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

October 12, 2016

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PORTLAND GENERAL ELECTRIC CO.
2017 Annual Power Cost Update Tariff
Docket No. UE 308

Dear Filing Center:

Please find enclosed the Closing Brief of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 308

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY 2017 Annual Power Cost Update Tariff	)))))))	CLOSING BRIEF OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

I. INTRODUCTION

Pursuant to the Administrative Law Judges' September 22, 2016 Ruling, the Industrial Customers of Northwest Utilities ("ICNU") submits this Closing Brief on Portland General Electric Company's ("PGE" or the "Company") proposed long-term natural gas hedging program.

As ICNU argued in its Opening Brief, the Oregon Public Utility Commission should consider PGE's application as making two distinct requests for relief – first, that the Commission approve a policy of hedging natural gas over the long term as in the public interest, and second, that the Commission find the transaction it has entered into for 2017 to be a prudent means of effectuating this policy. ICNU considers the first issue to be a threshold one, and that the evaluation of this policy issue is better addressed in the Company's integrated resource plan ("IRP").[1/] Staff and the Citizens' Utility Board of Oregon ("CUB") appear to agree with this position.[2/]

[1/] ICNU Opening Br. at 5-9.
[2/] Staff Opening Br. at 14; CUB Opening Br. at 12.

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

Nevertheless, the Company has requested a decision on both the policy question and the transaction it has negotiated in this Annual Update Tariff ("AUT") docket and it should, therefore, be evaluated consistently with the legal requirements that apply. As in any rate proceeding, in the AUT PGE must "bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable."[3/] This necessarily broad standard leaves the Commission with significant discretion in establishing rates.[4/] Its decision, however, must be based on the evidence in record of the proceeding.[5/] Most importantly, the statute requires PGE, and no other party, to produce sufficient evidence to persuade the Commission that its proposal to hedge natural gas over the long term by purchasing a non-operating working interest in natural gas wells results in fair and reasonable rates.[6/] Following three rounds of testimony and one round of briefing, the Company has failed to carry its burden.

The evidentiary record in this docket demonstrates the following: (1) there is a statistical near certainty that customer rates will be higher under the Company's long-term hedging proposal than they would be without it;[7/] (2) PGE has produced no persuasive evidence to show that customers are willing to pay these higher rates in exchange for the level of price stability the Company promises from its hedging program;[8/] (3) customers will assume increased

---

3/ ORS 757.210(1)(a).

4/ Pacific Nw. Bell Telephone Co. v. Sabin, 21 Or. App. 200, 224 (1975).

5/ ORS 756.558; ORS 183.482(8)(c).

6/ Re PGE Application to Amortize the Boardman Deferral, Docket No. UE 196, Order No. 09-046 at 7 (Feb. 5, 2009) ("There are two aspects to burden of proof: the burden of persuasion and the burden of production"); Re PacifiCorp, Docket No. UE 116, Order No. 01-787 at 6 (Sept. 7, 2001) (holding that the burden under ORS 757.210 "is borne by the utility throughout the proceeding and does not shift to any other party").

7/ ICNU/200 at 7-9; ICNU/300 at 5.

8/ PGE/800 at 16:6-22; Conf. Tr. at 64:9-66:6; ICNU Opening Br. at 17-18; Staff Opening Br. at 10-11.

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

risk as a consequence of the Company's ownership of physical gas reserves;[9/] and (4) PGE will earn a return on its investment.[10/] A circumstance in which customers pay PGE more in order to assume additional risk is not fair, just, and reasonable. Thus, because PGE has not supported the policy of long-term gas hedging in this docket, it cannot support the transaction for 2017 it is proposing to effectuate this policy.

II. ARGUMENT

A. PGE Has Failed to Carry its Burden to Demonstrate That Customers Are Willing to Pay the Premium Associated with PGE's Long-Term Hedge that ICNU's Analysis Demonstrates is a Near Certainty

As discussed in ICNU's Opening Gas-Hedging Testimony and its Opening Brief, ICNU's witness, Mr. Bradley Mullins, performed an empirical analysis to determine whether a risk premium was embedded in the Company's forward price curves.[11/] His analysis demonstrates that there is such a risk premium that is present in periods of both increasing and decreasing gas prices, and this premium grows the farther into the future the cost of natural gas is forecasted.[12/]

PGE's Opening Brief claims that Mr. Mullins' risk premium analysis "is fundamentally flawed,"[13/] although it is not entirely clear what the Company means by this given that it does not challenge the results of the analysis itself.[14/] Rather, it appears that the Company is simply wordsmithing ICNU's testimony. Citing its response to ICNU's data request ("DR")

9/ ICNU/200 at 10-14; ICNU/202 at 53-54; Staff/400 at 8; Staff/500 at 8-11; CUB/200 at 20-32.
10/ PGE/300 at 18:7-10.
11/ ICNU/200 at 7; ICNU Opening Br. at 13-16.
12/ ICNU/200 at 7, Confidential Figure 1; ICNU/300 at 5.
13/ PGE Opening Br. at 16.
14/ PGE/800 at 48:5-7 (noting that PGE's own analysis using the same data that ICNU used "would be consistent").

