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	**STAFF REPLY BRIEF**

SEPTEMBER 21, 2006

As staff of the Public Utility Commission points out in its opening brief, the weakness in Portland General Electric Company's ("PGE") testimony is PGE's failure to address the Commission's policy regarding the sharing of risk for net variable power costs that exceed those implicit in utility rates. This weakness is carried forward into PGE's opening brief. PGE declines to address the policy underlying the Commission's decision in Docket No. UM 995, echoed in Docket No. UM 1071 and implicit in decisions in other power cost deferral dockets. That policy, in a nutshell, is that utilities typically bear the risks and rewards of revenue and cost changes between rate cases and should only be allowed to transfer to customers risk associated with extraordinary cost changes. If the Commission adheres to that policy in this case, only a small portion of the costs at issue in PGE's deferral application is eligible for deferral.

Rather than address why the Commission's policy underlying its decision in Docket No. UM 995 is flawed, or acknowledge that this policy has been adhered to in every power cost deferral docket since the Western Power Crisis of 2001, PGE argues that the precedent of UM 995 should not apply to the circumstances presented by the Boardman outage for the following reasons:

1. The Commission's exercise of its discretion "in this context" is a highly fact-specific endeavor;

2. It does not appear that the Commission intended the UM 995 Order to serve as precedent because the order offers little reasoning in support of the deadband and the sharing mechanism adopted.

3. The UM 995 deferral period lasted almost 12 months, while the Boardman deferral period lasted less than three months.

4. Adopting a 250 basis point deadband has a very different outcome in this docket than it did in UM 995.[1]

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[1] Opening Brief of PGE at 14-15.

These arguments do not address the policy underlying the Commission's decisions in power cost deferral dockets since 2001 -- utilities bear risk for cost changes that do not exceed an amount associated with normal business variability between rate cases. In other words, PGE has not offered persuasive arguments as to why the Commission should not impose on PGE the same sharing requirements applied in prior power cost deferral dockets. Nonetheless, staff will respond to the arguments PGE has raised.

First, staff agrees that the Commission's review of an application to defer costs is a fact-specific endeavor. Staff made a similar point in response to PGE's argument that the Commission must treat all deferral requests the same and either impose a sharing mechanism on all deferrals or none. However, notwithstanding the unique circumstances presented by PGE's request to defer costs, there is one material fact that is common to this docket and the other dockets discussed by staff and intervenors in their opening briefs – they all concern excess net variable power costs.

The Commission has imposed a 250 basis point deadband for each power cost deferral authorized since the Western Power Crisis of 2001. It also declined to authorize a power cost deferral asked for by PGE when the costs at issue did not exceed an amount equivalent to 250 basis points of PGE's Return on Equity ("ROE"). There is nothing unique about this particular power cost deferral request that warrants treatment that differs from that afforded all other power cost deferral requests addressed in the last five years.

PGE's second argument, that the Commission did not intend the order in Docket No. UM 995 to serve as precedent because the Commission offered "little reasoning" in support of the deadband and sharing mechanism adopted in that order, is factually incorrect. When it adopted the deferral formula recommended by staff, the Commission expressly adopted certain arguments and recommendations staff made to support its recommended deferral mechanism.[2] These adopted statements and recommendations are as follows:

- The deferral formula should have a "deadband" (range of costs/revenues above or below a baseline for which no deferral will be allowed) to capture normal business variability to which the company is normally exposed between rate cases.

- The "deadband" (range exempted from deferral) should be symmetrical and equivalent to +/- 250 basis points return on equity.

- There should be variable sharing between PacifiCorp and its customers for costs and revenues outside the "deadband." The Company and its customers should share 50/50 costs and revenues between 250 and 400 basis points above or below the baseline. For costs and revenues more than 400 basis points above or below the baseline, the Company and its customers should share 75/25 (ratepayers/PacifiCorp).

