

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)**

8 **and**

9 **IDAHO POWER COMPANY (UM 1259)**

10 **Application for an Accounting Order**
11 **Addressing the Deferral of Costs Related to the**
12 **Development of Grid West**

IDAHO POWER COMPANY'S REPLY TO
THE INDUSTRIAL CUSTOMERS OF
NORTHWEST UTILITIES' RESPONSE

13 Idaho Power Company ("Idaho Power") respectfully submits this Reply to the Response
14 of the Industrial Customers of Northwest Utilities ("ICNU").

15 **I. INTRODUCTION**

16 In Order 2000¹, the Federal Regulatory Commission ("FERC") required utilities to take
17 steps to form and participate in regional transmission organizations ("RTO"s). Pursuant to this
18 Order, Idaho Power joined other utilities in forming a nonprofit regional transmission
19 organization to "manage the use and expansion of the region's transmission grid."² This RTO,
20 named Grid West (formerly RTO West), needed funding from its utility members in order to
21 effectuate FERC's mandate.. Accordingly, Idaho Power and other utilities entered into funding
22 agreements under which they loaned Grid West money. Starting in June of 2000, Idaho Power
23 loaned Grid West \$1,274,158. Idaho Power listed these loaned amounts, which Grid West
24 agreed to repay with interest, as a promissory note on its balance sheet.

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26 ¹ 89 FERC 61,285 (1999), *order on reh'g*, Order No. 2000-A, 90 FERC 61,201 (2000).

² *April 27, 2006 Public Utility Commission Staff Report* ("Staff Report"), p. 1.

1 Recently, various transmission-owners announced their withdrawal from Grid West–
2 making the RTO’s survival seem unlikely. In the event Grid West terminated, Idaho Power
3 understood that the amounts loaned would not be recovered. In that event, under Generally
4 Accepted Accounting Principles (“GAAP”), the loans to Grid West would be written-off as
5 expenses. Accordingly, on April 4, 2006, before these loans were written off and became
6 expenses, Idaho Power applied to the Oregon Public Utility Commission (the “Commission”)
7 to defer costs associated with these loans. Pacific Power & Light (“PacifiCorp”) and Portland
8 General Electric Company (“PGE”) (collectively, the “Utilities”) made similar applications for
9 deferred accounting.

10 Understanding the simple and generally accepted accounting principles in effect,
11 Commission Staff recommended that Idaho Power be allowed “to defer costs associated with
12 loans provided to Grid West . . . effective the date the loans are written-off and become an
13 expense, but not before [the application date].”³ Neither ICNU nor anyone else objected to
14 Idaho Power’s application. ICNU, however, objected to the applications of PacifiCorp and
15 PGE.

16 The Commission established a briefing schedule to assist it in deciding whether to
17 accept Staff’s earlier recommendation. In its *Initial Staff Analysis* (“Staff Analysis”) Staff
18 again argued that the loaned amounts constituted expenses properly subject to deferral. ICNU
19 submitted a response in opposition. ICNU’s response ignores both statutory language and prior
20 orders and repeats arguments previously rejected by the Commission. As a matter of law and
21 logic, Idaho Power’s application should be granted.

22 **II. ARGUMENT**

23 **A. Idaho Power’s Application Meets the Statutory Requirements for Deferred**
24 **Accounting**

25 Recognizing the potential inequities resulting from prospective ratemaking, Oregon law
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³ *Public Utility Commission of Oregon Staff Report* (April 27, 2006) (“Staff Report”).

