Davison Van Cleve PC
Attorneys at Law
TEL (503) 241-7242 ● FAX (503) 241-8160 ● mail@dvclaw.com
Suite 400
333 SW Taylor
Portland, OR 97204

September 8, 2006

Via Electronic Mail and U.S. Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

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 Revised documents of the Industrial Customers of Northwest Utilities:

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

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

These documents have been modified to reflect the alternative recommendation for a deadband and sharing mechanism that ICNU put forth in testimony. The pages that have been modified are marked as REVISED – 09/08/06. Please do not hesitate to contact me if you have any questions

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

Sincerely yours,

/s/ Matthew W. Perkins
Matthew W. Perkins

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Opening 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 8th day of September, 2006.

/s/ Ruth A. Miller
Ruth A. Miller

DEPARTMENT OF JUSTICE
CONFIDENTIAL
STEPHANIE S ANDRUS
REGULATED UTILITY & BUSINESS SECTION
1162 COURT ST NE
SALEM OR 97301-4096
stephanie.andrus@state.or.us

CITIZENS' UTILITY BOARD OF OREGON
CONFIDENTIAL
LOWREY R BROWN
610 SW BROADWAY - STE 308
PORTLAND OR 97205
lowrey@oregoncub.org

CITIZENS' UTILITY BOARD OF OREGON
CONFIDENTIAL
JASON EISDORFER
610 SW BROADWAY STE 308
PORTLAND OR 97205
jason@oregoncub.org

RFI CONSULTING INC
CONFIDENTIAL
RANDALL J FALKENBERG
PMB 362
8351 ROSWELL RD
ATLANTA GA 30350
consultrfi@aol.com

PORTLAND GENERAL ELECTRIC
CONFIDENTIAL
RATES & REGULATORY AFFAIRS
121 SW SALMON ST 1WTC0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com

PORTLAND GENERAL ELECTRIC
CONFIDENTIAL
DOUGLAS C TINGEY
121 SW SALMON 1WTC13
PORTLAND OR 97204
doug.tingey@pgn.com

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.	)
	)

OPENING BRIEF OF THE

INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

REDACTED VERSION

(Redacted Information is Shaded)

September 7, 2006

TABLE OF CONTENTS

Page

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

TABLE OF AUTHORITIES

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

I. INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") requests that the Public Utility Commission of Oregon ("OPUC" or the "Commission") deny Portland General Electric Company's ("PGE" or the "Company") Application for approval to establish a deferred account to recover approximately $42.6 million[1/] in excess power costs associated with an outage at the Boardman plant from November 18, 2005, to February 5, 2006. PGE's Application fails to meet the Commission's standards for approval of a deferred account for the following reasons:

1. Forced outages represent stochastic risks that are predictable, expected as part of the normal course of events, and modeled in PGE's power costs for the purposes of setting rates. The Commission has determined that deferred accounting generally is inappropriate for such events.

2. The evidence demonstrates that PGE modeled plant outages of equal or greater magnitude than the Boardman outage in setting rates to recover 2005 and 2006 power costs. As a result, PGE's rates already compensate PGE for an outage such as Boardman.

3. PGE has failed to demonstrate that the Boardman outage had a substantial financial impact on the Company. PGE's alleged impact of 355 basis points of return on equity ("ROE") includes costs that are not part of the Application, which the Company cannot lawfully recover. In addition, PGE fails to account for the outage expenses already included in power costs. PGE's claims that the outage led to a decrease in 2005 earnings as compared to 2004 ignore the many other factors that impacted the Company's financial results.

PGE's Application suffers from the same primary flaw as many of the Company's other proposed power cost recovery mechanisms that the Commission has disapproved in recent years. See, e.g., Re PGE, OPUC Docket No. UM 1071, Order No. 04-108 at 8-9 (Mar. 2, 2004); Re PGE, OPUC Docket Nos. UE 165/UM 1187, Order No. 05-1261 at 8-9 (Dec. 21, 2005). PGE seeks to shift to customers additional power costs without recognizing that rates are set based on

[1/] As described below, this is the deferral balance after applying certain adjustments that ICNU and Staff support. PGE maintains that the appropriate deferral balance is $45.7 million. PGE/400, Lesh-Tinker/3.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

the assumption that forced outages will occur. Further, the Company bears the risk of power cost variability between rate cases, and the Company's authorized ROE compensates for the risk of variations in costs. ICNU urges the Commission to deny PGE's Application.

