



1 BEFORE THE PUBLIC UTILITY COMMISSION
2 OF OREGON

3 UM 1256, UM 1257 & UM 1259

4 In the Matter of

5 PORTLAND GENERAL ELECTRIC
6 COMPANY (UM 1256)

7 PACIFICORP, dba PACIFIC POWER &
8 LIGHT COMPANY (UM 1257)

9 and

10 IDAHO POWER COMPANY
11 (UM 1259)

12 Application for Deferral of Certain Costs
13 and Revenues Associated with Grid West

PACIFICORP'S REPLY COMMENTS

14 In response to the Initial Staff Analysis submitted on June 16, 2006 in these
15 consolidated dockets, comments were filed by Portland General Electric Company ("PGE")
16 and the Industrial Customers of Northwest Utilities ("ICNU"), in addition to those submitted
17 by PacifiCorp dba Pacific Power & Light Company ("PacifiCorp").¹ In accordance with the
18 May 25, 2006 Conference Memorandum, PacifiCorp hereby submits these reply comments.

Reply Comments

19 ICNU's Response opposes the Initial Staff Analysis, claiming that the
20 recommendations made by Staff "lack both legal and factual merit." *ICNU Response at 1.* In
21 its response, ICNU repeated many of the points it made in its May 8, 2006 letter to the
22 Commission in opposition to the pending deferral requests. *Letter from Melinda J. Davison*
23 *to Commissioners, May 8, 2006.* PacifiCorp addressed many of these points in its July 10

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25
26 ¹ Idaho Power Company also filed a letter on July 10 indicating that it concurred with
the Initial Staff Analysis.

1 filing, and will not repeat those arguments in these reply comments. These reply comments
2 will be limited to addressing certain additional points made by ICNU in its July 10 Response.

3 **A. The Grid West Loans Are "Expenses" That Are Eligible for Deferral under**
4 **ORS 757.259.**

5 The ICNU Response claims that to be eligible for deferral, "only money expended
6 starting with the date of the application qualifies." *ICNU Response at 5*. According to
7 ICNU, "the loans that PGE and PacifiCorp seek to defer were all expended many years prior
8 to the date of the Applications" and thus are not eligible for recovery. *Id. at 6*. ICNU claims
9 that Staff's reliance on generally accepted accounting principles, or GAAP, in its Initial
10 Analysis seeks to "impermissibly" insert into the deferred accounting statute what has been
11 omitted by the legislature. *Id. at 5*.

12 This argument mischaracterizes the purpose for which GAAP was used in the Initial
13 Staff Analysis. GAAP was used as the basis for determining the point at which an expense is
14 "incurred" for accounting purposes. The Grid West loans were recorded on PacifiCorp's
15 balance sheet as a long-term receivable. The character of the loan amounts changed,
16 however, once it became clear that the loans will not be repaid. Once these loans become
17 uncollectible, PacifiCorp will be required under GAAP to write off the cost of the loans. At
18 this point, the loan amounts become an *expense* item. Because the event which triggered the
19 creation of the expense – Grid West's default under the Funding Agreement – will occur
20 *after* the filing of the Application in these dockets, the expense amounts remain eligible for
21 deferral.

22 This reliance on GAAP thus does not "impermissibly 'insert what has been omitted'
23 by the legislature" into the deferred accounting statute. Rather, it is a logical and well-
24 reasoned basis for determining when an item becomes an "expense" for purposes of
25 determining eligibility for deferral under the statute. The Commission has considerable
26 discretion to define when an expense has been incurred. As described in the Initial Staff

1 Analysis, the term "identifiable utility expenses" is an "inexact term" under the statutory
2 interpretation regime set forth in *Springfield Education Assn. v. School District*, 290 Or. 217,
3 223, 621 P.2d 547 (1980), and the Commission is empowered to define "identifiable utility
4 expense" using its expertise, along with the "context of the Oregon regulatory scheme."
5 *Initial Staff Analysis at 3.*

