

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 228

In the Matter of)
)
)
) OPENING BRIEF OF
) THE CITIZENS' UTILITY BOARD
) OF OREGON
)
) **REDACTED**
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I. Introduction

Prudence reviews are based upon what a company knew or should have known at the time it executed a particular transaction.¹ CUB recognizes that companies try to balance risks using professional judgment. Because the future is not known when a judgment is made, sometimes the application of a company's judgment can lead to a decision which increases costs. The question is not whether the outcome was good or bad, but whether the judgment exercised by the company was reasonable at the time it was exercised. It is therefore not possible to determine whether the exercise of that judgment was reasonable without conducting a review of what the company knew or should have known at the time it exercised its judgment—a prudence review. This includes a review of the decision to enter into each transaction and a review of the policies in place concerning the making of those transactions. Prudence reviews are not

¹ *In re PacifiCorp*, UM 995/UE 121, Order No. 02-469 at 5 (July 18, 2002); ICNU/108 Schoenbeck/2 lines 13-16.

“hindsight” determinations; rather, they are a review of what the company knew or should have known at the time that it entered into each transaction, PGE’s arguments to the contrary notwithstanding.

CUB began this proceeding taking the position that PGE should be adopting a three (3) year (36 month) gas hedging strategy.² CUB’s position was based upon its recent experience in the UM 1520 docket. “Until NW Natural’s recent deal with Encana, which is a physical purchase of a 30 –year gas supply, NW natural committed to financial hedges with terms of ‘up to three years.’” This was because NW Natural could not find reliable counterparties with acceptable credit ratings for terms longer than three years.³ To evaluate the proposed 30 year deal, intervenors in the UM 1520 docket advocated for a review of both three year rolling hedges and five year rolling hedges as alternative hedging options to the proposed 30 year deal. KPMG therefore evaluated both three year and five year rolling hedging opportunities. KPMG’s review demonstrates that the these hedging options get riskier as their time horizons increase. KPMG found that three year options had risks and five year options had the same, if not greater, risks.⁴

² CUB/100 Jenks-Feighner/2.

³ CUB/100 Jenks-Feighner/2 lines 12 – 20; UM 1520/NWN 400/ Friedman/2 lines 20-21; UM 1520/NWN 200/Cronise/10 lines 14-22.

⁴ UM 1520 Joint/102/34-35 (Redacted):

- KPMG evaluated a 3 year rolling hedge strategy by segmenting twenty-one years of forward prices into seven three year tranches. Each tranche’s price represents the average NYMEX futures price over each three year period up to the first 10 years. KPMG then simulated forward spot prices for years 11-20 and calculated three year average price for the remaining tranches. . . .
- KPMG believes there are too many market factors to model an approximate hedge transaction price. Forward spot prices represent today’s transaction prices and have limited predictive value in forecasting the price NWN could transact three years from today. . . .
- Similar to a 3 year rolling hedge, KPMG evaluated a 5 year rolling hedge strategy by segmenting twenty-one years of forward prices into four 5 year tranches. Each tranche’s price represents the average NYMEX futures price over each five year period up to the first 10 years. KPMG then simulated forward spot prices for years 11 through 20 and calculated five year average price for the remaining tranches. . . .

Notwithstanding the above, upon review of the additional information provided by ICNU witness Donald W. Schoenbeck, and others, CUB has determined that a more appropriate level for hedging in this docket is the longer 4 year (48 month) gas hedging strategy advocated for by ICNU. But this does not change CUB's position that PGE has hedged too much and too early. Nor does it change CUB's opinion that hedging shifts the risk of commodity price fluctuations from shareholders to ratepayers and removes incentives for the utility to prudently manage commodity costs.⁵

CUB, therefore, supports ICNU's request for an adjustment (disallowance) of

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END CONFIDENTIAL CUB also requests that the Commission impose a limit to PGE's hedging volumes that is similar to the limit agreed upon by Avista in UM 1282 and require PGE to fully implement a portfolio approach that layers hedges on top of each

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- As discussed, KPMG believes there are too many market factors to model an approximate hedge transaction price. Forward spot prices represent today's transaction prices and have limited predictive value in forecasting the price NWN could transact five years from today. . . .

⁵ CUB/100 Jenks-Feighner/3 – 4 lines 6-2. *See also In re Investigation into Avista Utilities' Gas Purchasing Strategy*, UM 1282, Order No. 07-200 (May 5, 2007)(Commission indicated that Avista Corp. was engaging in imprudent natural gas hedging strategy when Avista was hedging 91% of its natural gas load in Oregon. Avista agreed in the Stipulation to cap its hedging at 70% of its Oregon load which the Commission agreed would provide an incentive for Avista to prudently manage its natural gas costs).

⁶ Transcript of Deposition of Donald W. Schoenbeck at 101, lines 6-25. BEGIN CONFIDENTIAL [REDACTED]

Transcript of Deposition of Donald W. Schoenbeck at 101-102, lines 25-3.

[REDACTED] Transcript of Deposition of Donald W. Schoenbeck at 103, lines 11-15.

[REDACTED] END CONFIDENTIAL Transcript of Deposition of Donald W. Schoenbeck at 104, lines 15-20.

See also ICNU/100 Schoenbeck/7-9.

⁷ ICNU/108 Schoenbeck/13 lines 1-4.

other over time. A strategy based on hedging nearly 100% of gas requirements in the first two years simply contains too much risk;⁸ CUB requests that the Commission order PGE to do the following if it wants to obtain recovery from customers:

- follow its own policies
- meticulously document the reasons for any decision required to be in writing
- make prudent decisions
- provide appropriate training and oversight to all its employees
- audit its own programs to ensure that policies are being followed

PGE failed to do all of the above in regard to hedging transactions which took place between 2007 and 2008 that were in excess of 48 months in tenor. The disallowance requested by CUB and ICNU is appropriate and the sky will not fall on PGE if the disallowance is ordered.

CUB also respectfully requests that the Commission open a docket, or broaden the scope of AR 553 to encompass more than confidentiality issues related to SB 967. It is high time that the issue of utility designation of confidential and highly confidential materials be revisited.

As for PGE's threats to curtail hedging, CUB simply notes that if PGE makes a decision to discontinue hedging today, based on the outcome of this docket, CUB will in the future argue that that decision is also imprudent. It will be imprudent because it will not be based on an analysis of market risk, available products, market liquidity, or potential customer impacts, but instead on the risk of disallowance without consideration

⁸ CUB/100 Jenks-Feighner/4, lines 4 – 23.

of the impact on customers of not hedging. CUB is not suggesting in this docket that PGE not hedge, CUB is just requesting that PGE's hedging be regulated to ensure that it is being conducted in a manner that benefits customers and not just shareholders.

