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July 10, 2006

Via Electronic and U.S. Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PORTLAND GENERAL ELECTRIC
Application for Deferred Accounting Treatment of Certain Expenses Associated
with Grid West Loans
Docket No. UM 1256

In the Matter of PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY
Application for Deferred Accounting Order Regarding Grid West Loan Costs
Docket No. UM 1257

Dear Filing Center:

Enclosed please find the original and two copies of the Response to Staff Analysis on behalf of the Industrial Customers of Northwest Utilities in the above-referenced dockets.

Please return one file-stamped copy of each document in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely,

/s/ Anna E. Studenny
Anna E. Studenny

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Response to Staff Analysis on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid.

Dated at Portland, Oregon, this 10th day of July, 2006.

/s/ Anna E. Studenny
Anna E. Studenny

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1256 / UM 1257

In the Matter of the Application of)	
)	
PACIFIC POWER & LIGHT)	RESPONSE OF THE INDUSTRIAL
(dba PACIFICORP))	CUSTOMERS OF NORTHWEST
)	UTILITIES TO STAFF ANALYSIS
for an Accounting Order)	
_____)	
In the Matter of the Application of)	
)	
Portland General Electric Company)	
)	
for an Order Approving the Deferral of)	
Certain Costs and Revenues Associated with)	
Grid West)	
_____)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits this Response to the Staff Reports and Staff Analysis recommending that the Oregon Public Utilities Commission (“OPUC” or the “Commission”) approve both PacifiCorp’s and Portland General Electric Company’s (“PGE”) (jointly, the “Utilities”) applications for deferred accounting treatment of their respective Grid West loans. PacifiCorp Staff Report at 1; PGE Staff Report at 1. The recommendations made by Staff lack both legal and factual merit.

The Utilities’ applications for deferred accounting (“Applications”) impermissibly seek to have costs deferred that have been incurred before the application date. Such a request runs afoul of the plain language of ORS § 757.259, the deferred

accounting statute. The Applications also fail to explain what benefits customers will realize from the extra costs, how deferred accounting of these costs will stabilize rate changes, and why the Commission should exercise its discretion and grant deferred accounting. Similarly, Staff's recommendations fail to address these key legal and policy issues, yet Staff still concludes that the Commission should approve the Applications. For the reasons set forth below, the Commission should disregard Staff's recommendations and deny the Applications.

II. BACKGROUND

The Applications are the result of loans made by the Utilities to Grid West beginning in June 2000. Grid West represents an attempt by certain Northwest electric utilities to create a Regional Transmission Organization ("RTO"). The decision has now been made to dissolve Grid West, preventing recovery of these loans by the Utilities, and thus, customers will not realize any benefit from these loans.

Presumably in anticipation of this dissolution, the Utilities filed their applications for deferred accounting treatment of these loans on March 22 and 23, 2006. Staff is of the position that, according to Generally Accepted Accounting Principles ("GAAP"), the loans do not constitute "expenses" under ORS § 757.259 until the loans become unrecoverable, an event that is now certain, and the loans are required to be written off. In addition, Staff argues that deferred accounting "may avoid the need to adjust rates," and that customers will benefit from the Utilities' "experience in investigating alternative pricing and governance structures." PGE Staff Report at 3;

PacifiCorp Staff Report at 3. Staff’s recommendations are based on generalized statements and unsupported conclusions.

III. ARGUMENT

A. The Grid West Loans Fail to Meet the Statutory Requirements for Deferred Accounting

Retroactive ratemaking is prohibited without express legislative authority. Re PacifiCorp, OPUC Docket No. UE 76, Order No. 92-1128 at 8 (Aug. 4, 1992); Re Staff Request to Open an Investigation Related to Deferred Accounting, OPUC Docket No. UM 1147, Order No. 05-1070 at 2 (Oct. 5, 2005). ORS § 757.259 creates a narrow exception to the general rule in the form of deferred accounting. OPUC Docket No. UE 76, Order No. 92-1128 at 8. In assessing whether to approve an application for deferred accounting pursuant to that statute, the Commission must first determine whether the application meets the statutory requirements.^{1/} OPUC Docket No. UM 1147, Order No. 05-1070 at 2. An application for deferred accounting *must* meet the statutory requirements. Re PGE, OPUC Docket No. UM 1071, Order No. 04-108 at 8 (Mar. 2, 2004).