1 allows the Commission to authorize utilities to defer amounts for later incorporation into rates.⁴
2 The Commission “utilizes a flexible, fact-specific approach that acknowledges the wide range
3 of reasons why deferred accounting might be beneficial to customers.”⁵ “For almost 20 years,
4 the Commission has used deferred accounting to benefit both ratepayers and utilities.”⁶

5 ORS 757.259(2)(e) provides one mechanism for the Commission to confer this benefit.
6 Under this provision, a utility may defer “[i]dentifiable utility expenses or revenues, the
7 recovery or refund of which the [C]ommission finds should be deferred in order to minimize
8 the frequency of rate changes or the fluctuations of rate levels or to match appropriately the
9 costs borne by and benefits received by ratepayers.” In order to receive a deferral under this
10 provision, the utility needs to show that the deferral will either (a) stabilize rates **or** (b) match
11 costs borne by and benefits received by ratepayers; it need not do both.⁷ When an identifiable
12 utility expense or revenue meets one of these tests, the Commission may authorize deferrals
13 “beginning with the date of application. . .”⁸

14 Here, as the Staff correctly found, Idaho Power seeks to defer an “identifiable utility
15 expense” the deferral of which appropriately matches costs and benefits to customers.

16 **1. Idaho Power Seeks to Defer Expenses Incurred After the Date of the**
17 **Application.**

18 Under the funding agreements between Idaho Power and Grid West, “funds provided by
19 [Idaho Power] are considered loaned amounts to be repaid with interest by Grid West . . .”⁹ As
20 Staff explained:

21 In compliance with the [funding agreements], Idaho Power has entered its share
22 of the Grid West Loans as a promissory note on the balance sheet. The loan is
23 not considered a “current expense” because in exchange for the loan, Idaho
Power receives a loan receivable (in the form of a promissory note) as an asset.

24 ⁴ See ORS 757.259(2) (discussing various grounds for deferral); *Docket UM 1147, Order No. 05-1070*, at 2.

25 ⁵ *Id.* at 5.

26 ⁶ *Id.* at 2. (internal citations omitted).

⁷ See *Docket UM 995, Order No. 01-085, at 12* (identifying that these tests are “stated in the alternative”).

⁸ ORS 757.259(3).

⁹ *Staff Report*, p. 2; see also *Staff Analysis*, p. 1, fn 2 (incorporating prior memoranda).

1 If in the future, the Grid West Loans are no longer deemed to be recoverable,
2 then Generally Accepted Accounting Principles (GAAP) would require Idaho
3 Power to write-off a part, or all, of the receivable. If Idaho Power writes-off the
asset, the amount written-off becomes a current expense effective as of the date
of the write off pursuant to GAAP.¹⁰

4 ICNU concedes that GAAP would not treat the amounts loaned to Grid West as an
5 expense until the loans are written off as unrecoverable. ICNU also concedes that the Utilities
6 had not yet written off the loaned amounts at the time of their applications. ICNU instead
7 argues that GAAP is irrelevant and that the loans should be considered an expense when first
8 loaned to Grid West.¹¹ Thus, according to ICNU, the applications were years late and the
9 statute did not apply. Under this theory, the Utilities would have needed to seek to defer the
10 costs before loaning the money to Grid West although, at that time, the Utilities fully expected
11 to be repaid in accordance with the funding agreements. To arrive at this implausible statutory
12 construction, ICNU misapplies applicable law.

13 In construing a statute, Oregon courts give effect to the legislature's intent.¹² To do so,
14 courts first focus on the text and context of the statute.¹³ With respect to the *text*, courts give
15 "words of common usage their plain, natural, and ordinary meanings."¹⁴ Though a dictionary
16 definition may provide guidance on the plain meaning, it is not the sole consideration.¹⁵
17 Moreover, words with a well-defined legal meaning will be given that meaning.¹⁶ With respect
18 to *context*, the "[s]tatutory context includes other provisions of the same statute and other
19 related statutes, as well as the preexisting common law and the statutory framework within
20 which the law was enacted[.]"¹⁷

21 Here, neither the text nor the context supports ICNU's argument. ICNU focuses

22 ¹⁰ *Id.*

23 ¹¹ *ICNU's Response*, p. 6.

24 ¹² *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610 (1993).

25 ¹³ *Id.* at 610-11.

26 ¹⁴ *Norden v. Water Resources Dep't.*, 329 Or. 641, 645 (2000).