PGE claims that it is a "short utility" and should be given more hedging leeway because of its position.⁹ To CUB this seems like all the more reason that PGE's hedging policy should be carefully monitored, since PGE is the one that will be out on the market constantly looking for gas or electric hedges. Like most gas utilities who do not produce their own gas, and are therefore 100% short on gas supply, PGE too should be subject to Commission reviews of its gas utility hedging practices.

II. Litigated Issue

The sole remaining issue in this proceeding relates to what PGE knew, and what should PGE have known, at the time that it entered into the 2006-February 2011 hedging transactions for the 2012 prompt year or chose not to enter into available hedging transactions for the 2012 prompt year.

III. Standard of Review: Who Bears the Burden of Proof?

A. PGE Bears the Burden of Proof

PGE has the burden of proving, by a preponderance of the evidence, that its hedging strategy is reasonable and prudent; CUB does not bear the burden of proving that PGE's hedging strategy was unreasonable or imprudent. ORS 757.210 states that "the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable." In Order No. 02-469, the

⁹ PGE/400 Lobdell-Outama/4-5.

Commission set forth a clear standard of proof for determining whether a cost can be considered a prudent investment and be charged to customers through rates:

...[U]nder ORS 757.210, the burden of showing that the proposed rate is just and reasonable is borne by the utility throughout the proceeding. Thus, if PGE makes a proposed change that is disputed by another party, PGE still has the burden to show, by a preponderance of evidence, that the change is just and reasonable. If it fails to meet that burden, either because the opposing party presented compelling evidence in opposition to the proposal, *or because PGE failed to present compelling information in the first place, then PGE does not prevail.*¹⁰

This requirement is applied generally in all reviews of utility requests for rate changes, including prudence reviews. *See In re Portland General Electric Co.*, UE 88, Order No. 95-322 at 13 (March 29, 1995), which applied this standard to the entire case, including the prudence review of Trojan. Additionally, the Commission set forth the following parameters which guide its prudence review:

In a prudence review, the Commission examines the objective reasonableness of a company's actions measured at the time the company acted: 'Prudence is determined by the reasonableness of the actions 'based on information that was available (or could reasonably have been available) at the time.'¹⁰ *In re PGE.*, UE 102, Order No. 99-033 at 36-37. In applying this standard, the Commission does not focus on the outcome of the utility's decision as the following passage from *In re Transition Costs*, UM 834, Order No. 98-353 at 9 shows:

[When utilities mitigate transition costs,] they must behave prudently, meaning that their decisions were reasonable, based on information that was available (or could reasonably have been available) at the time.¹¹

¹⁰ Order No. 02-469 at 6.

¹¹ Order No. 02-469 at 5 (July 18, 2002). *See also In re Portland General Electric Co.*, UE 193, Order No. 02-772 at 13-14 (October 30, 2002) ("In reviewing the prudence of a utility's conduct, we examine the objective reasonableness of the company's actions. As recently explained in docket UM 995, we do not focus on the outcome of the utility's decision. Rather, we review the reasonableness of the actions based on information that was available or could reasonably have been available at the time of the action... It is important to note that, in a prudence review, the Commission must exercise a high degree of caution. We recognize the need for regulatory certainty, and, consequently, must use a high standard when examining the reasonableness of a utility's actions. We cannot let the luxury of hindsight allow us to second guess a utility's conduct. Moreover, we acknowledge the possibility that a prudently-made decision might turn out to be the wrong decision. Therefore, as stated above, we must look to the existing circumstances surrounding the decision, not the ultimate outcome of the decision.")

Therefore, in accordance with the ORS 757.210 and the Commission's orders applying that statute to prudence reviews, PGE bears the burden of proving that its gas hedging strategy is both reasonable and prudent.

IV. PGE's Hedging Policy and Its Hedging Transactions

As detailed by Mr. Schoenbeck in his Opening Testimony, gas financial hedging has been part of the energy industry since at least the mid-1990s. As explained by Mr. Schoenbeck, it has been used to reduce price volatility and to provide price certainty. Critical elements to a good hedging strategy are not using it to try to beat the market, making sure a portfolio is diversified, and aligning the cost and revenue risk closely. A policy of this kind is considered programmatic and relies on both forward and spot markets for gas transactions (both physical and financial) and ensures that gas is not contracted for long before there is a projected need for the supply.¹²

This docket reviews PGE's 2012 NVPC, which include

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¹² ICNU/100 Schoenbeck/5 lines 3-6.

¹³ ICNU/100 Schoenbeck/5 lines 10-12; ICNU/102, Schoenbeck/1.

¹⁴ ICNU/100 Schoenbeck/6 lines 16-18.

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While PGE provides a nice narrative for the Commission as to how it entered into hedging solely for the benefit of, and at the request of, customers,¹⁷ CUB takes issue with whether PGE was in fact hedging in a way that best protects and benefits customers. Clearly in 2007 and 2008 PGE was not following this strategy, but was hedging too much and too early.

A. PGE Was Hedging Too Much

In his testimony, Mr. Stoddard claimed that PGE did not set out to front-load its hedging of the Net Open Position (NOP) for 2012 when it began to close that position in 2007 and 2008.¹⁸ He stated that:

¹⁵ ICNU/100 Schoenbeck/5 lines 15-20.

¹⁶ ICNU/108 Schoenbeck/10 lines 2-4; *See for example*, ICNU/110 page 37-40, 55, 66.

¹⁷ PGE/300 Pope-Valache/5-7.

¹⁸ PGE/500 Stoddard/28 lines 1-4.

[H]is understanding of the situation is that the earlier purchases appear over-weight not because PGE was “betting” on the market price of natural gas, but rather because: (a) contemporaneous forecasts of customer demand for energy in 2012 has declined markedly from forecasts made five years ago, reducing PGE’s total net short energy position; (b) PGE rationally begins its risk reduction in the MTS with forward gas purchases, rather than forward power purchases . . . ;and (c) the volatility of natural gas prices had dropped¹⁹

At the hearing PGE spent significant time attempting to show that it did not over procure for Q2.²⁰ Here PGE states that it did go into the non-standard (“illiquid market” by PGE’s own definition at Hearing Transcript 29 lines 12-14) and incurred a premium to purchase on a quarter by quarter basis because that process was “deemed to be more efficient and less cost and just as effective.”²¹ But PGE continued to claim that it did not over-hedge because “taking into consideration our whole entire portfolio . . . [w]e were actually short gas on an annual basis”²² In other words, PGE argued that Q2 was a hedge for Q1, Q3 and Q4.²³

CUB begs to differ.²⁴ As stated by Mr. Schoenbeck:

[T]here is far too much gas purchased at that time period for the projected need.²⁵

He went on to say:

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¹⁹ PGE/500 Stoddard/28 lines 12-22.