Staff argues that the Applications qualify for deferred accounting under ORS § 757.259(2)(e), which authorizes the Commission to approve deferred accounting for “[i]dentifiable utility expenses or revenues” if the Commission finds that a deferral

^{1/} If the Applications meet the statutory requirements, the second step in the analysis requires the Commission to exercise its discretion before allowing a deferred account. OPUC Docket No. UM 1147, Order No. 05-1070 at 4. Whether the Commission should exercise its discretion in such a manner will be addressed later in the brief.

would “minimize the frequency of rate changes or the fluctuation of rate levels or ... match appropriately the costs borne by and benefits received by ratepayers.”

1. The Grid West Loans Are Not “Expenses” Eligible for Deferral

ORS § 757.259 is a limited grant of legislative authority to the Commission to set rates retroactively under very specific circumstances. See Re PGE, OPUC Docket No. UM 989, Order No. 02-227 at 9 (Mar. 25, 2002). Staff argues that the legislature intended to allow the types of costs at issue in these proceedings to be deferred, citing GAAP as support. Initial Staff Analysis at 2-3; PGE Staff Report at 3; PacifiCorp Staff Report at 3. Staff’s analysis is flawed.

First, Staff ignores the text and context of the statute. The “plain, natural, and ordinary meaning” of “expense” is clear. ORS § 757.259 allows deferral of “identifiable utility expenses.” When interpreting a statute, the text and context of the statute is the “best evidence of the legislature’s intent.” PGE v. Bureau of Labor and Indus., 317 Or. 606, 610 (1993). When looking at the text, common words should be given their “plain, natural, and ordinary meaning.” Id. at 611. Absent a special definition in the statute, courts will ordinarily turn to the dictionary definition. Walter v. Scherzinger, 339 Or. 408, 416 (2005). “Expense” is defined as “the act or practice of expending money: SPENDING.” Webster’s New Int’l Dictionary, 800 (3d ed. 1993). Therefore, an “expense” occurs as contemplated by the statute at the time the money is actually expended.

In addition, the term “expenses” is qualified by subsection (4), which only authorizes the Commission to approve deferral of expenses “beginning with the date of

application[.]” Thus, when read in context, only money expended starting with the date of application qualifies for deferred accounting. Further, because the statute is an exception to the general rule prohibiting retroactive ratemaking, the Commission has been careful to construe the statute very narrowly, and “not grant deferral unless it is *clearly within the reach of the statute.*” OPUC Docket No. UE 76, Order No. 92-1128 at 8 (emphasis added). A narrow interpretation of the statute requires that it be construed to apply only to expenses incurred on or after the date of application. See, e.g., Re PGE, OPUC Docket Nos. UM 594 and UM 571, Order No. 93-1493 at 1-3 (Oct. 15, 1993) (involving a request to defer excess costs as of the date of application).

Staff argues that “identifiable utility expenses” is an “inexact” term and that the Commission should apply its expertise in this situation and define the term in its *broadest* sense, citing GAAP. Staff’s importation of GAAP principles seeks to impermissibly “insert what has been omitted” by the legislature. ORS § 174.010. In addition, the Commission has already applied its expertise and ruled that ORS § 757.259 should be construed in its narrowest sense. OPUC Docket No. UE 76, Order No. 92-1128 at 8. The artful accounting techniques utilized by Staff in this case do not make the loans “clearly within the reach of the statute.” Id.

