BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1234

In the Matter of	)
	)
PORTLAND GENERAL ELECTRIC,	)
	)
Application for Deferred Accounting of Excess Power Costs Due to Plant Outage.	)

OPENING BRIEF

OF THE

CITIZENS' UTILITY BOARD OF OREGON

September 6, 2006

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1234

In the Matter of	)	
PORTLAND GENERAL ELECTRIC,	)	OPENING BRIEF OF THE CITIZENS' UTILITY BOARD OF OREGON
Application for Deferred Accounting of Excess Power Costs Due to Plant Outage.	)	

I. Introduction

In this first stage of the deferral process, the Citizens' Utility Board addresses the appropriateness of Portland General Electric's request for $45.7 million in excess costs associated with the Boardman plant outage between November 18, 2005 and February 5, 2006.

We address:

1. Whether the Boardman outage is eligible for a deferral under precedent and standards set out in previous Commission orders;
2. The methodology used to identify replacement costs;
3. The level of cost that should be allowed for recovery;
4. The impact of this deferral on Boardman's forced outage rate; and
5. The interplay between the deferral and SB 408.

ORS 757.259(2)(e) states that the Commission can authorize deferral of the following:

> Identifiable utility expenses or revenues, the recovery or 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.

PGE claims that this particular deferral both minimizes rate fluctuations and appropriately matches costs and benefits. PGE/100/Lesh/3-4. While we may quibble with the practical realities of a successful interim rate filing, we do note that if any portion of the deferred amount is amortized and charged to customers, the rate change could occur during the next general rate case change or RVM rate change, thus technically minimizing rate changes. Though we struggle to see what benefit has emerged from the Boardman outage, we recognize that the deferral has the potential to match temporally the costs of replacement power with those who used it.

CUB has taken a flexible approach in this docket, and, from determining eligibility for deferral to developing a sharing mechanism, we have refrained from taking a hard line.

II. Eligible Costs

A. Boardman Is Eligible For Deferral Consideration

The Commission has set out a path to determine if an event justifies the Commission's exercise of discretion in opening a deferred account. The Commission looks first at whether the event is stochastic or scenario in nature. If stochastic, where the event was modeled or foreseen, then "the magnitude of harm must be substantial" in order to be eligible for deferred accounting. Order No. 05-1070, p. 7, UM 1147, October 5, 2005. If scenario, then the magnitude of harm would likely need be lower. *Ibid*.

In 2001, the Commission allowed the deferral of the cost due to PacifiCorp's loss of a plant and the Company's need to replace power during the middle of the energy crisis. The Commission adopted a deadband of 250 basis points ROE around a baseline. Order No. 01-420, p. 5 and 29, UM 995, May 11, 2001. The PUC later identified the UM 995 event, the perfect storm of 2001, as an example of a scenario risk. Order No. 04-108, p. 8-9, UM 1071, March 2, 2004. Thus, implicitly, the Commission has said that it will consider the cost of a scenario event for deferral if the cost is greater than 250 basis points of ROE.

Staff, in Response Testimony, puts the cost of the Boardman outage during the deferral period at $42.8 million, equivalent to 255 basis points of return on equity. Staff/100/Owings-Galbraith/11-12&17. ICNU puts the cost at $42.6 million. ICNU/100/Falkenberg/16. In Rebuttal Testimony, PGE claims the excess power costs incurred during the deferral period are $45.7 million, representing approximately 273 basis points of return on equity.[1, 2] PGE/401/Lesh-Tinker/1.

All of the above amounts for the cost of the Boardman outage exceed the 250 basis point threshold established in UM 995 for a scenario event. However, as the 250 basis point threshold from UM 995 applied to a scenario event, which has a lower harm standard than that for a stochastic event, the Boardman outage may not be eligible

[1] $45,714,606 ÷ $16,766,000 x 100 = 272.66 basis points. PGE/301/Drennan-Tinker-Hager/1.