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

023, the Company argues that ICNU's analysis does not show a "risk premium."[15] The Company does not clearly explain either in its Opening Brief or in its response to DR 023 what it considers to be a "risk premium" and how its definition of this term differs from ICNU's analysis. ICNU notes that it requested "all data necessary to quantify the amount of *any risk premium* that is built into forward natural gas and power prices," and performed its analysis based on the data PGE provided in response to this request.[16]

While PGE may be correct, then, that ICNU's analysis does not show "the risk premium associated with price certainty obtained through hedging activities" as a general matter,[17] this is immaterial. What ICNU's analysis shows is the difference between the natural gas price PGE's forward curves forecasted and the actual price that ultimately ended up being available in the spot market.[18] This is relevant because PGE has proposed that the Commission evaluate the cost-effectiveness of its long-term hedging program based on a comparison of the levelized cost of the hedge with the levelized cost of its *forecasted* price.[19] ICNU's analysis shows that the Company's forecasted price is almost always higher than the ultimate spot price, and this differential increases the farther out the forecast goes.[20] Thus, the important point is not whether this is technically a "risk premium" or a premium by some other name, but that, based on ICNU's analysis, there is a near statistical certainty that a long-term hedging program dependent upon the Company's natural gas price forecasts for its cost-effectiveness will cost customers substantially relative to the price they would otherwise pay on the spot market.

---

[15] PGE Opening Br. at 16.
[16] ICNU/300 at 1, 3 (emphasis added).
[17] Id. at 3.
[18] ICNU/200 at 8:2-15.
[19] PGE/200 at 4:7-14.
[20] ICNU/300 at 5.

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

Importantly, at no point in this proceeding has the Company challenged the results of ICNU's analysis and admits that there is a "premium paid for the extended price certainty."[21/]

The Company is pursuing its long-term hedging program for customers' benefit,[22/] and therefore, should have the burden to produce convincing evidence that paying such a premium is in customers' best interest. The Company has not met this burden. Indeed, it attempts to shift this burden to ICNU and Staff, claiming that these parties "have posited that customers do not want hedging without providing evidence to support their claim."[23/] Arguably, the opposition to PGE's proposal from ICNU and CUB, organizations that represent the customer interest, is itself evidence to support this claim, but in any event, it is up to PGE to demonstrate that customers will benefit from its long-term hedging program.

Moreover, it is not merely an issue of stable rates. The Company cites a previous ICNU witness who "acknowledged that most people prefer stable rates."[24/] No one would dispute this statement. The question is how much are customers willing to pay to achieve price stability, particularly given that ICNU has presented unrebutted evidence that customers are likely to pay significantly for the price stability the Company is proposing in this docket.

PGE has provided no persuasive evidence on this issue. The only evidence it has are customer surveys from 2005 and 2006.[25/] ICNU addressed in its Opening Brief a number of the problems with relying on these surveys to justify acquiring non-operating working interests in gas wells to hedge natural gas prices.[26/] Staff's Opening Brief further undercuts the

---

21/ ICNU/300 at 3.
22/ PGE/800 at 1:21-2:2.
23/ PGE Opening Br. at 10.
24/ Id.
25/ PGE/800 at 16:6-22.
26/ ICNU Opening Br. at 17-18.

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

evidentiary value of these surveys, noting that they are surveys of focus groups that represent a miniscule slice of the Company's customer population, and offer decidedly lukewarm evidence that customers are willing to pay a premium for price stability, with key account customers providing mixed responses and residential customers resistant to this prospect.[27/] Most importantly, the Company did not perform any customer surveys to determine whether customers supported the long-term hedging program it proposes here.[28/] Consequently, the Company has not met its burden to demonstrate that its long-term hedging program will produce fair, just, and reasonable rates.[29/]

B. Even if PGE's Long-Term Hedging Proposal Were Theoretically in the Public Interest, the AUT is an Inappropriate Proceeding to Consider It

For the reasons discussed above and in ICNU's, Staff's, and CUB's Opening Briefs, the record in this case demonstrates that a program to hedge natural gas prices over the long term by purchasing non-operating working interests in gas wells is not in the public interest and will not result in fair, just, and reasonable rates. Yet, even if such a policy were theoretically appropriate, the AUT is not the proper proceeding to consider it. Rather, in its Opening Brief, ICNU argues that the IRP is the appropriate place to consider such a policy.[30/] CUB and Staff agree.[31/]

PGE argues that an "analysis of a generic transaction [in the IRP] would not be useful given continuously changing product availability and a dynamic gas market environment. The availability of willing counterparties would also be subject to significant change over the

---

27/ Staff Opening Br. at 10.
28/ Conf. Tr. at 65:25-66:6.
29/ ORS 757.210(1)(a).
30/ ICNU Opening Br. at 5-9.
31/ CUB Opening Br. at 12; Staff Opening Br. at 14.