If the Commission disagrees with ICNU and authorizes a deferred account, ICNU recommends that the Commission adopt a deferral mechanism that includes the 250 basis point deadband and 50/50 sharing mechanism applied to previous excess power cost deferrals. That deadband and sharing mechanism would reflect both the risk of power cost variability that PGE should bear between rate cases, as well as an appropriate sharing of the costs in excess of that amount.

II. BACKGROUND

PGE first took the Boardman plant off line on October 22, 2005, after discovering a vibration "in the rotor of the low-pressure turbine rotor . . . ." Application at 3. After conducting a series of tests that led to fully disassembling the rotor, PGE determined that the vibrations were due to a crack in the rotor. PGE/200, Quennoz-Mayer/4. PGE sent the rotor to a third party for repair and received and reinstalled the rotor in late January 2006. At that time, PGE experienced another failure in the generator, and Boardman remained out of service until June 28, 2006. ICNU/203 at 1. Unlike the initial rotor failure, PGE has provided no explanation regarding the subsequent failure of the plant. See PGE/200, Quennoz-Mayer/4-5.

PGE filed its Application for deferred accounting on November 18, 2005, twenty-six days after the Company first took Boardman off line. The Company requests authority to defer replacement power costs incurred from the date of the Application to February 5, 2006, the date that PGE "deemed" the outage to end. ICNU/205 at 1. PGE has not explained or provided

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

evidence to demonstrate why the Company deemed the outage to end when the plant remained out of service for an additional five months. See id.; ICNU/206 at 1.

PGE claims that its deferral application is "inextricably related" to the four-year rolling average that the Commission has traditionally used to calculate forced outage rates, because the Company included the Boardman outage in the average forced outage rates in its current general rate case (UE 180) and 2007 Resource Valuation Mechanism ("RVM") filings (UE 181). PGE/400, Lesh-Tinker/5. PGE states that it will remove from general rate case and RVM power costs any portion of the outage for which the Commission authorizes deferred accounting. Application at 5. PGE has not explained why the Company has attempted to recover the costs of the outage in this piecemeal fashion.

On March 2, 2006, the Administrative Law Judge issued a Prehearing Conference Report that bifurcated this proceeding into two phases. The parties were directed to address the following issues in this phase of the proceeding:

> 1) Whether PGE's application meets deferral requirements; 2) What deferral mechanism should be used; and 3) What are the rate implications of the deferral.

If the Application does not satisfy the deferral requirements, the last two issues become moot. Issues related to prudence and amortization will be addressed in the second phase (if any) of the proceeding.

III. ARGUMENT

The Commission concluded as part of its investigation into deferred accounting policies that deferred accounts should be used "sparingly" and has recognized in recent dockets that authorizing a deferred account to recover excess power costs often upsets the balance of risk

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

upon which utility rates are set. Re Staff Request to Open an Investigation Related to Deferred Accounting, OPUC Docket No. UM 1147, Order No. 05-1070 at 10 (Oct. 5, 2005); Order No. 04-108 at 8-9. ICNU urges the Commission to apply these same principles to deny PGE's Application in this case. The Application fails to meet the Commission's discretionary deferred accounting criteria and the statutory standards in ORS § 757.259. In addition, PGE has failed to justify the patchwork means by which the Company seeks to recover the Boardman replacement costs. The Company's efforts to recover the Boardman costs through a combination of a deferred account and forced outage rates suggest efforts to "game" cost recovery.

