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September 21, 2006

***Via Electronic Mail and U.S. Mail***

Public Utility Commission  
Attn: Filing Center  
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Re: In the Matter of PORTLAND GENERAL ELECTRIC COMPANY  
Application for Deferred Accounting of Excess Power Costs Due to Plant  
Outage  
**Docket No. UM 1234**

Dear Filing Center:

Enclosed please find the original and six copies of each of the following documents of the Industrial Customers of Northwest Utilities:

Reply Brief (Confidential Version) in OPUC Docket No. UM 1234

Reply Opening Brief (Redacted Version) in OPUC Docket  
No. UM 1234

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

Sincerely yours,

/s/ Ruth A. Miller  
Ruth A. Miller

Enclosures

cc: Service List

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Reply Brief (Confidential Version as indicated below) of the Industrial Customers of Northwest Utilities, upon the parties on the official service list shown below for OPUC Docket No. UM 1234, via U.S. Mail. The Redacted Version of the Opening Brief will be provided to the service list by electronic mail.

Dated at Portland, Oregon, this 21st day of September, 2006.

/s/ Ruth A. Miller  
Ruth A. Miller

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1234**

In the Matter of )  
 )  
Portland General Electric Company )  
 )  
Application for Deferred Accounting of )  
Excess Power Costs Due to Plant Outage. )  
\_\_\_\_\_ )

**REPLY BRIEF OF THE  
INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES**

**SUBJECT TO GENERAL PROTECTIVE ORDER**

**(Redacted Information is Shaded)**

**September 21, 2006**

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## I. INTRODUCTION

Portland General Electric Company's ("PGE" or the "Company") opening brief inaccurately characterizes the record in this proceeding, misconstrues the Public Utility Commission of Oregon's ("OPUC" or the "Commission") authority to deny the Company's Application, and reflects the unfounded position that the Company should bear no power cost risk between rate cases. Contrary to PGE's claims, the evidence demonstrates that:

- 1) The Boardman outage represents a "stochastic" event, because the Commission considered and included forced outage rates equal to or greater than the 2005 Boardman outage rate when it set 2005 and 2006 power costs;
- 2) PGE has exaggerated the financial impact of the outage and disregarded the Company's previous statements about offsetting cost reductions;
- 3) The Commission has explained in a number of recent cases that the reason for adopting a deadband for excess power cost deferrals is to ensure that the utility bears the burden or benefit of a reasonable range of power cost variation between rate cases;
- 4) The fact that the circumstances surrounding the Hunter and Trojan outages were much more extraordinary than the Boardman outage highlight why the Commission should deny the Application, not why PGE should not be subject to a deadband; and
- 5) No constitutional or statutory authority requires the Commission to authorize a deferred account in this Docket, because the Company's rates will not otherwise reach confiscatory levels.

PGE argues that the threshold financial requirements and deadband that the Industrial Customers of Northwest Utilities, OPUC Staff, and the Citizens' Utility Board ("CUB") have proposed in this proceeding are punitive and ill-conceived, but these assertions merely reflect the Company's disagreement with the Commission's decision that electric utilities should bear a reasonable range of power cost variation between rate cases. PGE effectively requests authorization to selectively update, for the Boardman plant only, the forward-looking

assumptions the Commission used to set normalized power costs with actual, historic availability data for the deferral period. The Commission has refused to approve PGE's requests for such selective updates to certain components of power costs in the past, and it should deny the Company's Application in this Docket as well.

## **II. ARGUMENT**

### **A. PGE Ignores the Evidence Demonstrating That the Boardman Outage is Properly Considered a Stochastic Event**

PGE unpersuasively argues that the Boardman outage is a scenario risk.

According to the Company, the Commission did not consider outages such as Boardman when it set base energy rates, the outage falls outside the range of foreseeable risk, and the costs of forced outages will not balance out over time. As described below, PGE ignores the evidence that ICNU provided regarding the outages the Commission considered when it set rates and the fact that extended forced outages have occurred with significant frequency at PGE's generating facilities. Finally, PGE fails to provide any evidence to support its claims regarding the balancing of outage costs over time.