¹⁵ *See State v. Stallcup*, 341 Or. 93, 99-100 (2006) (holding that the Court of Appeals' erred in solely relying on a dictionary definition of the term "appraisal").

¹⁶ *Norden v. Water Resources Dep't.*, 329 Or. 641, 645 (2000) (finding that "record" had a defined legal meaning).

¹⁷ *Stallcup*, 341 Or. at 99 (quoting *Denton and Denton*, 326 Or. 236, 241, (1998)).

1 exclusively on the dictionary definition to argue that the plain meaning of “expense” includes a
2 loan. Initially, as discussed above, ICNU’s sole reliance on the dictionary definition is
3 misguided. More importantly, however, the dictionary definition itself argues against ICNU’s
4 position.

5 First, ICNU quotes a limited excerpt from Webster’s New International Dictionary
6 which defines expense as “the act or practice of expending money: SPENDING.”¹⁸ Nothing in
7 this limited quotation supports a construction that would extend to amounts paid with the full
8 expectation that they will not only be repaid, but repaid with interest. Quite simply, amounts
9 loaned are not spent.¹⁹

10 Second, the *complete* definition of expense further illustrates that expenses do not
11 include loans unless and until the loans are written off. As PGE points out, a more relevant
12 definition of expense refers to monies consumed without a right or expectation to receive the
13 same back.²⁰ Significantly, the portion of the Webster’s definition that specifically refers to the
14 operation of a business (which term would inarguably apply to the Utilities) defines an expense
15 as “an item of outlay incurred in the operation of a business enterprise allocable to and
16 chargeable against revenue for a specific period.”²¹ Again, there is no dispute that this loan
17 will not become chargeable against revenue until it is written off. Indeed, until that point, it is
18 an expected source of revenue. Thus, ICNU’s plain meaning argument fails.

19 Similarly, the context of the statutory language undercuts ICNU’s position and suggests
20 that amounts loaned do not immediately becomes expenses. As discussed above, in construing
21 statutory language, the statute is not considered in a vacuum, but must be considered against
22 the relevant background.²² In this case, ORS 757.259 is applied to rate-regulated utilities by an

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24 ¹⁸ *ICNU Response*, p. 4 (quoting *Webster’s New Int’l Dictionary*, 800 (3d ed. 1999)).

25 ¹⁹ *Compare id* at 1326 (LOAN: “1a: money lent at interest; * * * (b) something lent for the borrower’s temporary
26 use on condition that it or its equivalent be returned”) *with id.* at 2190 (SPEND: “1: to distribute or consume in
payment or expenditure * * *; 2a: to exhaust or wear out by use or activity”).

²⁰ *PGE’s Response*, p. 2.

²¹ *Id.* at 800 (definition 2d).

²² *See Stallcup*, 341 Or. at 99.

1 expert agency that regularly relies on and applies GAAP in the execution of its legislative
2 mandate.²³ ICNU’s attempt to minimize GAAP’s central place in accepted accounting practice
3 as nothing more than “artful accounting techniques” is without substance.

4 **2. Idaho Power Seeks to Defer Expenses Which Benefit Ratepayers.**

5 “The Commission has used deferrals for a variety of reasons” that benefit the
6 ratepayers.²⁴ The reasons include “address[ing] costs that are hard to forecast. . .
7 implement[ing] legislative mandates . . . and encourage[ing] utility or customer behavior
8 consistent with regulatory policy.”

9 Here, the Utilities loaned money to Grid West pursuant to FERC Order 2000 which
10 required Utilities to take actions to form and participate in RTOs. FERC desired to advance
11 these RTOs in order to foster “[c]ompetition in wholesale electricity markets” which it
12 described as the “best way to protect the public interest and ensure that electricity consumers
13 pay the lowest price possible for reliable service.”²⁵ Staff correctly found that the Utilities’
14 participation “was consistent with regulatory policy” designed to benefit ratepayers, and that
15 this participation in the RTO has benefited and will continue to benefit ratepayers.²⁶
16 Accordingly, Staff continued, the expenses are appropriately subject to deferral under ORS
17 757.259(2)(e).