A. The Boardman Outage Does Not Warrant a Deferred Account According to the OPUC's Framework for Examining Deferred Accounting Applications

The Commission first described the framework for evaluating requests for an excess power cost deferred account in UM 1071. In that case, the Commission applied the framework and denied PGE's request for a deferred account related to variations in 2003 hydro generation. Order No. 04-108 at 8-9. The Commission subsequently affirmed this framework in its generic investigation of deferred accounting principles and policies in UM 1147 and in its decision denying PGE's request for a hydro-related power cost recovery mechanism and deferred account in UE 165/UM 1187. Order No. 05-1070 at 3, 7; Order No. 05-1261 at 8-9.

In UM 1071, the Commission explained that it evaluates a deferred accounting application according to whether it: 1) warrants an exercise of the Commission's discretion; and 2) fits within the criteria in the deferred accounting statute. Order No. 04-108 at 8. In deciding whether to exercise its discretion, the Commission evaluates two interrelated factors: 1) the type of event that caused the request for deferral; and 2) the magnitude of the event's effect. Id. The

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

utility bears the burden of identifying the event and demonstrating its significance. Order No. 05-1070 at 7.

With respect to the type of event that caused the request for deferral, the Commission distinguishes "stochastic" risks from "scenario" risks. Order No. 04-108 at 8-9. Scenario risks are those that are not subject to quantification or prediction. Id. Stochastic risks, on the other hand, are subject to prediction or quantification and are capable of being modeled in rates. Id.

The Commission considers the magnitude of the event's effect in terms of the financial impact on the utility. For stochastic risks, the event must have a "substantial" financial impact in order to merit deferred accounting. Id. at 9. For scenario risks, the financial impact must be "material." Id.

The Commission succinctly summarized the implications of this framework in UM 1147: "risks that are reasonably predictable and quantifiable are generally not appropriate for deferral unless the second consideration, the magnitude of the financial impact of the event on the utility, is substantial enough to warrant deferral." Order No. 05-1070 at 3. As described below, forced outages of thermal plants like Boardman are reasonably predictable and have been modeled in rates, and the impact of the Boardman outage on PGE barely meets the standards for what the Commission has considered "substantial."

1. The Boardman Outage Represents a Stochastic Risk That the Commission Considered in Establishing PGE's 2005 and 2006 Power Costs

The evidence in this proceeding demonstrates that the Boardman outage represents a stochastic risk, because forced outages are expected to occur during the normal course of the utility business and do so with a frequency that is predictable and quantifiable.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

ICNU/100, Falkenberg/14; Staff/100, Owings-Galbraith/16. Although PGE argues that the Commission should consider the Boardman outage a scenario event because it was "rare" in duration, PGE's evidence in support of this claim provides no basis to conclude that a 100-day outage is any more rare or improbable than a 6-day outage. As a result, PGE also has failed to demonstrate that any extenuating circumstances justify treating the Boardman outage as a scenario event.

a. PGE Modeled Forced Outages of Magnitudes Equivalent to the Boardman Outage in Setting 2005 and 2006 Power Costs

PGE currently establishes power costs using model results that assumed forced outages for all of its thermal generating facilities, including Boardman. The forced outage rate is based on a four-year rolling average of actual outage rates. PGE/400, Lesh-Tinker/5. PGE used this methodology to establish the rates approved by the Commission in the 2005 and 2006 RVM proceedings, and the evidence demonstrates that PGE's 2005 and 2006 costs included a forced outage rate of approximately 6.5% for Boardman. Staff/100, Owings-Galbraith/16. This represents approximately 24 days of outages each year. Id.

PGE has argued that the duration of the Boardman outage makes it "rare" enough to be considered a scenario event, but PGE ignores that the Commission's distinction between stochastic and scenario events focuses on whether a risk is predictable and capable of being modeled in rates rather than whether the event is rare. PGE/100, Lesh/7. PGE's response to an ICNU data request asking whether PGE believed that any outage at Boardman would be unforeseeable demonstrates that the Company fails to recognize the distinction upon which the OPUC's deferred accounting policy is based. PGE maintains that "[f]orced outages by definition are not subject to prediction," but this argument conflicts with the fact that PGE's power costs

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

incorporate forced outage rates that assume that the Company will experience outages with predictable frequency during the year. ICNU/210 at 1. Furthermore, PGE has multiple generating facilities, increasing the odds that the Company will experience an extended forced outage. ICNU/100, Falkenberg/14. It is these types of predictable events that the OPUC has concluded typically are inappropriate for deferred accounting. According to PGE's rationale, all forced outages would be considered unforeseeable scenario events. This is unrealistic and disregards the assumptions underlying PGE's power costs that the deferred accounting policy implicitly recognizes.