#### **1. The Evidence Demonstrates That Outage Rates Greater Than the 2005 Boardman Rate Were Included in 2005 and 2006 Power Costs**

PGE incorrectly claims that ICNU has failed to meet its burden of production regarding the Company's claim that the Boardman outage was a scenario risk, because "[n]o party rebutted PGE's evidence that the assumptions used to set PGE's 2005 and 2006 rates did not include the [Boardman] outage" and no party disputed "that PGE's rates have never included the possibility of such an extraordinary outage." PGE Opening Brief at 9, 13. Not only does ICNU dispute PGE's claim, the rebuttal evidence that ICNU provided flatly contradicts the

Company's assertion. ICNU explained in its Opening Brief that Confidential Exhibit ICNU/200 demonstrates that PGE's 2005 and 2006 power costs included forced outage rates for PGE's thermal generating facilities that reflected annual forced outages even greater than the outage rate for Boardman in 2005. ICNU Opening Brief at 7-8. Boardman had a [REDACTED] outage rate for 2005, when the hours of the outage at issue in this Docket are included. ICNU/200 at 4. Colstrip, Coyote, and Beaver all had at least one annual outage rate in the past four years that was roughly equivalent to or greater than Boardman's 2005 outage rate, and each of these outage rates was included in the four-year rolling average used to establish 2005 and 2006 power costs. Id. Coyote and Beaver had [REDACTED] and [REDACTED] outage rates in 2003, respectively, and Colstrip had a [REDACTED] outage rate in 2002. Id. This evidence demonstrates that the Commission considered outages of Boardman's magnitude when setting rates in the past.

PGE argues that the UM 1147 order "makes clear that the threshold test is whether or not the Commission uses this type of event in the test-year assumptions to set rates." PGE Opening Brief at 8. The evidence demonstrates that ICNU has satisfied its burden of production to show that the Commission used outages such as Boardman in setting rates, and that PGE fails this "threshold test" for deferred accounting.

**2. The Evidence Does Not Support PGE's Claim That Outages of This Length Fall Outside the Range of Foreseeable Risk**

PGE maintains that the Boardman outage should be treated as a scenario event because a forced outage of this duration is "very rare" and not reasonably foreseeable. PGE Opening Brief at 10. ICNU described in its opening brief why the National Electric Reliability Council ("NERC") data that PGE cites to demonstrate the rarity of the Boardman outage is unpersuasive. ICNU Opening Brief at 8-9. The NERC data merely demonstrates that few forced

outages last longer than a couple of days, which provides no basis to conclude that a 105-day outage is any more rare than a 5-day outage. Id. PGE’s anecdotal evidence about the foreseeability of the Boardman outage based on comparing the plant’s alleged “strong record of reliability” to the Company’s expectation that such an outage would not occur in Boardman’s lifetime is similarly unconvincing. PGE Opening Brief at 10. Both the evidence in the record and PGE’s experience with its own thermal generating facilities undermine the Company’s claims about the foreseeability of extended outages.

**a. The Assumptions Upon Which PGE’s 2005 and 2006 Power Were Set Demonstrate that This Outage Was Reasonably Foreseeable**

Confidential Exhibit ICNU/200 contradicts PGE’s claims that the Company could not have foreseen or quantified the possibility of an extended outage at a plant such as Boardman. As described above, the exhibit demonstrates that PGE’s forecast of forced outages for its thermal generating facilities in 2005 and 2006 included outage rates of magnitudes equal or greater than Boardman. The Colstrip facility is very similar to Boardman in terms of fuel, size, and cost to produce power, and PGE included a forced outage rate of [REDACTED] for that plant in 2005 and 2006 power costs as part of the four-year average. ICNU/200 at 4. According to PGE, the Company would not expect to experience extended outage events at a plant such as Boardman in the plant’s lifetime, but the evidence demonstrate that the Company experienced similar events at Colstrip only four years ago. PGE included even higher annual outage rates for Beaver and Coyote in its calculation of the four-year rolling average, which is intended to reflect “expected operation over the coming year.” Id.; ICNU/201 at 16. If PGE includes these outage rates in its forecast of plant availability for 2005 and 2006, then these events certainly should fall within the range of foreseeable risk for those years.