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

time involved."[32] Yet, the Company fails to explain how this differs from any other issue the Commission considers in the resource planning process. In the Company's 2009 IRP, the most recent IRP that included new generation in its action plan, PGE stated:

> Traditional electric generation choices and issues are greatly different today than they were just a few years ago. The sudden emergence of wind energy in quantities unimagined even in our last IRP has created new challenges for resource planning and system operations. Innovations in other technologies such as solar power are advancing and may have a considerable impact in future resource plans. At the same time, there is unprecedented uncertainty about the timing, form and cost of potential greenhouse gas legislation; the price for natural gas; and the ultimate impact of renewable energy standards on availability, cost and quality of renewable resources.[33]

Despite this planning environment of "unprecedented uncertainty," the Company still managed to propose, and the Commission acknowledged, an action plan that included 122 average megawatts ("aMW") of new renewable energy, 400 aMW of natural gas generation, and 200 MW of natural gas-fired flexible capacity.[34] The Company executed on this action plan by building or acquiring the Tucannon River Wind Farm, the Carty Generating Station, and Port Westward II, all of which the Commission determined to be prudent in subsequent general rate cases.[35] The mere presence of a "dynamic gas market" is no basis to conclude that a similar process would not be workable with respect to evaluating the policy of hedging natural gas over the long term.

---

[32] PGE Opening Br. at 11-12.

[33] Docket No. LC 48, PGE 2009 IRP at 1 (Nov. 5, 2009); Order No. 10-457 at 30 (Nov. 23, 2010).

[34] PGE 2009 IRP at 7.

[35] Docket No. UE 283, Order No. 14-422 at 7-8 (Dec. 4, 2014); Docket No. UE 294, Order No. 15-356 at 5-6 (Nov. 3, 2015).

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

Moreover, the Company's argument that the AUT, rather than the IRP, is the appropriate venue for evaluating its proposal is unconvincing. The Company criticizes CUB for focusing on the rate base aspect of the transaction and argues that "[t]he larger issue with regard to the AUT … is not how to categorize the transaction based on its impact on PGE (i.e., fuel purchase versus rate base) but rather on its value to customers. The value for customers is greater retail price stability. Based on this customer value, the transaction is a hedge, which makes it appropriate for the AUT."[36/] ICNU considers this statement to be overbroad. The AUT exists to "update" net variable power costs ("NVPC") in a "narrowly designed" proceeding.[37/] Thus, that PGE's long-term hedging program impacts retail price stability is not the issue. The issue is whether this program is merely an "update" to NVPC or something larger. The Company's witness acknowledged at the hearing that its proposal is not "representative of what we have historically done" in the AUT.[38/] After all, the acquisition of a new generating resource impacts "retail price stability" also,[39/] but that does not mean the prudence of this acquisition is evaluated in the AUT. ICNU agrees with CUB that approving rate based investments in variable power cost proceedings would establish poor precedent because, as CUB states, "there are several parts to any given capital investment, including the investment itself and the financing of it. The *only* time ratemaking examines financing costs is during a general rate case."[40/]

Consequently, ICNU continues to believe that the question of whether long-term hedging of natural gas is in the public interest should first be evaluated in the IRP. Nevertheless,

---

36/ PGE Opening Br. at 7.

37/ Docket Nos. UE 180/UE 181/UE 184, Order No. 07-015 at 17 (Jan. 12, 2007); Docket No. UE 192, Order No. 07-445 at 1 (Oct. 17, 2007).

38/ Conf. Tr. at 19:9-11.

39/ PGE Opening Br. at 7.

40/ CUB Opening Br. at 9 (emphasis in original).

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

parties have developed an evidentiary record in this docket that demonstrates the significant failings of such a policy and the Commission should render a decision based on this record.

III. CONCLUSION

Based upon the foregoing and the reasons discussed in ICNU's, Staff's, and CUB's Opening Briefs, ICNU recommends that the Commission refuse to approve PGE's long-term gas hedging program, including the transaction it has proposed to include in rates for 2017.

Dated this 12th day of October, 2016.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple
Tyler C. Pepple
333 S.W. Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242 (phone)
(503) 241-8160 (facsimile)
tcp@dvclaw.com
Of Attorneys for the Industrial Customers of
Northwest Utilities