Even accepting for argument's sake PGE's claims that outages of this magnitude are "rare," the evidence demonstrates that PGE's 2005 and 2006 power costs included forced outage rates that reflected annual plant outages of equal or greater magnitude than the 2005 Boardman outage. Confidential Exhibit ICNU/200 is a PGE spreadsheet that reflects forced outage rates for the Company's thermal generating facilities over the past ten years, along with the rolling four-year average forced outage rates in the Company's 2004-2007 RVM filings. According to PGE's calculations, including the 2005 portion of the outage in Boardman's 2005 modified equivalent forced outage rate results in an annual outage rate of [redacted], and the exhibit plainly shows that annual outages of similar and even greater magnitudes were included in 2005 and 2006 power costs. ICNU/200 at 4. For example, Colstrip and Beaver had forced outage rates of [redacted] and [redacted], respectively, in 2002, and PGE included both of these values in its calculation of the four-year rolling averages used for setting 2005 and 2006 power

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

costs. Id. Similarly, Coyote had a forced outage rate of [redacted] in 2003, and this rate also was included in the 2005 and 2006 RVM filings.[2/] Id.

The evidence conclusively demonstrates that: 1) PGE modeled forced outages for Boardman in the Company's 2005 and 2006 power costs; and 2) PGE's 2005 and 2006 power costs accounted for forced outage rates of equal or greater magnitude than what the Company experienced for Boardman in 2005. There is no credible argument under these circumstances that an outage of the magnitude of the Boardman outage was unforeseeable when the Commission established 2005 and 2006 power costs or that it falls outside of the range of foreseeable risk. No other extenuating circumstances justify PGE's claims that the Boardman outage was a scenario event. If the Commission accepts PGE's argument that the Boardman outage was a scenario risk, this effectively would allow PGE to selectively choose which outages to include in its forced outage rate, and which to seek recovery of through deferred accounting. It would be inappropriate to allow a deferred account for Boardman costs, without also accounting for the fact that Colstrip or other plants may have performed better than the outage rates noted above. This illustrates an essential problem with deferred accounting in that a utility can selectively true up normalized costs to actual costs.

b. PGE's North American Electric Reliability Council Data Does Not Demonstrate That the Boardman Outage Was a Scenario Risk

PGE claims that North American Electric Reliability Council ("NERC") plant outage data covering the last twenty years demonstrates that the duration of the Boardman outage was "rare," but that data provides no basis for the distinction that PGE seeks to draw. PGE/300, Drennan-Tinker-Hager/4. PGE states that only 0.24% of outages reflected in NERC data

[2/] PGE also included these outage rates in the 2004-2007 RVM proceedings and in UE 180.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

covering the last twenty years lasted as long as the Boardman outage, but this data also demonstrates that almost 90% of the outages lasted five days or less. Id. at Drennan-Tinker-Hager/5; PGE/302, Drennan-Tinker-Hager/1. In other words, according to PGE's rationale, every outage that lasted longer than a couple of days would be treated as a scenario event under the Commission's deferred accounting framework.