Staff cites to a past Commission order as support for its position that “expense” includes the “failure of a party to pay the utility an amount due.” Initial Staff Analysis at 3 (citing Re PGE, OPUC Docket Nos. UM 1008 and 1009, Order No. 01-231 (Mar. 14 2001) (“Order No. 01-231”). Order No. 01-231, however, was a summary order approving a stipulation between the parties involved and did not include any

statutory analysis whatsoever. Thus, its value as precedent on a question of statutory interpretation is insignificant. Moreover, Staff, as a party to the stipulation, apparently ignores the provision of the stipulation stating, “this Stipulation *may not be cited or used as precedent by any party or any person in any proceeding*, except for those proceedings implementing the terms of this Stipulation.” OPUC Docket Nos. UM 1008 and 1009, Order No 01-231 at 14 (emphasis added).

Staff also takes issue with ICNU's argument that allowing these deferrals would create a “slippery slope” that utility companies could utilize to disguise past expenses as loans eligible for deferral. Initial Staff Analysis at 3-4. Staff argues that the Commission will simply exercise its discretion to deny any such application. Staff is correct that the Commission has broad discretion to deny an application, but the Commission is still bound by its own precedent, which requires a narrow interpretation of what qualifies for deferred accounting

Moreover, if the Grid West loans qualify as an “expense” now, then virtually everything could be considered an “expense.” Every single item on a balance sheet that a utility company is required to write off under GAAP would become an “expense” eligible for deferral. Such a result shows the absurdity of the GAAP argument.

In sum, the loans that PGE and PacifiCorp seek to defer were all expended many years prior to the date of the Applications. When the money was paid to Grid West by the utilities beginning in 2000, that money met the definition of an “expense.”

2. The Applications Will Not Minimize the Frequency or Fluctuations of Rate Changes

As the applicants for a deferred accounting request, both utilities carry the burdens of production and persuasion in support of their requests. OPUC Docket No. UM 1147, Order No. 05-1070 at 5. In the Applications, neither utility met their burden in showing how a deferred account in this instance will minimize the frequency or fluctuations of rate changes. Despite this failure, Staff still recommends that the Commission approve the Applications, but does not explain why or how either utility has subsequently met their burden.

“[W]hether a deferral will minimize the frequency of rate changes depends primarily on the size of the cost to be deferred and the utility’s options for rate filings, including requests for interim rate relief.” Id. In order to meet that standard, a utility can show, for example, that a deferral “would prevent an interim rate filing.” Id. In the Staff Reports, Staff simply states that “[t]he creation of a deferred account may avoid the need to adjust rates to reflect [the Utilities’] share[s] of the Grid West funding obligation[,]” and provides no further analysis. PGE Staff Report at 3; PacifiCorp Staff Report at 3. In Staff’s Analysis, Staff does not even attempt to address whether deferred accounting of these costs would minimize the frequency or fluctuations of rate changes, presumably choosing solely to rely on its analysis of customer benefits.

In this case, deferred accounting would not minimize the frequency or fluctuations of rate changes. Neither utility explains why it cannot seek to recover these costs in general rate proceedings. Neither utility asserts, for example, that it would be

required to make an interim rate filing. In addition, absent is any argument regarding why the amount of the loan would require such relief. For example, PGE's share of the Grid West loans, as of March 31, 2005, includes only \$1.3 million in principal and interest. PGE Staff Report at 2. Such a minor amount would not require "the Commission to entertain immediately a utility's request for an increase in rates[.]" OPUC Docket No. UE 76, Order No. 92-1128 at 8. Without any explanation of how the size of the loans relates to the Utilities' options for rate filings, the Utilities simply have not met their burden.

Furthermore, the Commission has already allowed PacifiCorp to include ongoing expenses associated with Grid West in the Company's test year revenue for inclusion in rates.^{2/} Re PacifiCorp, OPUC Docket No. UE 170, Order No. 05-0150 at 26-27 (Sept. 28, 2005). Thus, there will be no rate changes because PacifiCorp's costs are already being recovered. PacifiCorp cannot be allowed to recoup costs from customers in the future simply because it neglected to include these costs in past rates. Deferred accounting is an inappropriate method to recover such "ordinary" costs. OPUC Docket No. UM 1147, Order No. 05-1070 at 11.