**b. The Frequency of PGE's Extended Forced Outages in Recent Years Contradicts the Claims That Such Events Are Unforeseeable**

The evidence regarding the frequency of extended forced outages in the last three decades for two PGE generating facilities alone demonstrates that the Company's description of events as "not expected in the lifetime of the plant" have little meaning. PGE first experienced an "extended" forced outage at Boardman just after the plant came on line in the early 1980s. PGE/200, Quennoz-Mayer/5; ICNU/201 at 16. Turbine blade problems at the plant required repairs in 1982-83. ICNU/201 at 16. OPUC Staff deemed the outage "extraordinary" enough to recommend removing it from forced outage rates for ratemaking purposes. Id.

Following the first Boardman outage in the 1980s, PGE experienced the extended outage and eventual decommissioning of the Trojan plant in the 1990s. This event, along with the six-month outage of PacifiCorp's Hunter 1 plant in 2000, certainly expanded the range of foreseeable risk with respect to outages that PGE was aware of prior to the most recent Boardman outages.

In this decade, PGE has now experienced two additional extended outages at Boardman that the Company claims it could not have foreseen in the plant's lifetime, and these outages resulted from failure of a turbine that has been operating for only five years. PGE installed the LPT1 turbine at Boardman in 2000, and this turbine suffered the failure that led to the 105-day outage at issue in this case in October 2005. PGE/200, Quennoz-Mayer/2. Following this first outage, the LPT1 turbine failed again, leading to a second, even longer outage that lasted over 140 days. PGE/200, Quennoz-Mayer/5; ICNU/203 at 1. This makes four extended forced outages in the last twenty-six years at two PGE generating facilities alone, all of which PGE alleges fall outside a range of foreseeable risk. The frequency of such outages

demonstrates that claims that such events should not occur in the lifetime of the plant are unsupported. Considering foreseeability in terms of PGE's actual experience demonstrates that extended outages can and do occur.

**c. PGE Has Provided No Evidence to Demonstrate Boardman's Reliability**

PGE claims that this outage was particularly unforeseeable due to Boardman's "strong record for reliability." PGE Opening Brief at 10. The Company has provided no hard evidence to support this claim. In fact, the evidence actually demonstrates that Boardman experienced an extended forced outage as soon as the plant came on line, and the facility has now experienced at least three extended forced outages in the last twenty-six years. The record lacks evidence to support PGE's claims regarding Boardman's superior reliability.

**3. PGE Has Provided No Evidence to Support Its Claim That Outage Costs Do Not Balance Out Over Time**

PGE also argues that the Boardman outage fits within the Commission's description of scenario events, because outage costs will not balance out over time. PGE Opening Brief at 10. According to PGE, the Company does not benefit from better than expected plant operation, because plants never experience greater than 100% availability. *Id.* at 10-11. PGE attempts to seize upon the Commission's statement in UM 1071 that the costs of hydro variability likely will balance out over time and, therefore, are generally inappropriate for deferred accounting. *Re PGE*, OPUC Docket No. UM 1071, Order No. 04-108 at 8 (May 2, 2004). PGE's position on this point skews the relevant comparison and is unsupported.

PGE's claim that outage costs do not balance out over time uses an improper point of comparison. The issue is not whether actual plant availability will exceed 100%. The

issue is whether actual plant availability exceeds the amount assumed in normalized power costs. Furthermore, in making this comparison, the Commission should consider the forced outage rate of all PGE's plants combined, because each plant will be above or below its forecast in any particular year. Over time, these deviations should balance out.

PGE's plants regularly experience actual outage rates that are substantially less than the outage rates assumed in power costs, and the Company collects more than its actual power costs when this occurs. PGE's power costs assumed forced outages rates for Colstrip of [REDACTED], [REDACTED], and [REDACTED] in 2003, 2004, and 2005, respectively, but Colstrip's actual outage rates for those years were only [REDACTED], [REDACTED] and [REDACTED]. ICNU/200 at 4. Similarly, PGE assumed forced outage rates for Coyote of [REDACTED] and [REDACTED] in 2004 and 2005, but Coyote's actual outage rates were only [REDACTED] and [REDACTED] for those years. *Id.* Customers have not sought or received a credit for these lower-than-assumed outage rates through deferred accounting.