PGE's admissions in this Docket demonstrate that the distinctions between "normal" and "rare" outages based on the NERC data are meaningless. PGE states that the twenty-six days that Boardman was out of service prior to the Company filing its deferred accounting application "is probably more representative of a 'normal' event," and the evidence demonstrates that 2005 and 2006 power costs reflected twenty-four days of forced outage for Boardman. PGE/100, Lesh/5; Staff/100, Owings-Galbraith/16. According to PGE's NERC data, however, outages lasting longer than twenty-six days comprise only approximately 1.5% of the total outages for plants similar to Boardman. PGE/302, Drennan-Tinker-Hager/1. As a result, the NERC data simply provides no statistical basis to conclude that the Boardman outage was any more "rare" than the length of outages that were included in 2005 and 2006 power costs. PGE has failed to submit any other evidence to support its argument to treat the outage as a scenario event.

2. The Boardman Outage Has Not Had a Substantial Financial Impact on PGE

The Commission has stated that deferred accounting is unwarranted for stochastic risks unless the underlying event is extraordinary and the financial impact is substantial. Order No. 05-1261 at 8-9. As described above, the evidence demonstrates that the Commission should treat the Boardman outage as a stochastic event.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

In previous cases, the Commission has determined whether an event is extraordinary and had 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." Id. at 9. In UM 995, the Commission authorized an excess power cost-related deferred account for PacifiCorp that included a 250 basis point "deadband" within which PacifiCorp did not recover any excess power costs. Re PacifiCorp, OPUC Docket No. UM 995, Order No. 01-420 at 5, 28 (May 11, 2001). The Commission also applied the 250 basis point deadband in both PGE's and Idaho Power's excess power cost deferrals during 2000-01. Re PGE, OPUC Docket No. UM 1008/1009, Order No. 01-231 at Appendix A, p. 4 (Mar. 14, 2001); Re Idaho Power, OPUC Docket No. UM 1007, Order No. 01-307 at Attachment A, p. 1 (Apr. 25, 2001). In UM 1071, the Commission used the 250 basis point deadband as a reference point to find that PGE's $31.6 million in excess power costs was "not significant enough . . . to warrant a deferral," noting that this alleged impact fell "well short of the 250 basis points of return on equity in which [the OPUC] allowed no recovery in UM 995." Order No. 04-108 at 9. The Commission explicitly stated that the 250 basis point deadband reflected the range of power cost variations that "represented risks assumed, or rewards gained, in the course of the utility business." Id. These decisions demonstrate that 250 basis points is an appropriate measure of the minimum financial impact necessary to allow deferral of a cost arising from a stochastic risk that already has been modeled in rates.

a. PGE's Claim of a 355 Basis Point Impact Is Exaggerated and Includes Costs That the Company Cannot Lawfully Recover

PGE has alleged that the replacement power costs for the Boardman outage amounted to approximately $59 million, which had a financial impact equivalent to 355 basis

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

points of ROE. PGE/100, Lesh/7-8. PGE's estimate includes more than $14 million that the Company cannot lawfully recover because it incurred those costs before applying for deferred accounting, and ORS § 757.259 authorizes the Commission to approve cost recovery beginning only on the date of the application. ICNU/100, Falkenberg/15; ORS § 757.259(4). As a result, the Commission should consider only the costs incurred during the deferral period to determine whether a substantial financial impact exists. In fact, the nature of PGE's Application actually requires the Commission to consider only the replacement power costs incurred during PGE's proposed deferral period as opposed to those incurred over the entire outage period. PGE requests deferral of the replacement costs incurred through February 5, 2006, but Boardman did not return to service until June 28, 2006. Although PGE has not explained the reason for limiting the deferral period, the Company requests that the Commission consider only a portion of the total replacement power costs. As a result, the Commission should resolve PGE's Application based on the financial impact of costs incurred during the deferral period. Eliminating from consideration the costs that PGE incurred prior to filing its Application reduces the costs at issue to $45.5 million. ICNU/100, Falkenberg/16.

PGE's alleged 355 basis point impact also relies on the unfounded assumption that the Company lost Boardman's full rated capacity of 383 MW during the deferral period. Id.; Staff/100, Owings-Galbraith/5. This is inconsistent with the Boardman capacity included in 2005 and 2006 power costs, which included the 6.5% forced outage rate discussed earlier. Including the Boardman forced outage rates results in a derated Boardman capacity of 358 MW in 2005 and 356 MW in 2006. Staff/100, Owings-Galbraith/5. Adjusting PGE's calculation to reflect Boardman's derated capacity reduces PGE's alleged financial impact to $42.6 million.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

ICNU/100, Falkenberg/16. PGE agrees that this is the approximate financial impact at issue after making the adjustments to the Company's calculation that ICNU and Staff recommend. PGE/400, Lesh-Tinker/4.