3. A Deferred Accounting Will Not Match the Costs and Benefits Received by Ratepayers

Deferral of costs is appropriate "where a cost being experienced by a utility today relate[s] to a benefit which may be received by a customer in the future[.]" OPUC Docket No. UE 76, Order No. 92-1128 at 9. Such a deferral matches the costs and

^{2/} The RTO costs included in rates relate to consulting, airfare, lodging, employee expenses, legal expenses, and secondary salary expenses. OPUC Docket No. UE 170, Order No. 05-1050 at 27.

benefits by ensuring that a future customer who actually receives the benefits is the one who bears the costs of those benefits. See Re PGE, OPUC Docket No. UM 246, Order No. 90-311 at 1 (Mar. 5, 1990). Staff argues that the Utilities have satisfied this criterion because participation in Grid West was “consistent with regulatory policy” and that the statute “does not require an activity to reach fruition for it to be considered beneficial to customers.” Initial Staff Analysis at 4. Staff’s reasoning again fails to comport with the plain language of ORS § 757.259.

The definition of a “benefit” is “to be useful or profitable to[.]” Webster’s New Int’l Dictionary, 204 (3d ed. 1993). In light of the fact that Grid West no longer exists, these costs will not benefit customers or either Utility in its respective operations. The only possible beneficiary of these costs is the now defunct Grid West. Staff asserts that future customers will benefit from the Utilities’ “experience in investigating alternative pricing and governance structures.” PacifiCorp Staff Report at 3; PGE Staff Report at 3. FERC, however, has backed off of requiring such alternative mechanisms. See, e.g., Bonneville Power Admin. et al., 112 FERC ¶ 61,012 (July 1, 2005). Future customers will not benefit from this so-called “experience,” in lieu of the completion of a successful RTO. Simply put, there are *no* customer benefits associated with these costs because Grid West will not exist in the future and the creation of a Northwest RTO similar to Grid West is improbable.

Staff also argues that the Commission can simply exercise its discretion to deny the Applications if it finds costs unbeneficial. Initial Staff Analysis at 4. Staff confuses the concepts of Commission discretion with the statutory requirements for

deferred accounting. If an application fails to meet the statutory requirements, the Commission has *no* discretion—it must deny the application. Simply because the Utilities may have been encouraged to support the creation of a Northwest RTO does not mean that customers will benefit from these endeavors.

B. The Commission Should Exercise Its Discretion to Deny the Applications

Even if the Commission rules that the Applications meet the statutory requirements for deferred accounting, the Commission should exercise its discretion to deny the Applications. In exercising its discretion, the Commission first examines “the triggering event that led to the deferral application. The utility bears the burden of identifying the event and showing its significance.” OPUC Docket No. UM 1147, Order No. 05-1070 at 7. Second, the Commission examines “the magnitude of the underlying event in terms of the potential harm.” *Id.* The failure of Grid West as an RTO is not the type of “event” that the Commission should consider in exercising its discretion. Regardless, the minimal financial impact of the Grid West loans makes the exercise of the Commission’s discretion inappropriate no matter how the loans are characterized.

1. The Applications, Staff Reports, and Staff Analysis Fail to Address Why the Commission Should Exercise Its Discretion

Although the Staff Reports, Staff Analysis, and the Applications attempt to address how the Grid West loans satisfy the statutory requirements, neither does so with respect to why the Commission should exercise its discretion to allow deferred accounts. Meeting the statutory requirements “is a necessary but not a sufficient condition for granting a deferred accounting application.” OPUC Docket No. UM 1071,

Order No. 04-108 at 9. The burden is on the Utilities to “identify[] the event and show[] its significance.” OPUC Docket No. UM 1147, Order No. 05-1070 at 7. Assuming the failure of Grid West is the triggering event, as we can at least infer, absent is any explanation of the financial impact these costs will have. Without more, there is simply insufficient information from which to guide the Commission in the exercise of its discretion. Despite that deficiency, ICNU will address why the Commission should decline to exercise its discretion in this case.

