

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1234

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

September 21, 2006



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I. Introduction

The Citizens' Utility Board resents the tone of PGE's Opening Brief and the misleading implications contained therein. PGE begins its argument by stating that the parties oppose its deferral application, and that we have provided no evidence to rebut the case put on by PGE. PGE later argues that the parties' use of UM 995 as an example of past Commission practice is misguided. PGE apparently does not recognize any Commission policy on a deadband or sharing other than wide open discretion.

The truth is that both Staff and CUB have agreed that the Boardman outage does qualify for a deferral. We depart from PGE's point of view because Staff and CUB see both a public policy reason and an established Commission policy that support the deadband we proposed in testimony. PGE is being willfully blind to past Commission practice and to the parties' cases. The Commission has clearly stated the policy reasons

behind a 250 basis point deadband, and PGE has provided absolutely no meaningful argument as to why the Commission should change this policy.

By agreeing that Boardman is a scenario event so that it qualifies for a deferral, and by applying the deadband policy enunciated in the UM 1071 order, CUB has offered a clear and reasonable response to PGE's Application.

II. If Boardman Is a Scenario Event, the Deadband is 250 Basis Points

Let us assume, as PGE has and as CUB has accepted, that the Boardman outage is a scenario event. PGE Opening Brief p. 12-13; CUB/100/Jenks/1; CUB Opening Brief p. 4: "for the purposes of this deferral application, CUB treats this outage as a scenario event." PGE would attempt to confuse us by conflating scenario & stochastic and substantial & material. We decline to be drawn into this morass of verbiage, because we think the pattern for how to handle a scenario event has been established by the Commission, and is supported by the Commission with a stated policy.

In UM 1071 and UM 1147, the Commission provided guidelines for evaluating a utility's application for deferred accounting. These guidelines pertain to the type of event, stochastic or scenario, and the financial impact of the event, substantial or material. While the Commission declined to specifically or numerically define these distinctions, the order in UM 1071 set out a clear path as to how to handle the deadband and sharing issues that pertain to a scenario event the Commission has approved for deferred accounting.

A. Stochastic vs. Scenario

In its Order in UM 1071, the Commission differentiates between what have come to be called stochastic risks and scenario risks. The Commission repeats this distinction in its Order in UM 1147.

Staff has established a distinction between the risks that can be predicted as part of the normal course of events and those that are not susceptible to prediction and quantification. Staff calls the former stochastic risks and the latter, paradigm or scenario risks ... We find this distinction useful to characterize the type of risk we consider appropriate for deferral.

UM 1071 OPUC Order No. 04-108 p. 9.

With regard to the type of event causing the deferral, we drew a distinction [in UM 1071 Order 04-108] between risk that can be predicted to occur as part of the normal course of events, classified as stochastic risks, and risks that are not susceptible to prediction and quantification, classified as scenario risks.

UM 1147 OPUC Order No. 05-1070 p. 3.

In these two cases, the Commission has also made clear that, in order to qualify for deferred accounting, the cost from a stochastic event must be substantial, while the cost of a scenario risk need only be material.

For a stochastic risk to justify deferred accounting, the financial impact must be substantial ... For such risks [scenario risks] to qualify for deferred accounting, the financial impact on the utility need be only material.

UM 1071 OPUC Order No. 04-108 p. 9.

If the event was modeled or foreseen, without extenuating circumstances, the magnitude of the harm must be substantial ... If the event was neither modeled nor foreseen, or if extenuating circumstances were not foreseen, then the magnitude of the harm that would justify deferral likely would be lower.

UM 1147 OPUC Order No. 05-1070 p. 7.

B. If The Boardman Outage Is A Scenario Event, What Is The Clear Path?

So the Commission has decided that, in order for a scenario event to qualify for deferred accounting, the cost must be material. In UM 1071, the Commission went further and gave an example of the kind of deadband it has used in a past scenario event that qualified for deferral, and the reason for that deadband.