²⁰ Transcript of Hearing at 47 through 50. Specifically at 48, lines 10 – 25 and 49, lines 1-7. *See also*, PGE/500/Stoddard/16 - 17 line 9.

²¹ Transcript of Hearing at 48, lines 10 – 16.

²² Transcript of Hearing at 48, line 22 through 49, line 5.

²³ Transcript of Hearing at 48, lines 8 – 19.

²⁴ CUB/Exhibit 102/Jenks-Feighner/1.

²⁵ Transcript of Deposition of Donald W. Schoenbeck at 85, lines 1-3.

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But Mr. Stoddard argues that PGE was using a “Stack and Roll” strategy mentioned in one of the books that Mr. Schoenbeck said he had studied.²⁸ With each shift in position, PGE’s argument has less credibility. If anything, the Stack and Roll argument is an after-the-fact alibi constructed by PGE to defend its hedging strategy. If PGE was indeed using a Stack and Roll strategy, why did it not disclose that long ago, when it was making all those other arguments, instead of waiting until the hearing to provide this supposed evidence of its “correct” use of a known financial theory? CUB does not believe that PGE was knowingly using the Stack and Roll strategy, as there is no documentation from 2007 or 2008 that this was indeed its hedging strategy. CUB does believe that PGE was hedging too much, too early.

²⁶ Transcript of Deposition of Donald W. Schoenbeck at 103, lines 6 – 19; ICNU 102/ Schoenbeck/1.

²⁷ Transcript of Deposition of Donald W. Schoenbeck at 104, lines 3 – 10; ICNU/102 Schoenbeck/1.

²⁸ See Transcript of Hearing at 69, line, 18 through 73, line 15.

B. PGE Was Hedging Too Early

As stated in CUB’s Opening Testimony, as revised by the Affidavits of Bob Jenks and Gordon Feighner, CUB is concerned that PGE was imprudent in its decisions to enter into hedging transactions longer than 48 months. This concern stems from the fact that

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It is unusual for a utility to hedge the majority of its need for a commodity so early.³⁴ As noted by Mr. Schoenbeck in his Deposition, this is because:

Generally, what you’re talking in terms of is doing a bilateral contract with someone willing to enter into that transaction with you.

The further out you go, there are generally less entities willing to enter into that contract. So the further out you go, there’s less liquidity in that bilateral market.³⁵

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²⁹ CUB CONFIDENTIAL Exhibit 102, page 1.

³⁰ CUB/100 Jenks-Feighner/2 lines 6-7.

³¹ Transcript of Deposition of Donald W. Schoenbeck at 27, lines 15-19.

³² CUB CONFIDENTIAL Exhibit 102, page 2.

³³ CUB/100 Jenks-Feighner/2 lines 7-11.

³⁴ CUB/100 Jenks-Feighner/2 lines 12-13.

³⁵ Transcript of Deposition of Donald W. Schoenbeck at 35, line 21 through 32, line 2

Certainly, if you go out beyond four or five years, there are fewer people you can enter in a transaction with, and there may be a wider range of market prices.³⁶

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[W]hat happens the further out you go, your credit and collateral risk costs become greater. Your counterparties become less. The market becomes less liquid.³⁷

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The further out you go, there's greater uncertainty, so there should be less supply entered into on a long-term contractual basis.³⁸

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The further out you go, there are fewer counterparties; because you're talking heavyweights in the financial industry. There are fewer entities that will sign long-term contracts, and that should be taken into consideration in formulating your hedging policy and may be say, I should not go out five years. I should not go out six years, because there's also this credit and collateral cost associated with that as well.

So your expenses are going up. The risk – the risk you're facing, you have less certainty about those risks. So that's why, in my view, for the electric utility industry, an appropriate period is pretty much the 48 prompt months.³⁹

* * * * *

But what's happening between the four- and five-year period, again, you're having fewer counterparties. You're having a greater spread on the gas hedging side and also, particularly on the load side, you're facing more risk the fifth year versus the fourth year. Your uncertainty is generally greater as the jaws of risk and uncertainty broaden as you go out in time.

So, you know, for those reasons, that's why I maintain the four years is more appropriate than the five.⁴⁰

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Transcript of Deposition of Donald W. Schoenbeck at 36, lines 18-21.

³⁷ Transcript of Deposition of Donald W. Schoenbeck at 38, lines 17-20.

³⁸ Transcript of Deposition of Donald W. Schoenbeck at 54, lines 6-8.

³⁹ Transcript of Deposition of Donald W. Schoenbeck at 54, line 24 through 55, line 12.

⁴⁰ Transcript of Deposition of Donald W. Schoenbeck at 112, lines 1-9.

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[T]here is far too much gas purchased at that time period for the projected need.⁴³

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⁴¹ Transcript of Deposition of Donald W. Schoenbeck at 71, lines 1-12.

⁴² Transcript of Deposition of Donald W. Schoenbeck, at 84, lines 2-5.

⁴³ Transcript of Deposition of Donald W. Schoenbeck at 85, lines 1-3.

⁴⁴ Transcript of Deposition of Donald W. Schoenbeck at 86, lines 6-25. BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL Transcript of Deposition of Donald W. Schoenbeck at 87, lines 1-12.

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[Y]ou could have what I would call a base load amount of annual strips. It wouldn't be many. I would think it would be in the range of 5- 15 percent of your entire transactions would be 12 month annual strips.⁴⁵

And, as discussed by Mr. Jenks and Mr. Feigner in their testimony, not only is it important for a utility not to hedge too much, it is also important not to hedge too early.

There is always a danger that traders will begin to believe that their knowledge of the market is superior and that their insight will allow them to “win” the hedge. There is also a danger that once a company establishes a goal, traders will fill it quickly in order to meet that objective quickly. To avoid these pitfalls, a portfolio approach should be used that layers hedges on top of each other over a period of time.⁴⁶

PGE did not do this in the period under review, instead hedging nearly 100% of its gas requirements in the first two years, which simply is not prudent.