2. The Grid West Loans Are Not the Type of Event Appropriate for Deferral

In UM 1071, the Commission thoroughly examined how it should exercise its discretion with respect to PGE’s request for a deferred account due to excess hydro costs. OPUC Docket No. UM 1071, Order No. 04-108 at 8-9. In that case, the Commission recognized that deferred accounting should be reserved for “extraordinary events that fall outside the predictable and quantifiable.” Id. at 9.

The costs associated with Grid West and its subsequent failure can hardly be said to be unpredictable. The attempt to establish a Northwest RTO had already twice collapsed. Bonneville Power Admin. et al., 112 FERC ¶ 61,012, 61,091-92. In addition, the formation of Grid West was very controversial because of concerns regarding higher costs, excess bureaucracy, and loss of jurisdictional control. Thus, it was highly foreseeable that the attempt to create an operational RTO would fail.

Furthermore, the costs were easily quantifiable. In the Funding Agreements entered into between the utilities and Grid West, each utility had a specific

percentage share of the loans allocated. For example, under the first Funding Agreement entered into on May 3, 2000, PGE was required to pay 7.97% of the costs and PacifiCorp was required to pay 18.01% of the costs.^{3/} PGE's Response to ICNU Data Request No. 2, Attachment 2-A at 1.4. The Funding Agreement further stated that the requested funds would not exceed \$2 million, unless a utility specifically agreed to increased funding. Id. at 1.3. Thus, each utility knew exactly, or could reasonably estimate, how much it would incur in costs associated with funding Grid West. In sum, the Grid West loans are not the type of "extraordinary event" that the Commission should consider in exercising its discretion.

3. The Magnitude of Harm Is Not Substantial Enough to Warrant Deferred Accounting

Whatever the significance of the triggering event, the Commission can still choose to exercise its discretion if the magnitude of harm is substantial. OPUC Docket No. UM 1147, Order No. 05-1070 at 7. The more predictable the triggering event, the more substantial the harm must be to warrant a deferred account. Id. The amounts that the Utilities have requested for deferral hardly qualify as substantial harm under the Commission's standards.

In UM 1071, although the Commission did not set a numerical standard, it rejected PGE's request to defer \$31.6 million, or 172 basis points of return on equity, noting that that amount fell well short of past amounts that the Commission has approved

^{3/} That funding agreement was entered into when Grid West was still named RTO West.

for a deferred account.^{4/} OPUC Docket No. UM 1071, Order No. 04-108 at 9. In this case, PacifiCorp estimates that the total amount of the deferred account will be approximately \$765,000.^{5/} PacifiCorp Application for Deferred Accounting at 3. PGE estimates that its deferred account will be approximately \$1.2 million.^{6/} PGE Application for Deferred Accounting at 2. It seems unlikely that either utility will suffer little if any out-of-pocket expense associated with these Grid West loans given Grid West costs are currently being recovered from ratepayers while no costs are being expended.

IV. CONCLUSION

The Utilities' requests for deferred accounting fail to meet the statutory requirements. Despite that fatal flaw, Staff still recommends that the Applications be granted. To do so would allow an expansive use of deferred accounting not intended by the legislature. In addition, it would create a mechanism that could be readily abused by utilities seeking to evade the prohibition against retroactive ratemaking. The Grid West loans are unlike any other deferred accounting request that the Commission has granted in the past. While these applications do not involved large amounts of money, ICNU strongly opposes these applications on the basis that approval is contrary to law and

^{4/} In that case, the Commission found that the amounts actually related to excess hydro costs was only \$17.5 million, or 95 basis points of return on equity—an amount still far more substantial than requested by the Utilities in this case.

^{5/} In its recommendation, Staff states that PacifiCorp is asking to defer \$2.7 million. In its application, however, PacifiCorp states that Oregon's portion of that \$2.7 million is only \$765,000. In either case, the amounts fall well short of what the Commission considers substantial.

^{6/} In its response to ICNU Data Request No. 1.5, PGE asserts that additional loans to Grid West will not be incurred.

would set a very poor precedent. Accordingly, the Commission should deny the Applications.

Dated this 10th day of July, 2006.

Respectfully submitted,

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