6 ICNU also argues that the "absurdity" of reliance on GAAP is apparent inasmuch as
7 "[e]very single item on a balance sheet that a utility company is required to write off under
8 GAAP would become an 'expense' eligible for deferral." *ICNU Response at 6.* This
9 argument disregards the particular circumstances involved with these Applications, *i.e.*, that
10 the funds advanced to Grid West by PacifiCorp were pursuant to the Funding Agreement,
11 which contains a repayment provision under which PacifiCorp expected to be repaid. The
12 characterization of these funds as loans was correct at the time the funds were advanced, and
13 the character of the item was transformed to an "expense" due to later developments. No
14 similar circumstance exists for other expense items that would enable a utility to make
15 otherwise ineligible costs eligible for deferral. Moreover, the Commission has discretion
16 under ORS 757.259 to determine whether to grant a requested deferral, and this authority
17 would preclude the potential misuse of the statute in the manner suggested by ICNU.

18 **B. The Expenses Meet the Standard for Deferral Under ORS 757.259.**

19 In its Application, PacifiCorp cited ORS 757.259(2)(e) as authority for granting the
20 requested deferral. ORS 757.259(2) provides in relevant part that:

21 Upon application of a utility . . . the commission by order may
22 authorize deferral of the following amounts for later incorporation
23 in rates:

24 . . .

25 (e) Identifiable utility expenses or revenues, the recovery or
26 refund of which the commission finds should be deferred in order
to minimize the frequency of rate changes or the fluctuation of rate
levels or to match appropriately the costs borne by and benefits
received by ratepayers.

1 ICNU claims that the Applications fail to meet the requirements of subsection 2(e) because
2 they will neither minimize the frequency or fluctuations of rate changes nor result in the
3 matching of costs and benefits received by ratepayers. *ICNU Response at 8-9.*

4 With respect to the former argument, ICNU characterizes the loan amounts as
5 "ordinary" costs for which deferred accounting is inappropriate, and states that the amounts
6 are not so large as to require any utility to seek interim relief. *Id. at 8.* This narrow reading
7 of the statute is unsupported by the text of the statute. There is nothing in the statute which
8 imposes a requirement that the expense at issue must be so large, in and of itself, to require
9 the filing of a rate case or a request for interim relief. While the amounts at issue may be
10 "minor" to the ICNU members (*Id.*), they are sufficiently large such that it would be
11 inappropriate to seek to recover such amounts in a single rate case, as an "ordinary" test year
12 expense. Clearly, they are not ordinary expenses suitable for recovery in setting rates on an
13 ongoing basis.

14 With respect to the matching of costs and benefits, the Initial Staff Analysis found
15 that "the utilities' participation was consistent with regulatory policy and will benefit
16 customers" and that an activity need not "reach fruition for it to be considered beneficial to
17 customers." *Initial Staff Analysis at 4.* ICNU would impose a strict "temporal" matching
18 requirement, *i.e.*, that a "future customer who actually received the benefits is the one who
19 bears the costs of those benefits." *ICNU Response at 9.* As noted in the PGE Response, this
20 "temporal matching" requirement has not previously been imposed by the Commission and is
21 unnecessarily rigid. If adopted by the Commission, the requirement would be nearly
22 impossible to satisfy, inasmuch as deferrals by definition involve a separation of time
23 between the period in which the expense is incurred and the period in which the expense is
24 amortized in rates. A better analysis is that the expenses were incurred for the ongoing
25 benefit of customers in the pursuit of the development of a regional transmission entity, and
26 deferred accounting would appropriately spread these costs over future periods. The

1 Commission should continue to reject this narrow interpretation of ORS 757.259(2)(e)
2 offered by ICNU, as the Commission did in rejecting ICNU's proposed "benefit over time"
3 requirement in Docket UM 1147, the investigation of deferred accounting. In that
4 proceeding, the Commission declined to adopt additional standards to determine whether an
5 application meets the requirements of ORS 757.259(2)(e), deciding instead to "adhere to the
6 Commission's past practice, which utilizes a flexible, fact-specific approach that
7 acknowledges the wide range of reasons why deferred accounting might be beneficial to
8 customers." *Docket UM 1147, Order No. 05-1070 at 5.*