The distribution of actual outage rates includes results that are both higher and lower than the outage rates assumed in normalized power costs. The fact that PGE now seeks to update the assumed costs to actuals for only one plant and one outage illustrates the problem with the selective use of deferred accounting. PGE and its customers have typically shared the benefits and burdens of the deviations from plant availability assumptions between rate proceedings. It would be unfair to allow PGE to selectively update forecasted outage rates for a plant that has a higher forecasted outage, while customers continue to pay the higher costs for plants that run better than forecast.

**B. PGE's Claims About the Financial Impact of the Outage and the Prospect of Interim Rate Relief Conflict with the Company's Previous Statements**

ICNU explained in its Opening Brief that PGE's claims of a 355 basis point impact (\$59 million) as a result of the Boardman outage included costs incurred prior to the date of the Application and did not account for the costs that were already included in rates. ICNU Opening Brief at 10-11. PGE's brief includes additional arguments about the financial impact that also present an inaccurate picture. In claiming that the Company could have justified interim rate relief, PGE maintains that it "did not have countervailing cost decreases to offset the excess power costs." PGE Opening Brief at 6. This is contrary to PGE's statements in its 2005 10-K that the "11% increase in PGE's average variable power cost [in 2005] was largely offset by both a reduction in total system load and a \$24 million decrease related to the amortization of costs deferred under power cost adjustment mechanisms in effect during 2001 and 2002." ICNU/102, Falkenberg/7.

PGE also inaccurately describes the financial impact as a result of costs that the Company alleges it would have to "absorb" even if the Commission authorizes a deferred account. The Company states that "[n]o one disputes that PGE should absorb normal variations related to Boardman's availability, such as the difference between the forced outage rate for Boardman and the rate actually experienced prior to the deferral period." PGE Opening Brief at 2. PGE's claim is misleading, because the Company's 2005 power costs assumed approximately 24 days of forced outage days for Boardman, which is approximately equivalent to the number of outage days that PGE experienced prior to the deferral period. Staff/100, Owings-Galbraith/16. As a result, PGE's outage costs prior to the deferral period are offset by at least the amount of outage costs included in 2005 power costs.

Furthermore, PGE fails to mention that the Company included the full 2005 outage in the forced outage rates in its 2007 RVM update and the general rate case. As a result, customers will continue to pay base energy rates that reflect the impact of the Boardman outage through at least 2007 under PGE's proposal. All of these factors demonstrate that that PGE has not simply "absorbed" all of the costs incurred prior to the deferral period.

**C. PGE's Suggestions About the Threshold for Materiality Are Misguided**

PGE urges the Commission to apply a "materiality" standard to the Boardman replacement costs for purposes of deciding whether a deferred account is justified, consistent with the Company's claims that the Boardman outage was a scenario event. PGE Opening Brief at 11-12. As described above, ICNU disagrees that the outage was a scenario event, and ICNU believes that the Commission should evaluate whether to grant PGE's Application according to whether the costs had a "substantial" financial impact. Nevertheless, certain of PGE's claims about materiality require a response.

PGE points out that Staff's witness suggested that one dollar of excess costs could satisfy the materiality requirement, and the Company states that the Commission has granted deferred accounting orders in the past "with no sharing or deadbands, supporting Staff's suggestion." Id. ICNU disagrees with PGE's arguments about materiality. PGE has filed in UE 180 a request to recover over \$800 million in net variable power costs in 2007. The Company filed for over \$600 million in power costs for 2006, and \$500 million for 2005. One dollar of excess power costs is not material even if the Company experiences a scenario event.

PGE's argument about previous deferred accounts that were not subject to a deadband and sharing mechanism fails to distinguish the financial threshold that the earnings

impact on the Company costs must meet to justify a deferred account from the deferral mechanism that the Commission adopts if a deferred account is granted. The Boardman outage's earnings impact must meet the requisite financial threshold for either a stochastic or scenario event for the Commission to authorize a deferred account in the first place. In UM 1071, for example, the Commission denied PGE's request for a hydro-related deferred account in part because the costs at issue were not "substantial." Order No. 04-108 at 9.