First, the Commission identified the scenario event:

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).

UM 1071 OPUC Order No. 04-108 p. 8-9.

Then the Commission identified the deadband it applied to this scenario event deferral:

In UM 995, for instance, we established a deadband around PacifiCorp’s baseline of 250 basis points of return on equity.⁷

Footnote 7: We approved the same deadband for recovery of 2001 excess net variable power costs for both PGE (UM 1008/UM 1009) and Idaho Power (UM 1007).

Id. at 9.

Finally the Commission explains its reasoning and the policy behind the 250 basis point deadband:

We allowed no recovery of cost or refunds to customers within that deadband, reasoning that the band represented risks assumed, or rewards gained, in the course of the utility business.

Ibid.

There we have it; for a scenario event that qualifies for a deferral, such as the perfect storm in UM 995 and the Boardman outage in UM 1234, the Commission applies a 250 basis point deadband to represent the risks assumed, or rewards gained, in the

course of the utility business, which includes a Commission-authorized return on equity built into rates.

C. PGE Has Not Made A Case For Changing The 250 Basis Point Policy

Besides stating the obvious, that UM 1234 is not UM 995, PGE lists four reasons why the precedent set in UM 995 and reaffirmed in UM 1071 has no bearing on this case. The Company's reasons are internally flawed, irrelevant to this case, and/or silly. The result is that PGE has utterly failed to make a case that the Commission practice with regard to establishing a deadband for a scenario event approved for deferred accounting should be changed.

PGE's first reason that UM 995 does not apply in UM 1234 is that the Commission's use of its discretion is highly fact specific. PGE supplies this quote from the order.

PacifiCorp's case presented a new constellation of events: Poor hydro conditions, a plant outage, and volatile power markets. In deciding on PacifiCorp's application, we did not depart from precedent because there were no factual situations close enough to PacifiCorp's to constitute precedent in our deferred accounting cases.

UM 1234 PGE Op. Br. p. 14. From UM 995 OPUC Order No. 01-753 p. 6.

No party has argued that the Commission should not look at the facts of each deferral application. To say that the Commission looks at the facts of each case is to state the obvious, and we learn nothing new from UM 995 that we did not know before. Furthermore, we think the quoted passage from UM 995 was not intended to make any reference to the deadband finding. Rather, the Commission was explaining why it was treating the deferral application like a scenario event, even though the costs were associated with typical stochastic variables, such as market prices and hydro conditions.

The reference to not constituting precedent did not mean going forward; the quote was making reference to the uniqueness of that situation from a historical perspective.

This brings us to PGE's second argument. According to PGE, UM 995 is not supposed to serve as precedent. This is, of course, a silly argument, as every Commission order can be viewed in the context of past orders. In fact, the Commission itself uses the UM 995 order as precedent to some degree to explain its position on approval of deferrals and the use of a deadband in the UM 1071 order. In UM 1071, as we have discussed above, the Commission cites UM 995, the deadband adopted, and the rationale for that particular deadband. Where PGE has trouble finding a rationale in UM 995 for the deadband, it is because PGE has intentionally ignored the Commission's own reading of UM 995 and the rationale stated in the UM 1071 order. The above quote from UM 995 certainly says nothing about lack of precedent going forward, only backward.

PGE's third argument is that the UM 995 deferral period lasted almost 12 months and the Boardman deferral lasted three months. PGE Op. Br. p. 15. UM 995 would be entirely consistent with a three-month Boardman deferral because they would both be in effect for the period of time that the pertinent costs were accruing. (We later make the argument that a 3-month deferral is less representative of costs on an annual basis, and subjects customers to a greater risk of paying deferred costs which the utility might recover during the next nine months. See Section VII.)