18 In response, ICNU argues that the Commission should import a “benefit over time”
19 requirement into ORS 757.259(2)(e). According to ICNU, the deferral could not meet this new
20 test because Grid West “is now defunct” and future customers could not benefit from these
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22 ²³ See *Docket UM 1167, Order No. 04-585*, at 4 (p. 2 of incorporated Appendix A) (holding that “Idaho Power is
23 required to implement SFAS 143 in order to comply with Generally Accepted Accounting Principles”); see also
24 *Docket UE 159, Order 04-202*, at 2 (identifying company’s argument, which it accepted, that “the Commission
25 adheres to general accounting principles”); see also *Docket UM 989, Order No. 02-227*, at 14 (applying GAAP
26 and finding that “GAAP standards required PGE to eliminate the Trojan related FAS 109 asset **when PGE
removed the Trojan investment from its balance sheet**”) (emphasis added); see also *Docket UM 1042, Order
No. 01-1053*, at 12 (requiring the Energy Trust to comply with GAAP).

²⁴ *Docket UM 1147, Order No. 05-1070*, at 2.

²⁵ 65 F.R. 810, 811 (January 6, 2000).

²⁶ *Staff Analysis*, p. 4; *Staff Report*, p. 4.

1 loans.²⁷ Initially, as discussed above, the Staff reasonably found that participation in this RTO,
2 and the efforts to ensure low prices and reliable service, will provide a benefit to ratepayers.
3 Specifically, according to Staff, the knowledge obtained through the involvement with the RTO
4 “will be useful in the development of future regional transmission operations as well as
5 transacting business in markets governed by other transmission organizations.”²⁸ Accordingly,
6 even under its own theory, ICNU’s argument collapses. Moreover, in Order No. 05-1070, the
7 Commission rejected the exact same argument (declining “to adopt additional standards to
8 determine whether an application meets the requirements of ORS 757.259(2)(e)” in response to
9 ICNU’s espousal of a “benefit over time” requirement). The Commission instead “affirm[ed]
10 the use of a flexible, fact-specific review approach that acknowledges the wide range of reasons
11 why deferred accounting might be beneficial to customers and utilities.”²⁹

12 ICNU provides no principled reason for the Commission to retreat from its established
13 position and import additional requirements into the statute. In fact, as PGE correctly notes,
14 ICNU’s “benefit over time” argument, which requires an exact temporal match between benefit
15 and ratepayer, would essentially render deferred accounting unavailable.³⁰

16 Under the statute, in order for an expense to be eligible for deferral the utility must
17 show only a benefit—without reference to timing.³¹ Consistent with Commission precedent,
18 Idaho Power’s compliance with federal regulatory policy via its support for and participation in
19 Grid West constitutes a benefit to utility customers. A contrary holding would provide utilities
20 with a disincentive to advance regulatory policy.

21 In short, Idaho Power’s loan becomes an expense when written-off and this had not
22 occurred prior to Idaho Power’s application. Accordingly, this expense, which was incurred to
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24 ²⁷ *ICNU’s Response*, p. 9.

25 ²⁸ *Staff Report*, p. 4.

26 ²⁹ *Id.*, p. 1.

³⁰ *PGE Response*, p. 6.

³¹ *See UM 480, Order No. 92-1130* at 2 (authorizing a deferral when the ratepayers were currently, not prospectively, enjoying the benefits).

1 advance FERC’s policy to maintain reliable service and low prices for ratepayers, is properly
2 subject to deferral under ORS 757.259(e).

3 **B. The Commission Should Grant the Deferred Accounting.**

4 In the Conference Memorandum, the Commission did not seek any briefing on whether
5 it should exercise its discretion to grant the deferrals. The Commission sought briefing only on
6 whether the statute would authorize the deferrals. ICNU however makes additional arguments
7 regarding the Commission’s discretion. Initially, these arguments about discretion neutralize
8 ICNU’s proffered concerns about future, hypothetical³² abuses because the Commission can
9 simply deny any application masquerading past expenses as loans. Moreover, these unsolicited
10 arguments also fail as applied to Idaho Power.