Replacement power costs of $42.6 million have an ROE impact of 254 basis points. ICNU/100, Falkenberg/16. This barely exceeds the 250 basis point measure that the Commission has used in previous cases, and this does not take into account other factors such as hydro conditions or gas and electric prices that may have affected the deferral balance during this period. Furthermore, in UM 1071, the Commission cited Idaho Power cases in which 725 and 675 basis point impacts were at issue as examples of "more serious" impacts that warranted deferred accounting. Order No. 04-108 at 10. The financial impact that PGE alleges pales in comparison to these numbers. As such, the Boardman outage's impact has not been "substantial" for purposes of the deferred accounting framework.

b. PGE's Has Overstated the Boardman Outage's Impact on 2005 Earnings

PGE's other evidence of the alleged financial impacts also fails under scrutiny. The Company alleges that it earned a 6.3% ROE in 2005, that its 2005 earnings were down $28 million dollars from 2004, and that these results are largely attributable to the cost of the Boardman outage. PGE/100, Lesh/3. First, PGE's claims that 2005 earnings were less than those in 2004 is a red herring, because the evidence demonstrates that PGE's $64 million in net income in 2004 is roughly equivalent to the $60 million and $66 million that PGE earned in 2003 and 2002, respectively. ICNU/102, Falkenberg/6.

Second, PGE does not describe all the various factors that contributed to 2005 earnings. In the Company's 2005 10-K, PGE attributes its 2005 earnings to a $21 million

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

increase in other expenses from 2004 levels, establishment of a $10 million reserve for refund of Multnomah County Business Income Taxes, and lower hydro production. Id. at Falkenberg/7-8. ICNU witness Randy Falkenberg determined that the 2005 hydro conditions[3/] alone had a 149 basis point impact on PGE's 2005 earnings, while the impact of losing the Boardman generation was only about 210 basis points. ICNU/100, Falkenberg/12.

Finally, PGE's 2005 10-K also states that the 11% increase in average variable power costs, which included the impact of the Boardman outage "was largely offset by both a reduction in total system load and a $24 million decrease related to the amortization of costs deferred under [PCAs] in effect during 2001 and 2002." ICNU/102, Falkenberg/7. In other words, PGE's claims in this docket provide only a limited glimpse of the Company's 2005 earnings picture. A more comprehensive understanding of PGE's earnings reveals that the Boardman outage's overall impact is not as significant as the Company has claimed and that the true earnings impact does not qualify as "substantial" under the Commission's guidelines.

3. Authorizing a Deferred Account for Boardman Outage Costs Does Not Satisfy the Requirements of ORS § 757.259

The other element of the Commission's deferred accounting framework is whether the application is consistent with ORS § 757.259, and the Commission does "not grant deferral unless it is clearly within the reach of the statute." Order No. 04-108 at 8; Re PacifiCorp, OPUC Docket No. UE 76, Order No. 92-1128 at 8 (Aug. 4, 1992). PGE requests a deferred account pursuant to ORS § 757.259(2)(e), in order to "minimize the frequency of rate changes or the fluctuation of rate levels or match appropriately the costs borne by and benefits

3/ In UE 165/UM 1187, the Commission rejected PGE's request for a temporary power cost adjustment mechanism related to hydro conditions.

received by ratepayers." Application at 5. The evidence demonstrates that a deferred account will not achieve either of these objectives.

a. Authorizing a Deferred Account Will Not Minimize the Frequency of Rate Changes

PGE claims that a deferred account will minimize the frequency of rate changes, because the Company would have requested emergency, interim rate relief in the absence of seeking a deferred account. PGE/100, Lesh/3. Under these circumstances, ICNU urges the Commission to test the legitimacy of such a claim according to the Commission's standards governing interim rate relief. The Commission should not accept unsupported assertions that PGE would have sought such relief as a basis to conclude that the Company has satisfied the requirements of ORS § 757.259.