PGE's fourth and final argument that UM 995 does not apply here is that the deadband used in that case would have a different outcome if applied in UM 1234. Starting with a different set of facts and figures pretty much guarantees that there will be a different outcome. PGE attempts to make a point that the deferral in UM 995 allowed

PacifiCorp to recover 60% of its excess power costs, while that same deadband applied to the Boardman outage would allow recovery of only 1% of its excess power costs, and that such an outcome would be “disparate and discriminatory.”¹ *Ibid.* Sounds really unfair the way PGE says it. Unfortunately for PGE, in the interest of fairness and consistency with established policy, the Commission should apply exactly the same deadband that it applied in UM 995. We are not talking about fairness between customers and the utility, we are talking about fairness between utilities. Yes, the deferral mechanism allowed PacifiCorp to receive 60% of its excess power costs (PacifiCorp actually recovered only 50% after the prudence phase), but on an Oregon basis, PacifiCorp’s excess power cost was \$259,000,000. OPUC Order No. 02-469 p. 2. The deadband mechanism allowed PacifiCorp to recover up to \$160,000,000 of its deferred costs. Given that PacifiCorp’s service territory in Oregon is smaller than PGE’s and given the amount of cost PacifiCorp shareholders had to absorb, application of the same 250 basis point deadband hardly discriminates against PGE. PGE has given no genuine reason to change the policy underlying the 250 basis point deadband, and changing the policy would be discriminatory against PacifiCorp and PGE’s customers.

Any suggestion that the material threshold might be below 250 basis points is contrary to the Commission’s established determination that 250 basis points represents the risks and rewards assumed in the course of utility business. PGE has not made a convincing argument to support a new Commission determination. Given PGE’s refusal to accept the Commission’s stated position on this point, it may be time for the Commission to clearly restate its position.

¹ If the Commission takes into account that AR 499 rules shift the tax deduction associated with the 2006 portion of this outage from the Company to customers, then it is reasonable to assume the PGE would actually recover much more than 1% of its costs. See Section VI, below.

III. Boardman Availability In Calculating The Outage Cost

Staff and ICNU have both addressed, in testimony and in briefs, PGE's inappropriate inclusion of replacement power costs equivalent to 100% of PGE's share of Boardman's capacity (hereinafter, Boardman's capacity) in the Company's calculation of the outage cost. Staff/100/Owings-Galbraith/6 & Opening Brief p. 3-4; ICNU/100/Falkenberg/16 & Opening Brief p. 11. In CUB's Opening Brief, we adopted Staff's \$42.8 million as the proper cost of the Boardman outage, which includes Staff's correction of PGE's use of 100% of Boardman's capacity. CUB Op. Br. p.5.

In Staff's Opening Brief, Staff states that "CUB does not dispute PGE's calculation." Staff Op. Br. p. 2. In testimony, CUB only addressed PGE's method of calculation, not the calculation itself, and so neither accepted nor rejected the calculation. Staff's and ICNU's testimony on PGE's use of 100% of Boardman's capacity matter was appropriate and convincing. CUB states that "Staff and ICNU both found that PGE miscalculated the excess cost based on PGE's share of Boardman using a rated capacity of 380 to 383 MW, when for setting rates, the 2005 and 2006 RVM runs used a de-rated capacity of 358 MW and 355 MW respectively." CUB Op. Br. p. 4. Given Staff's statement, we clarify our position.

In the 2006 RVM, Boardman was modeled with a 6.5% forced outage rate, and so only 93.5% of Boardman's capacity was modeled as serving customers.

Staff/100/Owings-Galbraith/5. For setting rates, MONET had to fill the equivalent of 6.5% of Boardman's capacity with other resources or market purchases. For the purpose of calculating the cost of the Boardman outage, PGE claims that customers should be charged the cost of replacement power equivalent to 100% of Boardman's capacity. PGE

Op. Br. p.4. Yet, customers have already paid for the equivalent of 6.5% of Boardman's capacity in base rates. Calculating the cost of the Boardman outage using replacement power costs for 100% of Boardman's capacity essentially charges customers 106.5% of Boardman's capacity, because customers have already paid for power equivalent to 6.5% of Boardman's capacity in base rates.