This is why CUB recommended that the Commission reject as imprudent PGE's gas hedging strategy.⁴⁷ As stated in CUB's Opening Testimony, CUB believes that hedging should generally be limited to about 75% of gas supply, unless a utility can demonstrate that more is prudent under current market conditions.⁴⁸ CUB also believes that most hedges should come from a hedging strategy that is executed during the three years before the gas is purchased. While a limited amount of hedging should be allowed in a three to five year window, a utility must demonstrate that the market is liquid at the time and that this early hedging is consistent with a prudent approach to hedging.⁴⁹

PGE has failed to demonstrate the prudence of its strategy. The Commission should find that the Company's strategy is imprudent—that it over-hedges and hedges too

⁴⁵ Transcript of Deposition of Donald W. Schoenbeck at 71, lines 10-13.

⁴⁶ CUB/100 Jenks-Feighner/4 lines 8 – 13.

⁴⁷ CUB/100 Jenks-Feighner/5 lines 8-9.

⁴⁸ CUB/100 Jenks-Feighner/5 lines 10-12.

⁴⁹ CUB/100 Jenks-Feighner/5 lines 12-16.

early. In order to protect customers from this flawed strategy, the Commission should disallow all hedges in the current AUT which were entered into more than 48 months ahead of the gas delivery. Instead, this gas supply should be re-priced at the forward price curve for gas at the time of the final update in November.⁵⁰

CUB also recommends that the Commission impose a limit to PGE's hedging volumes that is similar to the limit agreed upon by Avista in UM 1282.⁵¹

C. Other Hedging Options Were Available to PGE

In his Surrebuttal Testimony Mr. Schoenbeck explains that there are many ways in which PGE could have conducted hedging transactions for both gas and electricity. It could have bought products from the New York Mercantile Exchange (NYMEX) or from the Intercontinental Exchange (ICE). It could have purchased hedges through brokers or it could have entered into bilateral negotiations. It could also have purchased through auctions or a request for offers.⁵² Mr. Schoenbeck's testimony exhibits include a list of counterparties with whom PGE was authorized to trade under its Mid-Term Strategy for hedging.⁵³ But the crux of the CUB and ICNU testimony is that in hedging for the 2012 year PGE should have used a strategy with "smaller percentages the further out you are from the delivery month to getting an ever-increasing position as you go through time . . . virtually all utilities do that."⁵⁴

Other things that PGE should have done include reviewing its hedging strategy at least once a year, if not quarterly.⁵⁵ In terms of hedging strategy implementation, PGE

⁵⁰ CUB/100 Jenks-Feighner/5 lines 17-22; Affidavits of Bob Jenks and Gordon Feighner.

⁵¹ CUB/100 Jenks-Feighner/3 -4 lines 11-2.

⁵² ICNU/108 Schoenbeck/3 Lines 13-24.

⁵³ ICNU/110, ICNU/108 Schoenbeck/4.

⁵⁴ Transcript of Deposition of Donald W. Schoenbeck at 27, lines 6-10.

⁵⁵ Transcript of Deposition of Donald W. Schoenbeck at 42, lines 7-14.

should have been reviewing its implementation daily.⁵⁶ And PGE should have been taking into account market changes,⁵⁷ necessary collateral,⁵⁸ and transaction fees.⁵⁹ It should also have known that seasonal and quarterly strips were available to it because these products have been available for years.⁶⁰ “Once transactions are within the four-, three-, two-year, and one-year periods, then those instruments obviously become even more liquid. To get to the short-term market, virtually everything is a monthly transaction for the prompt month.⁶¹ Mr. Schoenbeck is “absolutely sure” that monthly and seasonal strips were available looking forward three to four years from 2007.⁶² He is also sure that other utilities follow the formula that he is describing, the only question being whether three years or four years is the appropriate hedging strategy.⁶³

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And those utilities are electric power utilities that hedge for both electric and gas.⁶⁵

D. PGE’s Limited Market Analysis

It appears from PGE’s data responses to ICNU that PGE relies mainly on information it gathers from ICE in order to perform its limited market analyses, and that ICE is known for providing short-term rather than long-term hedging opportunities.

⁵⁶ Transcript of Deposition of Donald W. Schoenbeck at 42, lines 17-23.

⁵⁷ Transcript of Deposition of Donald W. Schoenbeck at 48, line 1 through 49, line 4.

⁵⁸ See Transcript of Deposition of Donald W. Schoenbeck at 56-57.

⁵⁹ Transcript of Deposition of Donald W. Schoenbeck at 63, lines 19-25.

⁶⁰ Transcript of Deposition of Donald W. Schoenbeck at 72, lines 14-25.

⁶¹ Transcript of Deposition of Donald W. Schoenbeck at 73, lines 13-17.

⁶² Transcript of Deposition of Donald W. Schoenbeck at 77, lines 10-20.

⁶³ Transcript of Deposition of Donald W. Schoenbeck at 116, lines 16-19.

⁶⁴ Transcript of Deposition of Donald W. Schoenbeck at 117, lines 1-3.

⁶⁵ Transcript of Deposition of Donald W. Schoenbeck at 118, lines 4-13.

PGE’s limited market analysis completely ignores NYMEX—the service used by other utilities like SCE to clear bilateral transactions.

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E. PGE’s Requests for Transaction Approval Are Skimpy at Best

PGE knew that for each mid-term transaction it had to document BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL thereof in order to obtain a finding of prudence from the Commission: PGE therefore spent a significant portion of the hearing in this matter attempting to bolster its inadequate hedging decision making process. This testimony included that of Mr. Jim Lobdell, who stated that the Company’s process contained lots of deliberation, Mr. Outama’s research, the involvement of the risk management committee, and the seeking of written approvals.⁶⁷ But none of Mr. Lobdell’s testimony should detract from the fact that the

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⁶⁶ ICNU/108 Schoenbeck/9 lines 6-24.

⁶⁷ Hearing Transcript at page 57 lines 11-20.

⁶⁸ ICNU/110 Schoenbeck/36 – 141.