PGE also fails to acknowledge that the Commission has treated excess power cost deferrals differently than deferred accounts for other costs. PGE's examples of deferred accounts related to discrete issues such as the Oregon tax kicker, Grid West Loans, and information technology deferrals are much different than an excess power cost deferral with a lengthy deferral period. PGE Opening Brief at 12 n.10. This distinction is justified by the fact that the Commission has determined that utilities should bear the risk of power cost variations within a reasonable range. Moreover, ICNU is unaware of a utility requesting a deferred account for any other issue that involved costs on the magnitude of PacifiCorp's \$259 million in excess power costs in UM 995 or PGE's \$42.6 million at issue here. All of these circumstances demonstrate why a deadband and sharing mechanism is appropriate for excess power costs but might not be applied to other expenses.

If the Commission authorizes a deferred account, it should impose the 250 basis point deadband regardless of whether the Boardman outage is considered a stochastic or scenario event. In UM 995, the Commission imposed a 250 basis point deadband and 50/50 sharing even though PacifiCorp's costs related to a scenario event, and the Commission's recent orders have discussed this mechanism with approval for excess power cost recovery.

ICNU also disagrees with PGE's suggestion that the Commission "pro-rate" the financial threshold and deadband requirements that the Commission has applied in previous cases to take into account the length of the deferral period in this case. PGE Opening Brief at 12. As explained below, the deadband ensures that the utility bears some power cost variations between rate cases, and it is not based on the specific circumstances of the case or the length of the deferral period. Pro-rating the financial threshold or deadband undermines the idea that the utility is responsible for a range of excess power costs before customers share in the burden.

**D. PGE's Discussion of the Commission's Deferred Accounting Decisions Inaccurately States the Commission's Policy**

The Commission has discussed at length in recent orders the standards that apply to deferred accounting applications, yet PGE's opening brief attempts to create its own version of that policy. PGE may not agree with the Commission's policy, but the standards described in the orders in UM 1071, UM 1147, and UE 165/UM 1187 govern the Company's request in this case. PGE's efforts to distinguish its Application are unpersuasive for the reasons that follow.

**1. The UM 995 Order Highlights Why the Present Circumstances Do Not Justify Deferred Accounting**

PGE criticizes the parties' recommendations to use 250 basis points as a measure of "substantial" financial impact and to impose a 250 basis point deadband on the grounds that these recommendations are based on the UM 995 order. Id. at 14. According to PGE, "this is not UM 995." Id. The Company posits a number of reasons why UM 995 was a fact-specific decision, but examining the circumstances in UM 995 only demonstrates why the Boardman outage costs do not warrant a deferred account. Id. at 14-15. Furthermore, contrary to PGE's assertions, the parties' recommendations in this case are not based solely on UM 995. The

Commission has discussed the deadband in a number of recent cases in which PGE was involved, and the foundation for and reasoning behind the 250 basis point deadband is well-established.

**a. The Circumstances Under Which the Commission Authorized a Deferred Account in UM 995 Were Much Worse**

In UM 995, PacifiCorp incurred excess power costs due to a convergence of events: the Hunter outage, unprecedented high wholesale power costs, poor hydro conditions, and cold weather. See Re PacifiCorp, OPUC Docket Nos. UM 995, UE 121, and UC 578, Order No. 02-469 at 1 (July 18, 2002). In addition, the \$786.7 million (\$259 million Oregon) in excess power costs at issue in UM 995 exceeded the 250 basis point threshold by a substantial margin. It was this combination of factors that the Commission has since described as a “scenario” event, and these circumstances are markedly different than the temporary plant outage at issue in this case. Order No. 04-108 at 8-9.

**b. The Commission Has Restated the Purpose of the 250 Basis Point Deadband in UM 1071 and UE 165/UM 1187**

PGE argues that “it does not appear that the Commission intended the UM 995 Order to serve as precedent, let alone in the nature of the ‘rule’ the parties imply it is,” remarking that the order includes “little reasoning in support of the deadband and sharing mechanism adopted.” PGE Opening Brief at 14. PGE’s complaint about a lack of rationale behind the

deadband ignores the discussion in the UM 995 order itself, as well as the Commission’s subsequent discussion of that order in UM 1071 and UE 165/UM 1187.<sup>1/</sup>

The Commission never concluded in UM 995 that a utility would be permitted to recover all of its excess power costs even if those costs were the result of an extraordinary situation. Even recognizing the convergence of unanticipated circumstances that resulted in the excess power costs in UM 995, the Commission concluded that “[i]n this extraordinary situation, we believe PacifiCorp should have an opportunity to recover *some* of its excess power costs.” Re PacifiCorp, OPUC Docket Nos. UM 995, UE 121, and UC 578, Order No. 01-420 at 29 (May 11, 2001) (emphasis added). The Commission did not find that PacifiCorp was entitled to defer 100% of its costs or that customers should bear all excess power costs when circumstances are extraordinary.