The Commission will consider granting an interim rate increase "[w]here the utility can show a compelling need for immediate rate relief." Re PGE, OPUC Docket Nos. UE 47/UE 48, Order No. 87-1017 at 53 (Sept. 30, 1987) (internal citations omitted). In such instances, "the utility should show severe financial stress or some other such reason to gain approval" and that "its ability to serve the public at reasonable rates will be jeopardized." Id.

PGE has provided no evidence to demonstrate that a request for interim rate relief has any legitimate chance for success according to this standard. PGE has not even shown severe financial stress as a result of the outage. In fact, the evidence demonstrates that PGE's 2005 earnings were very similar to the Company's earnings in 2002 and 2003. Furthermore, PGE has not alleged that its ability to continue providing service was jeopardized as a result of the Boardman outage, and any claims to that effect would be unrealistic regardless.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

In addition, due to the manner in which PGE has filed its rate case in UE 180, the Company proposes to implement rate changes on: 1) January 1, 2007, when rates based on the power costs established in the 2007 RVM would take effect; 2) January 18, 2007, when rates based on PGE's general rate case filing would take effect; and 3) on March 1, 2007, when the Company proposes rates that incorporate the new Port Westward generating facility to take effect. Given the frequency of these rate changes, authorizing deferral would not minimize the fluctuation of rate levels.

b. Authorizing a Deferred Account Will Not Match the Costs and Benefits for Ratepayers

PGE also incorrectly claims that granting deferred accounting will appropriately match the costs borne by and benefits received by customers. According to PGE, a mismatch in costs and benefits would occur without a deferred account, because customers would use power at lower costs than those PGE actually incurred. PGE/100, Lesh/4. PGE's arguments misconstrue the matching of costs and benefits that was intended under this section. The Commission has previously stated that this provision of the statute "means that in the instance where a cost being experienced by a utility today related to a benefit which may be received by a customer in the future, the Commission may defer recovery of such cost until such time as the related benefit can be delivered to the customer." Order No. 92-1128 at 9. In the legislative history of ORS § 757.259, former OPUC Commissioner Charles Davis used as an example of the appropriate matching of costs and benefits weatherization programs that "would produce benefits lasting for some time," stating that spreading the costs of such a program over an extended period may be appropriate under this section. Hearing on HB 2145 before the House Committee on Energy and Environment, Exhibit B at 8 (Mar. 11, 1987) (testimony of OPUC Commissioner

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

Davis). The Boardman replacement costs at issue in this case provide no such future benefit to ratepayers that could be matched against deferred costs.

The Commission has recently determined that it will examine applications under this provision of ORS § 757.259(2)(e) on a case-by-case basis and that the lack of benefit as described in previous orders and in the legislative history may not prohibit authorizing a deferred account in some circumstances. Re PacifiCorp, PGE, and Idaho Power, OPUC Docket Nos. UM 1256, UM 1257, and UM 1259, Order No. 06-483 at 5 (Aug. 22, 2006). For example, the Commission found that an exact match of costs and benefits was not required under the deferral statute if the deferral furthers some other regulatory policy. Id. No such policy is implicated here.

PGE's arguments also ignore the cost that customers bear for forced outages regardless of whether any such outages actually occur. As Exhibit ICNU/201 demonstrates, PGE's power costs include significant amounts of replacement power for forced outages at all of PGE's thermal generating facilities each year, and customers pay for those costs regardless of whether any forced outages occur. Determining whether a deferred account would result in an appropriate match of costs and benefits would require an examination of the costs that customers already have incurred for outages. PGE's request merely seeks to selectively update the forced outage costs for one plant without respect to the costs that customers have paid in relation to outage rates assumed for all other plants during the deferral period. PGE has not provided any evidence to demonstrate that its Application appropriately matches costs and benefits from this broader perspective, and there is no basis to assume that the proposed deferred account meets the statutory requirements.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