9 **C. The Commission Should Exercise Its Discretion to Grant the Requested**
10 **Deferrals.**

11 The ICNU Response claims that the Grid West loans are not the type of event
12 appropriate for deferral given that (1) the magnitude of the harm is not substantial enough,
13 and (2) it was "highly foreseeable" that the attempt to create an operational RTO would fail.
14 *ICNU Response at 11-12.* Order No. 05-1070 provides some guidance on the issue of when
15 the Commission should exercise its discretion to grant a deferral. The Order describes the
16 approach as follows:

17 Initially, the proper approach in analyzing an event is to examine
18 the nature of the event, its impact on the utility, the treatment in
19 ratemaking, and other factors used to evaluate whether a deferred
20 account is appropriate. The next step is to examine the magnitude
21 of the underlying event in terms of the potential harm. The type of
22 event—modeled in rates or not, foreseeable or not—will affect the
23 amount of harm that must be shown by the utility. If the event was
24 modeled or foreseen, without extenuating circumstances, the
25 magnitude of harm must be substantial to warrant the
26 Commission's exercise of discretion in opening a deferred account.
If the event was neither modeled nor foreseen, or if extenuating
circumstances were not foreseen, then the magnitude of harm that
would justify deferral likely would be lower.

1 *Docket UM 1147, Order No. 05-1070 at 7.* As stated in PacifiCorp's July 10 Response,
2 applying this approach to the requested deferrals at issue in these dockets suggests that they
3 should be granted.

4 The default by Grid West of its obligation to repay the loans was not modeled in
5 rates. In contrast to the ongoing expenses associated with RTO formation that were
6 recoverable in rates, the loan amounts were carried as a receivable on the balance sheet and
7 were intended to be repaid at some time in the future. Denial of deferred accounting for the
8 loan amounts would effectively deny the ability of PacifiCorp to recover these amounts.
9 Moreover, it was hardly "foreseeable" that Grid West would fail and the loan amounts would
10 be unrecoverable. The development of Grid West, and its predecessor entity, RTO West,
11 was widely supported in the region at the time the loans were made, and received FERC
12 approval of its preliminary formation filings. The failed efforts preceding Grid West, cited
13 by ICNU (*ICNU Response at 11*), occurred prior to FERC's issuance of Order 2000
14 mandating the formation of RTOs. Previous failures under a pre-Order 2000 regime carry
15 little weight in establishing the foreseeability of failure by Grid West. Under the above
16 analysis enunciated by the Commission in Order No. 05-1070, the magnitude of the harm
17 need not be substantial if the event was neither modeled nor foreseen. The Commission
18 should therefore exercise its discretion, consistent with that analysis, to authorize the
19 requested deferrals.

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Conclusion

PacifiCorp respectfully requests that in accordance with ORS 757.259, the Commission authorize the Company to defer, commencing as of the date of the Application (March 23, 2006), the Grid West loan costs incurred by the Company as described in the Application.

DATED: July 28, 2006.

PACIFICORP



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July 28, 2006

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

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PO Box 2148
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RE: PacifiCorp's Response to Initial Staff Analysis
Docket Nos. UM 1256, UM 1257 and UM 1259

Enclosed for filing are the original and five copies of PacifiCorp's Reply Comments to GRID West filing in the above-referenced matters. A copy of this filing was served on all parties to these proceedings as indicated on the attached certificate of service.

Sincerely,

/s/ Natalie L. Hocken

Natalie L. Hocken

Enclosure

cc: Service Lists for UM 1256, UM 1257 and UM 1259

CERTIFICATE OF SERVICE

I certify that I have on July 28, 2006 served the foregoing document in Docket Nos. UM 1256, 1257 and 1259 upon all parties of record in this proceeding by mailing a copy with first class postage prepaid, unless paper service is waived, and by electronic mail to the following person(s) at his or her last-known address(es) as indicated below and via email to said person(s) email address as indicated below:

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