[2] In its Direct Testimony, PGE claims that the excess cost due to the outage equates to 355 basis points of ROE from the baseline, but in this calculation PGE includes costs from the period prior to the deferral application. PGE/100/Lesh/8; PGE/300/Drennan-Tinker-Hager/4. ICNU points out that PGE's exaggerated calculation includes costs of $14 million from the period prior to the deferral filing, which are not properly before the Commission. ICNU/100/Falkenberg/15.

for deferral if the Commission considers the outage to be a stochastic event. Staff says that, generally, generating plant forced outages are stochastic risk. Staff/100/Owings-Galbraith/16. However, Staff goes on to say that the 105-day Boardman outage is extraordinary. *Ibid.* An extraordinary event is not generally modeled and may, in fact, not be stochastic, but scenario.

CUB testimony recognizes that it is unclear whether the Boardman outage is stochastic or scenario. CUB/100/Jenks/3. However, Mr. Jenks does state that "the duration of Boardman's outage is greater than typically experienced by generating units of similar size" and that this outage is "unusual." *Ibid.* Therefore, for the purposes of this deferral application, CUB treats this outage as a scenario event, and applies the less-restrictive UM 995 standard to the outage. As such, CUB concludes that the Boardman outage is eligible for deferral. *Id.* at 4.

B. Quantifying The Cost To Defer

In quantifying the cost to defer, there is a specific matter of numbers and a theoretical matter of consistency.

i. Correcting For The Excess Costs

Both Staff and ICNU identify flaws in PGE's calculation of the deferral costs. Staff and ICNU both found that PGE miscalculated the excess cost based on PGE's share of Boardman using a rated capacity of 380 to 383 MW, when, for setting rates, the 2005 and 2006 RVM runs used a de-rated capacity of 358 MW and 355 MW respectively. Staff/100/Owings-Galbraith/5; ICNU/100/Falkenberg/16. In addition, Staff corrects PGE's calculation of cost for line losses, daily energy in November, a December purchase, and May market prices. Staff/100/Owings-Galbraith/6-9. Correcting for these errors led Staff to identify the excess cost to be $42.8 million. We adopt Staff's higher value of $42.8 million for our purposes.

ii. Consistency

In general, there are two ways to quantify the cost of a plant outage. First, as proposed by PGE in this case, one can calculate the cost of the replacement power and the avoided cost of operating the plant and any planned outages. This exercise is an attempt to identify costs specific to the deferral event. The other way, as was done in the PacifiCorp Hunter outage, is to quantify the net power cost variation during the event period, which may include other cost drivers that could exacerbate or offset the size of the deferred cost.

We raise this issue, not because we disagree with PGE's proposal in this case, but to highlight the inherent inequity of allowing the utility to unilaterally choose the method of calculating deferral costs. If given the opportunity, the utility will always choose the method that benefits the company. Even here in PGE's deferral application, PGE states that "PGE recognizes that other methodologies for determining the replacement cost of power during this outage may be proposed by PGE and other interested parties later in this docket or in the amortization phase of this deferral." PGE Application for Deferral, p. 2. If you wait long enough, conditions could change, and a different methodology might be more beneficial to the applicant.

CUB's testimony describes why a utility should not be allowed unilaterally to choose the quantification methodology. CUB/100/Jenks/5-7. Above all else, there should be consistency of approach. CUB is not endorsing one method over another at this point, but until a requirement for a consistent quantification approach is implemented, we reserve the right to identify, and ask for corrections to, inconsistent quantification methodologies that consistently benefit the utility.

III. Deadband And Sharing Mechanism

We have determined that the Boardman event is eligible for deferred accounting, and accept Staff's calculation that the excess cost of the Boardman outage is $42.8 million. The next step is to determine the appropriate deadband and sharing bands that recognize the costs a company would ordinarily absorb before making a filing, and the sharing of risks between the company and its customers. Order No. 01-420, p. 5 and 29, UM 995, May 11, 2001.