- The variability in sharing contemplated by the bands in the deferral formula appropriately apportions to the Company the risk it would normally assume between rate cases.

- The 75/25 sharing in the outer band will help shield Oregon customers from assuming costs associated with load growth in other jurisdictions.

- The formula adopted for PacifiCorp has a larger sharing ratio in the outer band than the formula adopted for PGE in Docket Nos. UM 1008/1009 because PacifiCorp is a multi-jurisdictional utility and Oregon customers require some protection against costs associated only or primarily with providing energy to other jurisdictions.

- The sharing proposed by staff will provide PacifiCorp with incentives to minimize its power costs.

- The deferral formula proposed by staff offers protection and risk sharing to all parties.

[2] Order No. 01-420 at 29 (Commission stating that, with one exception, it adopted staff's responses to a list of issues presented in the docket).

- What costs should be included in a utility's rates has always been a matter of OPUC decision-making.
- The types of costs addressed in Docket No. UM 995 have traditionally been the responsibility of utilities between rate cases.
- All deferred power costs should be subject to a prudence review. [3]

These statements make clear the policy and reasoning underlying the Commission's decision in Docket No. UM 995. There is no reason they should not apply to the circumstances presented by the Boardman outage.

PGE's third argument, that the costs at issue should not be subject to sharing because they were incurred in less than three months, makes little sense, particularly in light of the circumstances of the Boardman outage. First, the argument has no logical foundation. For example, assume utilities A and B both incur excess net variable power costs equivalent to 300 basis points of their ROE, but utility A incurs the excess costs over a three-month period while utility B incurs the costs over a ten-month period. Under PGE's reasoning, the utility that incurred the costs over a three-month period would be able to defer all of its excess net variable power costs while utility B would only be able to defer the costs subject to a sharing mechanism. The fact the utilities incurred the costs over different time periods does not provide a reason to treat the costs differently.

Furthermore, the Boardman plant was off-line for a period of time that is considerably longer than the deferral period. The plant went off-line on October 23, 2005, and went back into service on June 28, 2006. The deferral period is from the date PGE filed its deferral application, November 18, 2006, to the date PGE "deemed" that the outage ended, February 5, 2006.

PGE controlled the length of the deferral period, within the parameters of the outage itself. Had PGE asked to defer the replacement costs associated with the entire outage, the deferral period would have been approximately two months shorter than the 10-month deferral at issue in Docket No. UM 995.[4] PGE has not explained in this docket why it chose, for purposes of this deferral, to "deem" that the Boardman outage ended five months earlier than it actually did. It makes no sense that the Commission should treat this deferral request differently than it has treated other deferral requests because PGE made this choice.

PGE's argument that a 250 basis point deadband should not apply in this case because it would have a different effect in this docket than it did in Docket No. UM 995 ignores the reasoning articulated by the Commission in Docket Nos. UM 995 and UM 1071. In Docket No. UM 995, the Commission explained that the deferral formula in that case should have a "deadband" to capture normal business variability to which the company is normally exposed between rate cases. It concluded that normal business variability is equal to +/- 250 basis points of the utility's ROE. It reiterated its conclusion regarding the amount associated with normal business variability in Docket No. UM 1071:

> In UM 995, for instance, we established a deadband around PacifiCorp's baseline of 250 basis points of return on equity. We allowed no recovery of costs or refunds to customers within that deadband, reasoning that the band represented risks assumed, or rewards gained, in the course of utility business.[5]

The purpose of the deadband is not to ensure that utilities absorb a share of excess net variable power costs that is proportionate to that absorbed by other utilities in other

[3] OPUC Order 01-420 at 6-8.
[4] *See* OPUC Order at 02-469 at 1 (Deferral period from November 1, 2000 to September 9, 2001).

deferral dockets. The purpose of the deadband is to require the utility to absorb costs that it is normally required to bear between rate cases. Here, the amount of costs at issue is very close to the amount that a utility is normally required to bear between rate cases. Accordingly, only a small portion of the costs associated with the Boardman outage is eligible for deferral under Commission precedent.