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⁶⁹ PGE/Exhibit 601 Page 152 (Power Operations Mid-Term Strategy, PGE Board of Directors, May 12, 2006 at 21). See also PGE/Exhibit 601 Page 177 (Power Operations Update on Mid-Term Strategy, PGE Board of Directors October 26, 2006 at page 5) BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL

⁷⁰ PGE/Exhibit 601 Page 150 (Power Operations Mid-Term Strategy, PGE Board of Directors, May 12, 2006 at 19). See also PGE/Exhibit 601 Page 177 (Power Operations Update on Mid-Term Strategy, PGE Board of Directors October 26, 2006 at page 5) – BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL

⁷¹ PGE/Exhibit 601 Page 147 (Power Operations Mid-Term Strategy, PGE Board of Directors, May 12, 2006 at 16) (*emphasis added*).

⁷² Transcript of Hearing at 125, lines 18 – 19. See also PGE/Exhibit 601 Page 181 BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL

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⁷³ Transcript of Hearing at 126, lines 6 – 14; Transcript of Hearing at 130, lines 2 - 13.

⁷⁴ ICNU Cr. Ex. 704 page 6 (*emphasis added*); PGE/Exhibit 601 page 169. *See also* Id. at 4 (175) BEGIN CONFIDENTIAL

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⁷⁵ ICNU/102 Schoenbeck/2-6 Portland General Electric Energy Risk Management Policies & Procedures (Revision Date: November 15, 2006) BEGIN CONFIDENTIAL

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⁷⁶ Transcript of Hearing at 130, line 24 through 131, line 4.

⁷⁷ PGE/Exhibit 601 Page 25 Section 9.3.3 (Portland General Electric Energy Risk Management Policies & Procedures Revision Date: November 15, 2006 at page 19).

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F. PGEs Risk Management Policies Were Not Well-Implemented.

Mr. Stoddard was hired as PGE’s “expert” witness approximately one month before the hearing—he had not previously done any work for PGE.⁸¹ All of the gas and electric utility examples he was able to cite to in his testimony were to companies outside

⁷⁸ ICNU/108 Schoenbeck/10 lines 2-4; *See for example*, ICNU/110 page 37-40, 55, 66.
⁷⁹ ICNU/110 Schoenbeck/137-141.
⁸⁰ Transcript of Hearing at 134, lines 1 – 15.
⁸¹ Transcript of Hearing at 155, lines 6 – 12.

of the Northwestern United States.⁸² This same Mr. Stoddard, relying only on the information provided to him by PGE, his general knowledge, and information learned during work for another client,⁸³ argued at the hearing that PGE's Risk Management Policies were good and well implemented, had appropriate levels of control, and that good levels of communication with regulators and customers took place.⁸⁴ CUB does not agree. Clearly the policies were not good or they would have prevented PGE's traders from frequently trading outside the risk management trading zone where no pre-approval was required without adequate analysis, documentation, and supervision.

Good policies also would have required traders to adequately document the reasons for trades outside the trading zone where no pre-approval was required, would have required more analysis of the trading decisions made by management that were outside the trading zone that required no pre-approval, and would have been transparent enough that CUB and ICNU would have become suspicious of the risk management policy's ineffectiveness earlier.

Indeed, a quote from Ms. Pope makes CUB wonder how successful the trading strategy was from another perspective. PGE has stated throughout this proceeding that if the Commission awards the disallowance sought by Intervenors that it will raise PGE's collateral rates. This fear is brandished about like it is some new and horrible thing that might befall the Company. But the following colloquy took place during the hearing:

MS. DAVISON: Could you turn to page four of this document?
And on page four, Standard & Poor's states, quote, we expect that a significant portion of PGE's power and gas positions will roll off in 2010 and that this return of collateral will further improve liquidity, assuming commodity prices do not fall significantly, end of quote.

⁸² Transcript of Hearing at 156, lines 4 – 14.

⁸³ Transcript of Hearing at 156, line 17 through 157, line 11; Transcript of Hearing at 158, lines 5-7.

⁸⁴ Transcript of Hearing at 75, lines 1 – 14. *See also*, PGE/500 lines 10-16.

Did PGE have to post higher collateral because gas prices had fallen significantly as compared to your gas positions?

MS. POPE: PGE has posted significant amounts of collateral since 2009 - - actually, beginning in 2008. Those collateral positions peaked probably about March of 2009 and have been declining as new lower cost positions have been added and the higher cost positions have rolled off.

MS. DAVISON: So the answer is yes, you did have to post higher collateral?

MS. POPE: Yes.

MS. DAVISON: Is that reference in the Standard & Poor's report?

MS. POPE: Yes.

MS. DAVISON: So this was a risk associated with hedging strategy as identified by Standard & Poor's?

MS. POPE: Yes.⁸⁵

G. PGE claims that a disallowance will create a harm in the form of increased collateral for the Company. That harm, however, has already been inflicted by the Company hedging too much, too soon for its gas supply. CUB Does Not Agree That PGE's Strategy Was Successful

Mr. Stoddard testified that the PGE strategy was successful and that it managed its risks well.⁸⁶ He further testified that CUB and ICNU were only fighting the strategy because gas prices had fallen steeply in the last few years.⁸⁷ CUB does not agree with this assessment. CUB is looking at what PGE knew or should have known when it began to implement its hedging strategy in 2006 and 2007. It is clear to CUB from that analysis

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[REDACTED]

[REDACTED]⁸⁸ [REDACTED]

[REDACTED]⁸⁹ [REDACTED]

⁸⁵ Transcript of Hearing at 90, line 5 through 91, line 5.

⁸⁶ Transcript of Hearing at 73, lines 22 -25.

⁸⁷ Transcript of Hearing at 74, lines 1-7.

⁸⁸ ICNU/102 Schoenbeck/2-6; Hearing Transcript at page 125 lines 18 – 19.

⁸⁹ ICNU Cr. Ex. 704 page 6.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁹⁰

[REDACTED]

[REDACTED]

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H. Disclosure to Investors

PGE's constant refrain during the hearing was that PGE's investors and ratings agencies would be surprised by any disallowance of the hedging costs.⁹¹ But PGE's investors and ratings agencies will only be surprised if PGE has deliberately kept them in the dark. As evidenced by the testimony of Maria Pope and Bill Valach, PGE talks regularly with the Company's investors and ratings agencies,⁹² and yet the Company has not seen it fit to advise those same investors and ratings agencies of the specifics of the UE 228 docket and the fact that there may be a disallowance of costs.⁹³ This is an investment community that, as the Company has testified, supposedly does understand the concept of prudence review.⁹⁴

PGE is treating this like a game of chicken. In effect the Company is saying to the Commission that if its costs are disallowed, then PGE's investors will walk away because they will be shocked and the ratings agencies will punish the Company, resulting in

⁹⁰ ICNU Cr. Ex. 704 page 6; ICNU/102 /2-6.