The Commission affirmed this conclusion in UM 1071, stating that it allowed no recovery of costs or refunds within the deadband in UM 995, because cost variations within that band “represented risks assumed, or rewards gained, in the course of the utility business.” Order No. 04-108 at 9. In finding that the \$31.6 million in costs at issue in UM 1071 was not “substantial” enough to warrant a deferred account, the Commission noted that the financial impact was “well short of the 250 basis points of return on equity within which we allowed no recovery in UM 995.” Id. In other words, even if extraordinary circumstances warrant a deferred account, the utility still should bear a substantial amount of the excess power costs to reflect the range of risk that the utility assumes between rate cases.

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<sup>1/</sup> PacifiCorp made the same complaint regarding the adequacy of the explanation in Order No. 01-420, when it sought judicial review of the Commission’s decision. Both the Oregon Court of Appeals and the Marion County Circuit Court affirmed the Commission’s order. PacifiCorp v. Public Util. Comm’n, 189 Or. App. 87 (2003).

In UE 165/UM 1187, the Commission explained that it determines if an event is “extraordinary” and has a “substantial” financial impact according to “whether the event impacted the utility’s earnings beyond a reasonable range within which the utility should bear the entire cost or benefit of variability.” Re PGE, OPUC Docket Nos. UE 165/UM 1187, Order No. 05-1261 at 9 (Dec. 21, 2005). The Commission specifically cited its discussion in UM 1071 as the basis for the statements. Id. Note that the Commission focused on the financial impact of the event on earnings. PGE’s claim about the lack of reasoning supporting the deadband is directly contrary to and ignores the Commission’s decisions in recent PGE cases.

**c. The 250 Basis Point Deadband Is Unrelated to the Length of the Deferral Period or Other Case-Specific Circumstances**

PGE claims that the 250 basis point deadband should not apply in this case because UM 995 involved a global deferral that covered twelve months, but the proposed Boardman deferral covers only three months. PGE Opening Brief at 15. According to PGE, the Commission chose a 250 basis point deadband in UM 995 “as a fair amount for PacifiCorp to absorb given all the circumstances present.” Id. at 11 n.8. The Commission’s statements in UM 995, UM 1071, and UE 165/UM 1187 all demonstrate that PGE’s description of the Commission’s reasoning is wrong. The Commission’s stated purpose for the 250 basis point deadband is to establish a reasonable range of power cost variation for the utility to bear between rate cases. Order No. 05-1261 at 9. The Commission has never indicated that the 250 basis point deadband was based on specific circumstances in UM 995.

A more careful reading of the UM 995 order demonstrates that the Commission adjusted the *outermost* band of the deferral mechanism to reflect the specific circumstances in that case, and the Commission ordered that adjustment to ensure that customers would bear less

cost rather than more. Order No. 01-420 at 29. Parties argued in UM 995 that PacifiCorp's excess power costs should be adjusted to prevent Oregon customers from paying for expenses attributable to Utah load growth, and the Commission adjusted PacifiCorp's deferral mechanism accordingly: "In response to the problem of PacifiCorp being a multi jurisdictional company, we choose Staff's Option 1: Revise the sharing percentage over 400 basis points from 90/10 to 75/25 for customers/company." Id. In other words, even if PGE had demonstrated circumstances that justified modifying the deferral mechanism, Commission precedent demonstrates that it is not the deadband that the Commission should adjust.

**d. The Deadband's Purpose Is Not to Ensure a Particular Amount of Deferred Costs**

PGE also complains that the deadband would result in the Company deferring less in this Docket than PacifiCorp was authorized to defer in UM 995. PGE Opening Brief at 15. Again, the deadband's purpose is to ensure that the utility bears some power cost variation between rate cases. The deadband is not designed to be adjusted to affect a certain level of power cost deferral. Furthermore, PGE's complaints about disparate treatment assume that deferred accounting is justified in the first place, and the UM 1071 order demonstrates that the Commission will not authorize a deferred account unless the earnings impact of the event at issue exceeds some requisite financial threshold. Order No. 04-108 at 9. Finally, the result that PGE complains about is precisely how the deadband is intended to operate. The utility is permitted to defer some costs in excess of the deadband.