In UM 995, the Commission adopted the standard sharing mechanism for a scenario event deferral. Because PGE has not made a convincing argument why this precedent should be altered in this case, the standard deadband and sharing bands should be used. The standard mechanism is structured as follows:

> 1. Shareholders absorb 100 percent of the excess power costs in a deadband equivalent to 250 basis points of ROE;
>
> 2. Shareholders absorb 50 percent of the excess power costs in a sharing band between 250 and 400 basis points of ROE; and
>
> 3. Shareholders absorb 25 percent of the excess power costs beyond 400 basis points of ROE.

Order No. 01-420, p. 5 and 29, UM 995, May 11, 2001.

This deadband and sharing band mechanism has seen different permutations in different deferral applications, however the 250 basis point deadband has been fairly consistent, as have been two sharing bands. The biggest area of difference has been in the outermost sharing band, and even there the difference only ranges from shareholders absorbing 10% of costs above 400 basis points to 25%. For a survey of recent past deadband and sharing band mechanisms, see CUB/100/Jenks/8-9.

However, since the excess cost only just edges over the 250 basis point deadband, CUB offers an abbreviated sharing band proposal. CUB proposes to create a single sharing band wherein customers will absorb 70% of the cost above the 250 basis points. CUB/100/Jenks/10.

Using Staff's corrected excess costs of $42.8 million and applying that to the mechanism CUB is offering here, depending on the outcome of the prudence phase of this case, PGE customers would absorb up to $655,000.[3]

IV. Two Complications

A. Forecasted Forced Outage Rate

PGE testified that if the Commission authorizes the deferral as PGE has proposed, then PGE will forecast Boardman's availability in the next forced outage rate calculation as if it were 100% available during the outage. PGE/100/Lesh/7. The implication of this statement is that if the Commission authorizes something other than PGE's proposal in the deferral application, then PGE will treat this significant outage differently in the forced outage rate calculation. In other words, whether PGE's forced outage rate forecast retains any integrity depends on the Commission acceding to PGE's wishes in this docket.

Staff finds this position unreasonable. Staff said that regardless of whether the Commission adopts PGE's or any other party's recommendation in this docket, the calculation of the four-year rolling average for the forced outage rate should reflect

---

[3] $42,850,000 ÷ $16,766,000 x 100 = 255.58 basis points. $42,850,000 x (1- (250 ÷ 255.58)) = $935,531 (cost beyond the deadband). $935,531 x 0.7 = $654,872 (customer share).

Boardman as 100% available during the deferral period. Staff/100/Owings-Galbraith/21-22. Staff notes that anything less than this would allow PGE to recover outage costs not through the deferral but through the forced outage rate and that this would "simply circumvent the Commission's final decision in this docket." Staff/100/Owings-Galbraith/22. PGE is challenging the Commission: either you let us recover all the Boardman outage costs through our deferral proposal or we will recover those costs through a trumped-up forced outage rate.

CUB agrees with Staff that PGE's position is unreasonable and contrary to the theoretical underpinnings of the forced outage rate as a forecasting tool. Mr. Jenks of CUB explains:

> This Boardman outage is not the kind of event that should be included in a four-year average of a utility's forced outage rate for the purposes of setting future rates. It was a catastrophic plant failure, which required the plant to be closed for months. A forced outage rate is a tool for forecasting routine outages. It would not be reasonable to include this kind of catastrophic failure in a utility's forced outage rate, as an outage of this magnitude is unlikely to repeat itself, and, therefore, should not be forecast in the future.

CUB/100/Jenks/4.

PGE's not-so-veiled threat is unreasonable from a monetary point of view, from a Commission authority point of view, and from a ratemaking theory point of view.