B. PGE Has Failed to Justify its Proposed Recovery from the Perspective of Customer Benefits or Sound Regulatory Policy

PGE has failed to explain why the Company seeks to recover the Boardman outage costs through a patchwork combination of deferred accounting and forced outage rates, and ICNU urges the Commission to disapprove any deferred account that reflects in any manner an attempt to game cost recovery. PGE currently proposes to recover the costs of the outage as follows: 1) the Company would recover costs incurred prior to filing its deferred accounting Application (from October 22, 2005, to November 17, 2005) through forced outage rates in the 2007 RVM and the general rate case; 2) the Company would recover costs incurred from the date of the Application to when PGE deemed the outage to end (November 18, 2005, to February 5, 2006) through a deferred account; and 3) the Company would include replacement costs incurred from when PGE deemed the outage to end to when Boardman actually returned to service (February 6, 2006, to June 28, 2006) in forced outage rates.

Although PGE's efforts to address the Boardman outage costs have commingled the issue of cost recovery through forced outage rates and through deferred accounting, ICNU urges the Commission to address these issues separately in the appropriate forum. The Commission has adopted a specific framework for considering deferred accounting applications, and it should evaluate PGE's Application according to that framework in this case. Similarly, the issue of the appropriate forced outage rate for future rates should be resolved in UE 180. Considering whether the Boardman outage replacement power costs warrant a deferred account is a much different issue than determining forced outage rates for purposes of setting normalized power costs in a rate case.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

Deeming the outage to end over five months prior to when the plant returned to service and seeking recovery of the outage through both deferred accounting and forced outage rates (forcing the Commission and parties to address this issue in multiple proceedings to prevent double recovery) unquestionably is an unconventional way to address replacement power costs. ICNU described in its testimony reasons why seeking recovery of costs through deferred accounting as opposed to other means may be more or less advantageous for a utility, and PGE has failed to provide any evidence how the cost recovery scenario it proposes will benefit customers or constitute sound regulatory policy. ICNU/100, Falkenberg/7-9. Because the record lacks any evidence to justify PGE's piecemeal means of recovery from a policy perspective or to demonstrate that customers will benefit, ICNU urges the Commission to deny the Application.

C. If the Commission Authorizes a Deferred Account, It Should Adopt a Mechanism with a 250 Basis Point Deadband and 50/50 Sharing

If the Commission disagrees with ICNU and authorizes deferred accounting for the Boardman replacement costs, ICNU recommends that the Commission adopt a deferral mechanism that includes a 250 basis point deadband and a 50/50 sharing mechanism. As described above, the Commission has adopted a 250 basis deadband for a number of excess power cost deferrals authorized in previous dockets and has stated that this deadband reflects the risk of power cost variability that the utility assumes between rate cases. Order No. 01-420 at 5, 28; Order No. 01-231 at Appendix A, p. 4; Order No. 01-307 at Attachment A, p. 1; Order No. 04-108 at 9. The 50/50 sharing band will ensure that PGE shares some of the burden of excess costs outside the range of those that it is expected to bear between rate cases, consistent with the sharing of such costs that the Commission has ordered in previous cases. E.g., Order No. 01-420 at 28-29.

DAVISON VAN CLEVE, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
Telephone: (503) 241-7242

IV. CONCLUSION

For the reasons stated above, the Commission should deny PGE's Application for a deferred account to recover replacement power costs associated with the Boardman outage. In the alternative, the Commission should authorize deferral but adopt a deferral mechanism that includes a 250 basis point deadband and 50/50 sharing mechanism.

Dated this 8th day of September, 2006.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Matthew W. Perkins

S. Bradley Van Cleve
Matthew W. Perkins
333 S.W. Taylor, Suite 400
Portland, OR 97204
(503) 241-7242 phone
(503) 241-8160 facsimile
mail@dvclaw.com
Of Attorneys for Industrial Customers of Northwest Utilities