its alternative other than the testimony attached to the application which merely describes its new proposal. Nor does CUB offer good cause for considering the alternative it proposes.

In any event, the alternative provisions CUB proposes are misconceived. The Commission approved decoupling on a two-year trial basis. PGE is required within six months of the expiration of the two-year trial period to submit an assessment of the effectiveness of the decoupling mechanism with detailed information regarding the impact of the mechanism on the utility's disincentives to promote energy efficiency. Order No. 09-020 at 29. The short term nature of the decoupling mechanism coupled with the detailed reporting requirements fully address and make moot CUB's proposed cost effectiveness requirement.

Moreover, CUB's proposed hard cap and off ramp for severe economic recessions are unfair and ill-advised. The disincentives that decoupling addresses continue in a recession and without respect to whether or not the decoupling adjustment amount is greater than two percent. Nor do the size of the adjustment or the existence of a recession mitigate in any way the fixed costs that PGE is required to incur to offer safe reliable electricity service. CUB's proposal is doubly objectionable given that it operates in a discriminatory fashion by suspending decoupling in a recession but leaving it in place when loads are higher than expected.

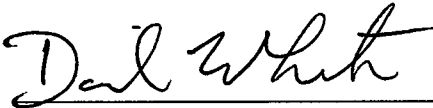
V. CONCLUSION

For the reasons stated above, the Commission should deny CUB's application.

DATED this 8th day of April, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **PORTLAND GENERAL ELECTRIC COMPANY'S OPPOSITION TO CUB'S APPLICATION FOR RECONSIDERATION** by e-mail and/or mailing a copy thereof, to each party that has not waived paper service, in a sealed, first-class postage prepaid envelope, addressed to each party listed below and depositing in the US mail at Portland, Oregon.

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DATED this 8th day of April, 2009.

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