⁹¹ Transcript of Hearing at 21, line 23 through 22, line 7 and lines 12 – 24.

⁹² Transcript of Hearing at 20, line 15 through 21, line 6 and lines 9-15.

⁹³ Transcript of Hearing at 100, line 25 through 101, line 1.

⁹⁴ Transcript of Hearing at 101, lines 2-7.

higher collateral costs.⁹⁵ The Commission should not let itself be placed in the role of chicken. The chicken here is the Company, which refuses to tell its investors and ratings agencies the truth about the possibility of a disallowance in UE 228.⁹⁶ And it is not because PGE believes that the sky will fall—it doesn't.

MS. DAVISON: I understand it would have a detrimental impact on the company, but let me try my question again . . . it would really be helpful to the record if in the first instance you could answer yes or no and then provide an explanation.

My question is: Is it your position that regardless of the merit of Mr. Schoenbeck's proposed adjustment here that the number is simply too great and the financial impact is too great for PGE to withstand?

MS. POPE: PGE can withstand this impact. It will be costly, but PGE would withstand this impact.⁹⁷

I. IRP Timelines Do Not Drive the Use of Five Year Hedges

PGE attempts to argue that the IRP timelines drive use of five year hedges; this is a flawed argument. In PGE's questioning during Mr. Schoenbeck's deposition, PGE attempted to suggest, and to elicit responses suggesting, that there would be a gap in planning because of the five year IRP structure. This does not need to be the case. PGE might simply declare year five to be part of long term planning and could obtain a long-term contract resource.⁹⁸

J. The Proposed Adjustment Is Not Based on Hindsight

PGE attempted to argue that the proposed disallowance being advocated for by CUB and ICNU is a hindsight adjustment and should not be granted.^{99,100,101} The

⁹⁵ Transcript of Hearing at 25, lines 9-13.

⁹⁶ Transcript of Hearing at 100, line 25 through 101, line 1.

⁹⁷ Transcript of Hearing at 89, lines 2 – 13.

⁹⁸ Transcript of Deposition of Donald W Schoenbeck at 129, lines 4-16, amongst others.

⁹⁹ PGE/300 Pope-Valach 2 lines 1-2; PGE/300 Pope-Valach 3 lines 1-3; PGE/300 Pope-Valach/8-12.

adjustment being advocated for is the result of the findings of a prudence review and not a hindsight adjustment.

As noted in the “Introduction” to CUB’s Opening Brief *supra*, prudence reviews are based upon what a company knew or should have known at the time it executed a particular transaction.¹⁰² CUB recognizes that companies try to balance risks using professional judgment. And, because the future is not known when a judgment is made, sometimes the application of a company’s judgment can lead to a decision which increases costs. The question is not whether the outcome (increased costs) was good or bad, but whether the judgment exercised by the company was reasonable at the time it was exercised. It is not possible to determine whether the exercise of that judgment was reasonable without conducting a review of what the company knew or should have known at the time it exercised its judgment. This includes a review of the decision to enter into each transaction and a review of the policies in place concerning the making of those transactions.

Another way of looking at PGE’s hindsight argument is to think about how the Commission reviews cost items submitted for inclusion in revenue requirement determinations. In those kinds of proceedings the Commission can

approve placing the costs of a five-year power purchase agreement (“PPA”) in the rates for year one. However, just because the commission (sic) approved the agreement for year one does not mean that any subsequent cost associated with the agreement is deemed ever after to be reasonable.”¹⁰³

¹⁰⁰ Transcript of Hearing at 23 lines, 10-13 and lines 18-21.

¹⁰¹ PGE/500 Stoddard/8-10.

¹⁰² Order No. 02-469 at 5.; ICNU/108 Schoenbeck/2 lines 13-16.

¹⁰³ ICNU/108 Schoenbeck/10.

But we all know that the administration of a contract “must be reviewed each and every year the Company is seeking cost recovery . . .”¹⁰⁴ This is the standard that should also be applied to hedging contracts. The fact that PGE may have previously provided certain individual hedges to the Commission for review¹⁰⁵ does not mean that the Commission or the Intervenors have ever been presented with the appropriate opportunity, or had sufficient time and resources, to review the policy and execution of the Mid-Term Strategy policy as a whole. CUB has limited financial and personnel resources and cannot look at all costs in each AUT proceeding. Thus, CUB has been forced to choose only the ripest issues for review - things like FORs. In this proceeding, having recently dealt with FORs, CUB chose to review PGE’s hedging strategy, among other things. As a result of that review CUB determined that the Mid-Term Strategy was imprudent and thus chose hedging as the issue to raise and focus on in this docket. This is the time to review what PGE knew, or should have known, at the time it exercised each transaction under its Mid-Term Strategy.

K. The Mid-Term Strategy Has Not Been Reviewed and Evaluated As Part of a Prior Commission Proceeding

To support its argument that certain of the hedges at issue have been the subject of prior Commission dockets and that the MTS strategy has therefore been blessed and approved, PGE testified at length at the hearing about how it had previously presented its hedging strategies to the Commission and to the parties for their review as part of its IRP and other AUT dockets. PGE’s argument is in effect that the parties have given their

¹⁰⁴ ICNU/108 Schoenbeck/10 lines 16-21.

¹⁰⁵ PGE/300 Pope-Valach/2 lines 6-12; PGE/400 Lobdell-Outama/1 lines15-21.

blessing to the PGE strategy and cannot now be seen to argue that it was imprudent.¹⁰⁶

This is not correct. CUB did not give its blessing to this strategy and neither did the Commission.

Upon review of the times at which the Intervenors are supposed to have had the opportunity to review, comment, and pass blessing on PGE's hedging policies, it becomes clear that no real review could ever be done because

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[REDACTED]

[REDACTED]¹⁰⁷ [REDACTED]

[REDACTED]¹⁰⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁰⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁰⁶ Transcript of Hearing at 50, line 17 through 51, line 5; Transcript of Hearing at 51, line 11 through 52, line 13; Transcript of Hearing at 122, line 2 through 124, line 16.

¹⁰⁷ Transcript of Hearing at 122, line 17 through 123, line 4.

¹⁰⁸ Transcript of Hearing at 124, lines 5 – 11.

¹⁰⁹ Transcript of Hearing at 122, lines 1-16.