11 The Commission enjoys broad discretion to grant deferral applications and has
12 repeatedly rejected attempts by ICNU to limit that discretion.³³ In exercising its discretion, the
13 Commission “consider[s] both the type of event that caused the request for deferral and the
14 magnitude of the event’s effect.”³⁴ These factors “interact with each other such that neither one
15 is dispositive without the other.”

16 With respect to the type of event, in UM 1071 the Commission held that predictable or
17 stochastic risks are generally inappropriate for deferred accounting “as long as those risks are
18 reasonably predictable and quantifiable and have no substantial financial impact on the
19 utility.”³⁵ If, however, the financial impact of a stochastic risk is substantial, deferred
20 accounting is justified.³⁶ On the other hand, for “events that fall outside the predictable and
21 quantifiable,” the Commission held that the financial impact on the utility need be only

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23 ³² ICNU does not argue that the Utilities “disguise[d] past expenses as loans” or otherwise did anything improper
by entering into funding agreements to loan Grid West money.

24 ³³ See UM 1147, Order No. 05-1070, p. 11 (“We acknowledge the concerns of customer groups that deferred
25 accounting should not be used too liberally, but retain our discretion . . .”); see also UM 995, Order No. 01-085, p.
12 (“Regarding ICNU’s concerns . . . we believe that the safeguards provided by our statutory review process of
the deferral . . . allow us to make a reasoned decision” on the deferral).

26 ³⁴ UM 1071, Order No. 04-108, p. 8.

³⁵ *Id.* at 9.

³⁶ *Id.*

1 material.” In UM 1147, the Commission adhered to the flexible standards articulated in UM
2 1071.³⁷ The Commission recently summarized these standards as follows:

3 If the event was modeled or foreseen, without extenuating circumstances, the
4 magnitude of the harm must be substantial to warrant the Commission’s exercise
5 of discretion in opening a deferred account. If the event was neither modeled
6 nor foreseen, or if extenuating circumstances were not foreseen, then the
7 magnitude of the harm that would justify deferral likely would be lower. *Id.*

8 Here, the one-time failure of the RTO created pursuant to a FERC Order and with the
9 financial backing of major utilities was “neither modeled nor foreseen.” Indeed, had it been
10 foreseeable, the Commission would not have authorized Idaho Power to book the loans as it
11 did. Therefore, because the withdrawal of the backing utilities and the consequent demise of
12 Grid West was not predictable, the magnitude of the harm to Idaho Power need not be
13 substantial.

14 ICNU’s renewed attempts to curtail Commission discretion should be rejected and,
15 consistent with the Staff recommendation, Idaho Power’s application should be granted.

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26 ³⁷ Order No. 05-1070, at 7.

1 **III. CONCLUSION**

2 For the foregoing reasons, the Commission should follow Staff's recommendation and
3 grant Idaho Power's application.

4 DATED this 28th day of July, 2006.

5 ATER WYNNE LLP

6
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July 28, 2006

VIA ELECTRONIC MAIL AND US MAIL

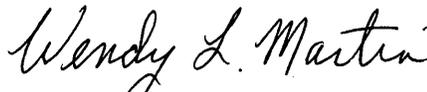
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Re: UM 1256, UM 1257 and UM 1259 – Idaho Power Company's Reply to ICNU's
Response

Dear Sir or Madam:

Enclosed for filing in the above-referenced dockets is Idaho Power Company's Reply to the Industrial Customers of Northwest Utilities' Response. Please contact me with any questions.

Very truly yours,


Wendy L. Martin

Enclosures

cc: Service List

**CERTIFICATE OF SERVICE
UM 1256, UM 1257, and UM 1259**

I hereby certify that a true and correct copy of **IDAHO POWER COMPANY'S
REPLY TO THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES'
RESPONSE** was served via U.S. Mail on the following parties on July 28, 2006:

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