**2. The Trojan Shutdown and Decommissioning Was Markedly Different Than the Temporary Boardman Outage**

PGE also argues that the order authorizing a deferred account for the Trojan decommissioning supports the Company's Application, but the facts and circumstances surrounding the Trojan deferrals are much different than those at hand. The Commission authorized the Trojan deferrals fifteen years ago, and it has significantly clarified its deferred accounting policy since that time. More recent orders provide directly applicable guidance.

In addition, the shutdown and decommissioning of a nuclear facility is different than a temporary outage at a coal plant. The order acknowledged that Trojan was a "unique resource" and that a deferred account would "help allay recent concerns of financial analysts" that downgraded PGE's senior secured debt following the outage. Re PGE, OPUC Docket Nos. UE 81, UE 82, UM 445, and UE 47, Order No. 91-1781 at 1, Appendix A, p. 5 (Dec. 20, 1991). No such circumstances are present here.

**E. PGE's Discussion of the Commission's Ratemaking Authority is Far Off the Mark**

PGE's opening brief includes a curious discussion of the "legal limits" of the Commission's ratemaking authority. PGE Opening Brief at 16-18. The Company effectively argues that, in order to comply with statutory and constitutional ratemaking constraints, the Commission is required to either: 1) authorize a deferred account and allow recovery of the Boardman outage costs; or 2) include the Boardman outage in the forced outage rates used to set normalized power costs. Id. According to PGE, ICNU has taken the position that "utilities may not recover operating costs associated with extraordinary plant outages," because ICNU recommends denying PGE's application in this Docket and ICNU allegedly has excluded the Boardman outage from the plant's future availability in UE 180. Id. at 16. PGE essentially

claims that it is unlawful for the Commission to allocate power cost risk to the Company between rate cases, but that is one of the fundamental assumptions of regulated ratemaking. PGE's claims about both ICNU's arguments and the Commission's authority are seriously misplaced.

**1. ICNU's Recommendation That the Commission Deny PGE's Application Is Based on Applying the Commission's Deferred Accounting Policy**

ICNU has not taken the position that utilities may not recover operating costs associated with plant outages. In this Docket, ICNU has requested that the Commission deny PGE's application, because it fails to satisfy the Commission's discretionary standards and the statutory requirements for deferred accounting. PGE claims that ICNU's recommendation to apply financial thresholds to the Application and impose a 250 basis point deadband is the product of a "faulty deferred accounting policy," but the policy that ICNU applied is the one defined by the OPUC's recent orders. Id. at 17. PGE's disagreement is with the Commission's policy.

PGE's claim that the Commission could somehow be required to authorize a deferred account to satisfy constitutional or statutory requirements is entirely inconsistent with the Company's recognition that deferred accounting is a discretionary tool available to the Commission. See Order No. 04-108 at 8. The Commission establishes base utility rates in a rate case, and the Commission has the option to approve a deferred account if it determines that recovering certain costs between rate cases is appropriate. The Commission is not required, however, to authorize deferred accounting as part of ratemaking. Under PGE's reasoning, the Commission could not order a prudence disallowance associated with an extraordinary plant

outage because doing so would lead to unlawful or confiscatory rates. There simply is no basis in ORS § 757.259 or the constitution for the Company's argument.

**2. Non-Recurring Events Are Properly Excluded from the Four-Year Rolling Average for Forced Outage Rates**

Establishing normalized power costs, including adopting assumptions regarding forced outage rates, is much different than deciding whether to approve a deferred account, and the Commission is not determining the appropriate forced outage rate for future power costs in this case. Nevertheless, setting aside whether PGE's arguments about recommendations in UE 180 are relevant, the Company's claims that parties have taken an "extreme" and "punitive" position is incorrect. Staff noted when it first proposed using the four-year average for forced outage rates that the Commission should exclude non-recurring outages for ratemaking purposes. ICNU/201 at 16. In fact, Staff specifically stated that it was excluding the extended outage at Boardman in the early 1980s because "the problem was extraordinary." Id. Recommendations to exclude the most recent extended Boardman outage from the rolling average for forced outages are entirely consistent with this policy.