B. Deferrals And SB 408

PGE has raised a scenario where a final ruling in AR 499, the utility tax rulemaking docket, might affect this and other deferrals. PGE explains:

> The Commission is presently developing rules to implement SB 408, legislation passed in 2005 that requires utilities to "true-up" the difference between taxes they pay to various governments and taxes deemed collected in rates. Under some applications of this statute, a lower tax payment resulting from the effect of these additional costs on PGE's net

> income would result in a refund to customers. . . For example, assume a utility absorbs $20 million of excess power costs. This would lower its taxes paid by $8 million. The suggested interpretation of SB 408 would require that the utility refund $8 million to customers, even though customers did not pay the $20 million in increased cost.

PGE/100/Lesh/8.

CUB has also recognized the interplay between final AR 499 rules and a deadband or sharing bands. In UE 180, PGE's on-going general rate case, CUB offered the following testimony:

> We recognize that the application of Senate Bill 408 may create a reason to reevaluate the appropriate magnitude of a deadband and sharing bands. In the past, a deadband and sharing bands were pre-tax values, and the utility then got a tax deduction, which reduced the impact of these bands. With the implementation of SB 408, these tax deductions will most likely be incorporated in the SB 408 automatic adjustment clause, and so no longer act to mitigate the amounts in a deadband and sharing bands. As the rules implementing SB 408 are not yet finalized, and as SB 408 is likely to face both a tough legislative session as well as legal challenges, we have designed a mechanism without taking into account SB 408. Once SB 408 is fully implemented, the Commission may wish to revisit a deadband or sharing bands such that the impact on the utility and the customers remains the same. CUB does not oppose redrawing the deadband and sharing bands so that post-SB 408 bands have the same after-tax impact as pre-SB 408 bands.

UE 180 CUB/200/Jenks/23.

CUB recognizes that a particular interpretation of SB 408 may have an implication for the treatment of a deadband or sharing bands. While we cannot make an adjustment for an order that has not yet been published, we can state that if the Commission's decision in AR 499 does have implications for the deadband in deferral cases, we are willing to revisit the UM 1234 deadband to make sure the treatment is fair.

V. Conclusion

CUB has taken a liberal approach to this proceeding. We have given PGE the benefit of the doubt as to whether to classify the Boardman outage as scenario or stochastic, accepted PGE's method for quantifying the costs to be deferred, and have offered a greater sharing burden for customers in the relevant sharing band. While these positions are flexible and fair, they are also firmly based in good regulatory policy and Commission precedent. Our proposal would allow PGE to collect from customers, depending on the outcome of the prudence review, up to $655,000 of the excess costs associated with the Boardman outage.

Respectfully Submitted,
September 7, 2006

Jason Eisdorfer #92292
Attorney for the Citizens' Utility Board of Oregon

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2006, I served the foregoing Opening Brief of the Citizens' Utility Board of Oregon in docket UM 1234 upon each party listed below, by email and U.S. mail, postage prepaid, and upon the Commission by email and by mailing 6 copies to the Commission's Salem offices.

Respectfully submitted,

____

Jason Eisdorfer #92292
Attorney for Citizens' Utility Board of Oregon

RATES & REGULATORY AFFAIRS PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com	MELINDA J DAVISON DAVISON VAN CLEVE PC 333 SW TAYLOR - STE 400 PORTLAND OR 97204 mail@dvclaw.com
RANDALL J FALKENBERG RFI CONSULTING INC PMB 362 8351 ROSWELL RD ATLANTA GA 30350 consultrfi@aol.com	DOUGLAS C TINGEY PORTLAND GENERAL ELECTRIC 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com
STEPHANIE S ANDRUS REGULATED UTILITY & BUSINESS 1162 COURT ST NE SALEM OR 97301-4096 stephanie.andrus@state.or.us	S BRADLEY VAN CLEVE DAVISON VAN CLEVE PC 333 SW TAYLOR – STE 400 PORTLAND, OR 97204 mail@dvclaw@com