PGE's argument that the deadband is discriminatory because it will allow PGE recovery of 1% of the costs eligible for deferral while PacifiCorp was allowed to recover 60% of its costs in Docket No. UM 995, is illogical. In fact, the deadband ensures the utilities are treated similarly in that each utility is required to absorb a commensurate level of costs before being allowed to share costs with customers. It would be discriminatory to require one utility to absorb certain costs in connection with a request to defer excess net variable power costs (those equaling the level of costs associated with normal business variability), but not require another utility to do the same.

If PGE argues that the Commission should not apply a sharing mechanism to the Boardman outage costs because the Boardman outage is properly classified as a "scenario risk," the argument is not well taken for at least two reasons. First, the Commission has described the combination of circumstances leading to PacifiCorp's deferral application in Docket No. UM 995 as a "scenario risk."[6] Nonetheless, the Commission concluded that PacifiCorp must absorb an amount of costs associated with that risk that is equivalent to the amount of costs PacifiCorp would normally be expected to absorb between rate cases.

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[5] OPUC Order 04-108 at 9.

[6] *See* OPUC Order No. 04-108 at 8 ("An example of a scenario risk is the "perfect storm" of 2000-2001, a cascade of effects that included poor hydro conditions, cold weather, and extremely volatile power markets (UM 995).").

Second, even if Commission precedent established that the Commission imposed a different sharing mechanism for deferrals associated with scenario risks, the Boardman outage is not properly classified as a scenario risk. Whether an event is a scenario or stochastic risk turns on whether it is quantifiable, *e.g.,* can be represented by a known statistical distribution.[7] Staff testified that the likelihood of an outage such as the Boardman outage could in fact be reasonably quantified using North American Electric Reliability Council ("NERC") data.[8] As noted in the opening brief of the Industrial Customers of Northwest Utilities ("ICNU"), PGE ignores the Commission's distinction between stochastic and scenario events and focuses on whether the event is rare. The fact that an event is rare does not mean it is a scenario risk.

The remainder of PGE's brief, in which it addresses ICNU's arguments that the costs at issue do not satisfy the Commission's criteria for deferral and quibbles with the parties' characterizations of the Boardman outage, is confusing. This is in part because PGE appears to misunderstand staff's testimony and prior Commission orders. To some extent, it is not necessary for staff to address all of PGE's arguments, because staff and PGE agree that PGE's application meets the criteria for deferral. However, PGE's characterization of some of staff's arguments is confusing, and accordingly, staff offers some clarification.

First, contrary to PGE's assertion, staff did not testify that the Boardman outage was a "normal plant outage."[9] In fact, staff testified that coupled with the substantial financial impact, "the *extraordinary* nature of the Boardman outage justif[ied] deferred

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[7] See OPUC Order No. 04-108 at 8-9.
[8] Staff/100, Owings-Galbraith/16.
[9] See Opening Brief of PGE at 13.

accounting."[10] Accordingly, PGE's argument that "[p]arties rest their case on Commission orders in UM 1071 and UM 995, and conclusory statements that the Boardman outage was a 'normal plant outage[,]'" is factually incorrect.[11] Staff's recommendation in this matter does not rely on an assumption that the Boardman outage was a "normal plant outage." Contrarily, staff's recommendation to authorize the deferral is based on its conclusion the plant outage had an extraordinary duration and substantial financial impact.