PGE does not even correctly describe ICNU's proposal in UE 180. ICNU has not proposed an adjustment to exclude the Boardman outage from forced outage rates. ICNU proposed imputing NERC average outage rates for comparable plants to model forced outages to remove the impact of the poor performance of PGE's thermal generating resources in recent years. OPUC Docket No. UE 180, ICNU/103, Falkenberg/14. ICNU explained that outage rates for certain PGE plants have exceeded the NERC averages by a substantial margin. Id. at Falkenberg/13. Using NERC data as the basis for forced outage rate assumptions will help eliminate any disincentive to improve plant reliability. Id.

**F. Adjusting the Amount Deferred Based on SB 408 is Inappropriate**

PGE suggests that, if the Commission authorizes a deferred account, it should adjust the deferral amount based on the tax impacts of costs incurred during the deferral period that are subject to any deadband or sharing mechanism. PGE Opening Brief at 18-19. Such an adjustment is inappropriate. The Commission determined in AR 499 that it would be contrary to the legislature's intent to adopt an earnings test or deferred account that would effectively offset the operation of the SB 408 automatic adjustment clause. Re Adoption of Permanent Rules to Implement SB 408, OPUC Docket AR 499, Order No. 06-532 at 10 (Sept. 14, 2006). PGE suggests that the Commission depart from its previous deferred accounting decisions to indirectly accomplish the result that it determined was unlawful in AR 499. The Commission should not endorse such a result. SB 408 was passed to correct the problem of utilities collecting substantially more income taxes in rates that were paid to units of government. The Commission should not abandon its deferred accounting precedent to attempt to address concerns about SB 408's response to problems that the utilities created.

PGE points out that the Commission noted in AR 499 that it would consider the tax effects when considering issues such as power cost adjustment ("PCA") mechanisms. Id. Even if the Commission authorizes a deferred account and considers the tax effects in this case, ICNU believes that an adjustment is unwarranted. Considering any tax impact associated with PGE's request for a one-time, temporary deferred account to selectively update the forced outage rate for one plant is significantly different than considering the impact of an ongoing PCA that remains in effect year after year. PGE and customers may be on equal footing with respect to revenue neutrality if the Commission authorizes a PCA. For a deferred account, however, PGE

controls the information regarding the costs at issue and has ability to determine whether or not requesting a deferred account will benefit shareholders. Given that the Commission already has determined that offsetting the operation of SB 408's automatic adjustment clause is contrary to legislature's intent, adjusting the deadband of a one-sided deferred account is particularly inappropriate.

Furthermore, even assuming for the sake of argument that an adjustment such as PGE suggests is warranted, adjusting the deadband at this time is premature. PGE's tax liability is a derivative value based on numerous factors, only one of which could be the impact of any deadband that the Commission adopts in this case. In addition, SB 408 itself is subject to uncertainty, with the expected efforts by the utilities to repeal or amend the law in the 2007 legislative session. Finally, PGE has not demonstrated that its replacement power costs were prudently incurred, and accounting for the tax impact of costs subject to a deadband is entirely different than examining the tax impacts of costs that are disallowed due to imprudence. Regardless of whether the Commission decides to adjust deferral to account for the tax impact of sharing mechanisms in the future, no adjustments should be made to reflect the effects of disallowing imprudently incurred costs.

If the Commission disagrees with ICNU and adjusts the amount deferred or the deadband at this time, ICNU agrees with Staff that the adjustment should apply only to those replacements costs incurred in 2006. Staff Opening Brief at 13. No SB 408 rate adjustment will apply to PGE's 2005 taxes, because SB 408 applies prospectively as of January 1, 2006. Or. Laws 2005, ch. 845, § 4.

### III. CONCLUSION

For the reasons stated above and in ICNU's Opening Brief, the Commission should deny PGE's Application for a deferred account or, in the alternative, approve the Application subject to the deferral mechanism adopted in UM 995.

Dated this 21st day of September, 2006.

Respectfully submitted,

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