IV. The 2005-06 Boardman Outage & Boardman's Forced Outage Rate

In PGE's Opening Brief, the Company again asserts that the Boardman availability factor used in calculating this outage cost is the same availability that should be used in future calculations of Boardman's forced outage rate. PGE Op. Br. p. 4. This is not appropriate; PGE is trying to link two variables that are not linked. The cost of the Boardman outage is properly calculated using the cost of replacing power that customers had not yet paid for: 93.5% of Boardman's capacity. The calculation of Boardman's forced outage rate, used to forecast routine forced outages when setting base rates, is properly calculated using Boardman's routine forced outages.

At a theoretical level, PGE appears to concur that the forced outage rate is not the appropriate tool for capturing the cost of this Boardman outage.

First, including an outage of this length in the rolling four-year average methodology will seriously depress the forecasted availability of Boardman through 2011. During this time, PGE would have an opportunity to recover through Boardman's "better-than-forecasted" performance what we lost through the "worse-than-forecasted" performance of this outage period, with the "value" of that recovery depending on the markets in each of those years ... While this may be appropriate and acceptable to all for a range of "normal" forced outages, we believe that removing it from this methodology so that annual forecasts are closer to "normal" operation is the better course for customers and for PGE.

UM 1234 PGE/100/Lesh/6.

PGE then goes on to explain that the Company does plan to include parts of this Boardman outage in the forced outage rate. PGE/100/Lesh/7. However, the Company's plan is at odds with its own explanation of why this outage is more appropriately addressed in a deferral. Though PGE appears to see no contradiction in these positions, CUB has made clear that this outage is a single event, and should be treated coherently in a single mechanism. CUB/100/Jenks/2,4; CUB Op. Br. p. 7-8.

If the Boardman outage is an event, then it should be treated separately as an event – the whole outage. If the Boardman outage is a routine outage, then it should be treated as a routine outage – the whole outage. PGE's attempt to force the Commission to grant the Company almost full recovery by suggesting it will include through another mechanism the amount the Commission doesn't grant through this mechanism is entirely inappropriate. CUB objects to PGE's attempt at an end run around this process through its intention to recover any outstanding outage costs through another mechanism.

V. A Deferral Should Not Mimic A Power Cost Adjustment

It is important to step back and look at PGE's deferral application in perspective with a power cost adjustment mechanism. A deferral is a one-time filing, and in its Order in UE 165, a docket examining a proposed power cost adjustment mechanism, the Commission makes clear that the standard of recovery for a deferral should be stricter than that for a power cost adjustment.

We believe less extreme events should qualify for recovery or refund through a hydro-related PCA rather than under one-time deferred accounting for two reasons. First, as further discussed below, a PCA should remain in effect for many years, allowing the mechanism to pick up the effects of good and bad hydro conditions over time. In contrast, with a one-time deferral, there is no guarantee that the effects of offsetting events will be reflected in customer rates, so the standard for recovery should be stricter.

UE 165 OPUC Order No. 05-1261 p. 9.

The Commission rejected the mechanism proposed in UE 165, a power cost adjustment, yet PGE's proposal for the Boardman deferral is considerably more generous to the Company than the power cost adjustment the Company supported in UE 165. This is despite the fact that the Commission has clearly stated that the standard of recovery for a deferral should be stricter than that of a PCA. The SD-PCAM supported by PGE in UE 165 contained a \$15 million deadband for costs greater than forecast, and sharing beyond the deadband would have been 80% to customers. OPUC Order No. 05-1261 p. 4. In this case, PGE proposes to defer the entire cost of replacement power (ignoring the issue of availability) with no deadband and no sharing. PGE/100/Lesh/1; PGE/400/Lesh-Tinker/16.