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]¹¹⁰

What is most glaring from the above is the omission of reference to Commission Staff's statements of the need for liquidity and documentation (see below). CUB also takes issue with the inclusion of a statement that says stakeholders were mostly silent. Of course CUB was silent, as we were not provided with anything we could review, evaluate or pass comment, let alone provide blessing, on.

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CUB does not give out an opinion without first conducting its own analysis, but to conduct an analysis a party has to have access to information and an opportunity to review and later discuss. CUB never had that with regard to the Mid-Term Strategy, until today.

In terms of information previously provided to the Commission, and the Commission's response thereto, it is best to review the transcript from the meeting where PGE appeared to give an "Update on Integrated Resource Plan. Informational only."¹¹¹

During that update Jim Lobdell stated:

So given the fact that we are seeing some developments in the marketplace, we thought it was prudent to see if we could capture opportunities in that space, and therefore we had a conversation with our board, laid out a strategy for trying to layer in purchases in that midterm space - - which I'll talk about a minute. And one of the questions that I got

¹¹⁰ ICNU Cr. Ex. 704 at page 5; PGE/Exhibit 601 at page 5 (*emphasis added*); PGE/Exhibit 601 Page 176 (Power Operations Update on Mid-Term Strategy, PGE Board of Directors October 26, 2006 at page 4).

¹¹¹ ICNU Cr. Ex. 703 page 2 lines 2-3.

back from our board was what was staff's opinion on this, what was the Commissioner's opinion, are there any issues that are out there.¹¹²

The Commission then responded by asking if there would be a way to evaluate the strategy and whether it would be evaluated as part of the IRP process.¹¹³ The Commission was told that PGE was "not planning on evaluating it so much in that process as recognizing it."¹¹⁴ Commission Staff, when asked for its opinion, stated:

We have indicated that - - that our support is contingent on there being liquidity in the market, and that PGE should document the analysis that supports the - - any transactions that they make. And so we think it's a good step.¹¹⁵

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[REDACTED]

[REDACTED]

[REDACTED]¹¹⁶

[REDACTED]

[REDACTED]¹¹⁷

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PGE has further argued that some of the questioned transactions were included in prior AUT filings and were blessed there.¹¹⁸ CUB again objects to this idea. Even if any of these transactions were included in prior filings, nothing had occurred at that time to

¹¹² ICNU Cr. Ex. 703 page 3 lines 13-22.

¹¹³ ICNU Cr. Ex. 703 page 9 lines 17 – 19.

¹¹⁴ ICNU Cr. Ex. 703 page 9 lines 24 – 25.

¹¹⁵ ICNU Cr. Ex. 703 pages 10-11 lines 23 – 2.

¹¹⁶ Transcript of Hearing at 137, lines 4 – 11.

¹¹⁷ Transcript of Hearing at 151, lines 13 – 18.

¹¹⁸ PGE/400 Lobdell-Outama/25 lines 1-8.

make CUB and ICNU suspicious of the strategy being used by PGE. There is no law that provides even if once blessed a party cannot further review prior actions. New information can always prompt a review of what the utility knew or should have known at the time of a certain transaction. This is the docket where CUB and ICNU's suspicions were raised and a thorough review was undertaken of this hedging strategy. CUB does not claim that it reviews every single line item in every docket. CUB has limited resources. Previous AUTs have been dominated by other issues such as Forced Outage Rates and plant outages. The critical fact is that CUB has reviewed the gas hedges of PGE and has determined that PGE was not prudent when it overhedged too early. The fact that CUB did not challenge these hedges in an earlier proceeding has no importance. The question here is whether the facts on the record in this docket are sufficient for the Commission to find that PGE has proven that its actions were prudent.

L. Standard and Poor's Has Not Previously Downgraded PGE in Response to Commission Disallowances

During the hearing ICNU cross-examined PGE CFO Maria Pope. ICNU asked Ms. Pope whether PGE had taken write-offs as a result of the decision in UE 196 disallowing \$26.4 million in costs.¹¹⁹ Ms. Pope responded in the affirmative. She was, however, unable to provide any evidence that ratings agencies such as Standard and Poor's had in fact responded negatively to that disallowance.¹²⁰

¹¹⁹ Transcript of Hearing at 93, line 23 through 94, line 4.

¹²⁰ Transcript of Hearing at 94, line 5 through 99, line 23.

M. Future Proceedings Should Not Be a Substitute for CUB’s Recommended Disallowance

PGE has recommended that the Commission consider a “go-forward” docket to look at workshops to inform the utility’s hedging policy. CUB supports more in-depth review of PGE’s hedging policies but any workshops or other proceedings should not be ordered in lieu of the disallowance requested in this docket.

During the hearing PGE’s Maria Pope offered up that her recommendation for the Commission would be for it to “consider a go-forward docket to look at workshops or things to inform the utility, PGE, in what would be the best interest of customers.”¹²¹ As noted above, CUB supports more in-depth review of each utility’s hedging policies, but does not support any kind of process that could be used as a claim of preapproval for its hedging strategy by PGE. Any workshops or other proceedings should not be ordered in lieu of the disallowance requested by the intervenors in this docket and should be specifically identified as not being a pre-approval process.

N. PGE Cannot Hide the Ball From Customers, Investors, or the Commission

The Commission needs to send a message to PGE management that hiding the ball from investors or customers will not prevent the Commission from imposing necessary and appropriate disallowances. As noted earlier in this brief, PGE witnesses Mr. Valach and Ms. Pope testified that they talked regularly with investors and rating agencies¹²² but had failed to advise them of the specifics of UE 228 and the possibility of a disallowance.¹²³ And, during the hearing ICNU asked Ms. Pope whether she thought that the Commission should allow imprudent costs to go into rates because of the

¹²¹ Transcript of Hearing at 101, lines 21 – 25.

¹²² Transcript of Hearing at 20, line 15 through 21, line 6 and lines 9-15.

¹²³ Transcript of Hearing at 100, line 25 through 101, line 1.

negative financial impact to PGE if the Commission imposed a disallowance.¹²⁴ Ms. Pope obfuscated for a long time and never answered the question. She did, however, answer a question posed by the ALJ:

ALJ PINES: Okay. So putting aside the larger question of the impact on the regulatory framework and how that would affect PGE secondarily, looking really, really narrowly just at the financial impact to PGE of the proposed disallowance, just that alone, would that be a reason for the Commission to disallow that?

MS. POPE: No. I don't think so on that basis just alone.¹²⁵

From this exchange it appears that Ms. Pope agrees that just because the Company would suffer a large financial hit is not a compelling reason for the Commission to disallow a request that a disallowance be imposed.