Second, contrary to PGE's assertion, staff did not argue that "the Commission should consider the Boardman outage as meeting the UM 1147 criteria for a heightened financial impact test because [the Boardman outage] could have been modeled in rates." Contrarily, staff noted that pursuant to Order No. 05-1070, the Commission will determine whether costs are deferrable by determining whether the cost-causing event was modeled in rates *or* whether the event was foreseeable as happening in the normal course of events, and will examine whether or not the risks are reasonably predictable and quantifiable.[12] Staff testified that the risk of an outage like the Boardman outage was foreseeable and quantifiable, noting that 52 outages with duration greater than 104 days appear in the 20-year data extract that PGE acquired from NERC and indicating that this is roughly equivalent to one such outage every 100 years.[13]

Third, PGE appears to have a poor understanding of staff's position regarding the inclusion of the Boardman outage in the PGE's "forced outage rate." Staff's position on the inclusion of the Boardman outage in PGE's forced outage rate and its position

[10] Staff/100, Owings-Galbraith/17 (emphasis added). *See also* Staff/100, Owings-Galbraith/18 (Staff testifying that "[t]he Boardman outage was an extraordinary event.").
[11] *See* Opening Brief of PGE at 12.
[12] Staff/100, Owings-Galbraith/14.

regarding the appropriateness of the requested deferral have as their foundation the distinct purposes of a deferral and forced outage rate. Deferred accounting provides a means to address utility expenses or revenues outside of a general rate case and is a statutorily authorized exception to the general prohibition on retroactive ratemaking.[14] The forced outage rate is intended to accurately forecast future plant availability.[15] Accordingly, to the extent PGE is allowed to recover replacement power costs incurred in the past, it must do so through deferred accounting, not the forced outage rate. It should not be allowed to capture these costs via the forced outage rate used to calculate PGE's future rates.

Further, staff's recommendation that the replacement costs for Boardman be calculated assuming Boardman's availability would have been 93.5 percent is not inconsistent with a recommendation that none of the deferral period Boardman outage should be included in the calculation of the Boardman plant's forced outage rate in Docket No. UE 180.[16] The important consideration when considering whether staff's recommendation is internally consistent is the forced outage rate in effect during the deferral period, not the outage rate staff recommends be used to calculate future rates.

PGE's current rates are based on a forced outage rate for the Boardman plant of 6.5 percent. In other words, PGE has already recovered in rates the normal replacement power costs associated with a forced outage rate of 6.5 percent at the Boardman plant during October 23, 2005 through February 5, 2006.[17] Accordingly, it would be

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[13] Staff/100, Owings-Galbraith/16-17.
[14] Order No. 05-1070 at 2.
[15] Staff/100, Owings-Galbraith/22.
[16] As explained later in staff's brief, this is not actually staff's primary recommendation in Docket No. UE 180.
[17] Staff/100, Owings-Galbraith 17.

inconsistent to calculate the cost to replace the Boardman output during the Boardman outage assuming the Boardman plant would have been 100 percent available during that period. Contrarily, it is appropriate to assume, for purposes of calculating Boardman outage replacement costs, that Boardman's availability is that implicit in rates effective at the time of the outage.

In any event, staff's primary recommendation in Docket No. UE 180 is to base the forced outage rate for PGE's plants on industry-wide averages, rather than plant-specific data. Staff's alternative recommendation is to calculate the forced outage rate for the Boardman plant based on Boardman plant data, but to exclude the outage during the deferral period because inclusion gives too much weight to extreme events, and does not result in a "normal" outage rate.[18] Importantly, however, staff believes that the extent to which any of the Boardman outage is included in PGE's forced outage rate for purposes of calculating PGE's future rates, should be resolved in PGE's pending rate case.

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[18] The portion of the outage from October 23 to November 18, 2005 is included in the forced-outage rate calculation under staff's alternative recommendation. No part of the 2006 outage is included, however, because the four-year period used to calculate the forced-outage rate ends December 31, 2005.

CONCLUSION

For the reasons presented in staff's testimony and briefs, the Commission should authorize PGE to defer, for future recovery in rates, replacement costs for the Boardman outage, subject to the sharing mechanism recommended by staff.

DATED this 21st day of September 2006.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 21, 2006, I served the foregoing upon all parties of record in this proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

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