Yet in PGE's Opening Brief, the Company argues that its application should be granted and full recovery provided, because the outage will not balance out over time. PGE Op. Br. p. 10. The Commission has expressed that the financial threshold a scenario event must meet to qualify for deferred accounting is lower than the threshold a stochastic event must meet, in part because stochastic events are more likely to balance out over time. OPUC Order No. 04-108 p. 9; OPUC Order No. 05-1070 p. 10. This does not, however, speak to the appropriate level of recovery. When addressing the

appropriate level of recovery, the Commission has clearly stated that the standard for recovery of a deferred account should be stricter than that of a PCA. OPUC Order No. 05-1261 p. 9. Yet PGE proposes far more generous recovery in this deferral than in the PCA it supported in UE 165.

PGE's proposed recovery would compromise the integrity of power cost deferrals by making them a more attractive option to a utility than a power cost adjustment mechanism. Why would a utility, if it receives 100% recovery in a power cost deferral, have any desire to establish a PCA? Power cost deferrals are one-sided in that the utility has access to its own cost information. A utility will file for a deferral when it is in its interests to do so, and will not file when it is not in its interests to do so. The Commission has stated that a properly designed PCA, on the other hand, should be revenue neutral such that the value provided to shareholders approximately equals the value provided to customers over time. OPUC Order No. 04-1261 p. 10. A utility that can get 100% recovery for increased power costs when it files for a deferral, would have no incentive to establish a PCA which would require it to share power cost savings with customers.

VI. Senate Bill 408

The Commission has now issued the final rules implementing Senate Bill 408. Earlier, we addressed the precedent of a 250 basis point deadband, but when this precedent was established the utility benefited from the tax deduction associated with that lost revenue. The Boardman outage straddles two years, 2005 and 2006, and, in so doing, straddles the period before the SB 408 automatic adjustment clause and the period after.

The automatic adjustment clause established by SB 408 will not be in effect for 2005, so the deadband for replacement power in 2005 should be the 250 basis points established by precedent. The deadband for replacement power in 2006, however, should be reduced by the Company's effective tax rate, as Staff points out. Staff Op. Br. p. 13.

VII. The Deferral Period Is Irrelevant To The Financial Threshold

PGE claims that the materiality threshold used to evaluate an event's financial impact should be prorated to match the deferral period. PGE Op. Br. p. 12. This would set a terrible precedent. A deferral may be authorized for a period of up to one year. ORS 757.259 (4). Over the course of a year, a utility's power costs will go up and down. Using PGE's logic, if a utility's costs were out of whack for one quarter, the utility could file for a deferral to capture those increased costs, even though the next quarter may have lower-than-expected power costs. It would not be appropriate to allow a utility to file a deferral for 3 months, ignore the other nine months, which may have balanced out the deferral months, and then approve the deferral based on $\frac{1}{4}$ of the annual financial threshold. Though the Boardman outage spans two calendar years, the annual deadband measure remains appropriate.

VIII. Conclusion

PGE has again entered the realm of the unreasonable. CUB approached this case with a generous attitude, but PGE's reaction continues the Company's obstinate denial of the last five years of policy, precedent, and practice, that the Commission itself continues to cite. PGE has failed to establish a context, rationale, or principle for a deadband other

than what the Commission uses today. Therefore, the Commission should:

- Approve PGE's application for deferral of the Boardman outage costs from November 18, 2005 to February 5, 2006;
- Calculate those costs using Boardman's availability as modeled in MONET for setting rates;
- Establish a deadband equivalent to 250 basis points of return on equity for 2005 costs, and, if the Commission so chooses, an equivalent SB 408 deadband for 2006 costs; and
- Allow PGE to recover 70% of costs outside of that deadband.

Respectfully Submitted,
September 21, 2006

A handwritten signature in black ink that reads "Jason Eisdorfer". The signature is written in a cursive style with a long horizontal stroke extending to the right.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2006, I served the foregoing Reply Brief of the Citizens' Utility Board of Oregon in docket UM 1234 upon each party listed below, by email and U.S. mail, postage prepaid, and upon the Commission by email and by mailing 6 copies to the Commission's Salem offices.

Respectfully submitted,



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