PGE's choice to not fully disclose information to its investors, and the investors' response to learning of the omitted information, do not provide a basis for the Commission to disallow an appropriate and necessary disallowance.

Ms. Pope went on to state that SB 408 had been seen as a black mark against Oregon utilities by investors and was increasing their cost of borrowing.¹²⁶ Whether or not this is true, it is not relevant to the Commission's decision in this docket. The only question before the Commission in this docket is whether the hedging costs incurred by PGE between 2006 and 2007 were prudently incurred. It is CUB's position that those costs incurred in relation to hedges that took place with tenors longer than 48 months were not prudently incurred and should be disallowed.

CUB wants the Commission to take particular note of Ms. Pope's answer on Hearing Transcript page 89 lines 12-13, where, in response to a question from ICNU, she

¹²⁴ Transcript of Hearing at 83, lines 20-23.

¹²⁵ Transcript of Hearing at 87, line 22 through 88, line 4.

¹²⁶ Transcript of Hearing at 88, lines 12 – 18.

responded that the dollar impact that the Company could suffer were the Commission to grant the disallowance requested by CUB and ICNU would not be too great for PGE to withstand. To CUB's mind this completely undercuts all of PGE's prior arguments that the sky will fall because of the shock that its investors will receive. CUB hopes sincerely that investors are smarter than PGE suggests and that they would want to know that they are investing in a company that is well managed and appropriately regulated—no one wants another Enron.

PGE cannot have it both ways, and even if it could, it would be inappropriate for the Commission not to disallow imprudently incurred costs. A basic principle of utility regulation is that customers are only responsible for the prudently incurred costs associated with providing utility service. If a cost is imprudent, then there is no basis for it to be included in rates.¹²⁷ The bottom line is that it seems to be PGE's unspoken position that, even if the Company broke its own rules, its strategy was successful and it should not be punished for breaking its own rules. CUB does not agree. If the Commission does not show the utility that it must follow its own rules, then the utility can break any rules it wants without fear of retribution. This is not in the public interest.

O. The Commission needs to send a message in this docket and in all future dockets that the over-designation of information as confidential information will not be tolerated.

This docket, and the concurrent UE 227 PacifiCorp TAM docket, have become poster children for the over-designation of confidential information by utilities. In this docket PGE has insisted on designating even numbers derived by the intervenors from

¹²⁷ Order No. 02-469 at 5

PGE materials as confidential information, to the point that CUB cannot even tell its members the total sum that CUB is fighting to have disallowed in this docket.¹²⁸ This situation is unacceptable. It is also unacceptable that the utility should designate material as confidential for intervenors and then itself waive all that confidentiality aside at the hearing when it is not longer convenient to have it in place.¹²⁹

The evidentiary record in this docket is incomplete because of the over-designation of confidential material. Short of doing its own investigation, the Commission will never know the full truth about hedging because the intervenors are prevented from disclosing and entering as evidence all that they know.

This is a matter that the Commission needs to address. The Commission should consider opening a docket to review the designation of confidential documents, or alternatively, the Commission should consider broadening the scope of AR 553 to encompass more than confidentiality issues related to SB 967. It is high time that the issue of utility designation of confidential and highly confidential materials was revisited.

IV. Conclusions and Recommendations to the Commission

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[REDACTED]

[REDACTED]

[REDACTED]¹³⁰ [REDACTED]

[REDACTED]

¹²⁸ Transcript of Hearing at 13, line 10 through 17, line 7.

¹²⁹ Transcript of Hearing at 26, lines 14 – 16 and 27, lines 2 – 6; Transcript of Hearing at 37, lines 11 – 25, 38, and 39, lines 1-5; Transcript of Hearing at 42, lines 22 - 25 and 43, lines 1 - 10 – ultimately determined this never was confidential but had it been they were willing to waive it; Transcript of Hearing at 54, line 2-through 56, line3.

¹³⁰ ICNU/108 Schoenbeck/12 lines 18-19.

[REDACTED]

[REDACTED]¹³¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹³²

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Requiring this disallowance is very important for several reasons. First, PGE’s CFO, Maria Pope, seems to be of the opinion that PGE should be awarded even imprudent costs if the disallowance of such might scare investors. Second, PGE’s Vice President of Power Operations and Resource Strategy, Jim Lobdell, believes that if PGE is required by the Commission to document something, it only means keeping documents it acquires, and not that PGE has to write up its reasoning for a decision. Third, PGE is playing with customer money here and is not even following its own policies.

This prudence review, far from being “nothing more than opportunistic attempts to deny PGE recovery of prudently incurred costs,”¹³³ is in fact a well-researched, well-reasoned review of PGE’s Mid-Term Strategy, which shows that PGE hedged too much and too early. Just as the Intervenors cannot go back and say this hedging strategy is wrong because it is out of the money, so too PGE cannot use hindsight to come up with new theories to explain what it was doing. There simply are no records to support any *post hoc* theory that PGE might invent as to why it was hedging too much, too early. It

¹³¹ ICNU/108 Schoenbeck/12 lines 21 – 24.
¹³² ICNU/108 Schoenbeck/13 lines 1-4.
¹³³ PGE/400 Lobdell-Outama/1 lines 14-15.

really is too bad that PGE was not as meticulous in designing and executing its Mid-Term Strategy as it has been in attempting to create after-the-fact explanations for its actions.

For all of the above reasons, CUB respectfully requests the Commission to send a very strong message to PGE, both in writing and in dollar impact, through the requested

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- Follow its own policies
- Meticulously document the reasons for any decision required to be in writing
- Make prudent decisions
- Provide appropriate training and oversight to all its employees
- Audit its own programs to ensure that policies are being followed

PGE failed to do all of the above in regard to the hedging transactions that took place between 2007 and 2008 that were in excess of 48 months in tenor. The disallowance requested by CUB and ICNU is appropriate, and the sky will not fall on PGE if the disallowance is ordered.

And, as noted above, CUB also respectfully requests that the Commission consider opening a docket, or broaden the scope of AR 553 to encompass more than confidentiality issues related to SB967 so that the issue of utility designation of confidential and highly confidential materials can be revisited.

September 14, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. C. McCracken', written in a cursive style.

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UE 228 – CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of September, 2011, I served the foregoing CITIZENS' UTILITY BOARD OF OREGON'S OPENING BRIEF in docket UE 228 upon each party listed in the UE 228 OPUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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