

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 308**

In the Matter of )  
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 )  
PORTLAND GENERAL ELECTRIC )  
COMPANY, )  
 )  
2017 Annual Power Cost Update Tariff )  
(Schedule 125). )  
\_\_\_\_\_ )

**CLOSING BRIEF  
OF THE  
CITIZENS' UTILITY BOARD OF OREGON**

October 12, 2016



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**I. Introduction**

Pursuant to Administrative Law Judges (“ALJ”) Arlow and Harper’s September 22, 2016 Ruling, the Citizens’ Utility Board of Oregon (“CUB”) submits its Closing Brief in UE 308.

As stated in testimony and briefing throughout this docket, CUB strongly recommends that the Commission reject Portland General Electric’s (“PGE” or “the Company”) proposal to ratebase natural gas reserves.<sup>1</sup> Based on review of testimony and briefs filed by the Public Utility Commission of Oregon Staff (“Staff”), the Industrial Customers of Northwest Utilities (“ICNU”), and PGE, not one non-Company party to this proceeding believes that PGE’s request for relief should be granted.<sup>2</sup>

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<sup>1</sup> CUB’s UE 308 Opening Brief at 21.

<sup>2</sup> See generally ICNU’s UE 308 Opening Brief; Staff’s UE 308 Opening Brief; PGE’s UE 308 Opening Brief.

## II. Argument

PGE is proposing a significant and highly speculative change in how it secures fuel for its power plants.<sup>3</sup> The proposal is a large capital investment in natural gas reserves as an alternative to entering into a long-term financial hedge.<sup>4</sup> The Company appears to have backtracked on its initially preferred “long-term gas hedging program”<sup>5</sup> classification for its proposal. PGE accepts the ratebase component, acknowledging that its proposal is indeed a long-term cost-of-service natural gas transaction intended to acquire non-operating direct ownership in oil and gas wells.<sup>6</sup> The Company has failed to address the significant risks ratepayers assume in its proposal, and has sought review of those risks through an improper and inadequate process. CUB continues to urge the Commission to reject the Company’s proposal to invest in natural gas reserves.

### A. There May be a Significant Supply Risk Associated with the Proposal

The Company is unable to produce sufficient evidence to support its claim that “[t]here is no significant supply risk” associated with its proposed transaction.<sup>7</sup> This bald assertion ignores the fact that there is a very real production risk associated with natural gas drilling, even when reserves are “proved” and “probable.”<sup>8</sup> PGE has attempted to minimize production risks by only entering into transactions for properties that contain “proved” or “probable” reserves.<sup>9</sup> However, historically similar transactions such as the NW Natural (“NWN”) and Encana transaction in UM 1520 demonstrate that significant

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<sup>3</sup> CUB’s UE 308 Opening Brief at 2.

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> UE 308 – PGE/100/Tinker – Sims/1, lines 7-9.

<sup>6</sup> PGE’s UE 308 Opening Brief at 2.

<sup>7</sup> *Id.* at 7.

<sup>8</sup> CUB’s UE 308 Opening Brief at 16.

<sup>9</sup> UE 308 – CUB/200/Jenks/26.

supply risks may remain even when operating with “proved” and “probable” reserves.<sup>10</sup> In both that case and the transaction considered in the present case, the Company contracted with Netherland, Sewell, and Associates, Inc. (“NSAI”).<sup>11</sup> NSAI presented analysis for both proposed transactions that estimated the amount of “proved” and “probable” reserves.<sup>12</sup> Even though the NWN /Encana agreement contained NSAI analysis to support that reserves were “proved” and “probable,” the actual production was *significantly* below forecast.<sup>13</sup> That transaction revealed very apparent production issues and problems.<sup>14</sup>

Standing alone, an assertion that reserves are “proved” and “probable” is insufficient to conclude that there is no significant supply risk. The Company itself has admitted that production risk has not been eliminated altogether.<sup>15</sup> It is impossible to know what the depletion curve is for each well contemplated in this proposal, and the rate of depletion will undoubtedly vary.<sup>16</sup> The assumption that the wells will produce for thirty-five years, as is contemplated by the proposed contract, is unfounded.<sup>17</sup> The wells may produce for twenty years; they may produce for twenty five years.<sup>18</sup> It is entirely speculative. Importantly, Staff and ICNU share CUB’s concern regarding the risk and uncertainty associated with production volume.<sup>19</sup> PGE cannot adequately demonstrate that there is no significant supply risk.

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<sup>10</sup> *See id.* at 27.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Confidential Session Transcript (“CS TR.”) 111 (Jenks).

<sup>15</sup> UE 308 – PGE/800/Sims – Faist – Tooman/27.

<sup>16</sup> CS TR. 109 (Jenks).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *See* ICNU’s UE 308 Opening Brief at 10; *see also* Staff’s UE 308 Opening Brief at 7.

## **B. PGE’s Argument that the Nature of the Transaction Drove the Timing of the Docket Fails to Consider Important Available Alternatives**

Every non-Company party to this docket raised concerns about having inadequate time to review the transaction.<sup>20</sup> Indeed, CUB and other parties effectively had three weeks with which to review the actual investment.<sup>21</sup> For its part, PGE acknowledges that the schedule in this docket was compressed and an attendant burden that was placed on parties.<sup>22</sup> PGE asserts that the compressed timing of this docket was driven by the nature of the gas transaction—the market and the specific deal, rather than the particular ratemaking docket utilized.<sup>23</sup> However, this argument is self-serving and narrowly focuses on the Company’s argument that it “had” to hold open this deal for review.<sup>24</sup> Instead of arguing that it was compelled to hold this deal open for longer than industry standard,<sup>25</sup> the Company could have taken a completely different procedural route that would shift risk in a more equitable manner.<sup>26</sup>

It is not the nature of the transaction that drove the timing of this docket, as the Company asserts. Rather, it is the fact that PGE is seeking pre-approval of this contract in an attempt to insulate its shareholders from the risk associated with a disallowance.<sup>27</sup> However, the ability to absorb risk of that nature is built into to a utility’s business model. Typically, the Company’s shareholders bear the risk of a potential prudence

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<sup>20</sup> See CUB’s UE 308 Opening Brief at 11; see also ICNU’s UE 308 Opening Brief at 6; see also Staff’s UE 308 Opening Brief at 14.

<sup>21</sup> CUB’s UE 308 Opening Brief at 11.

<sup>22</sup> PGE’s UE 308 Opening Brief at 11.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See CUB’s UE 308 Opening Brief at 12.

<sup>27</sup> *Id.*

disallowance, but are rewarded on that risk with a return on equity if their investment is recoverable.<sup>28</sup>

Additionally, the Company argues that timing issue must not have been the driving force behind parties' positions because CUB stated at hearing that more time to review the transaction would not have changed CUB's position.<sup>29</sup> This mischaracterizes CUB's statement. CUB merely stated that the process and timing were irrelevant to its conclusion that the proposal is fundamentally not an activity that the Commission should authorize.<sup>30</sup> If the answer is fundamentally "no" regardless, the timing of the docket is irrelevant. That is not to say that CUB does not have considerable concerns about the process that the Company attempted to use in this docket, as has been fleshed out in testimony and briefing throughout.<sup>31</sup> Regardless of whether CUB supports the Company's proposed activity or not, the Company must not have impunity to require parties to respond to a highly speculative, risky, and long-term investment over a three week period.<sup>32</sup>

**C. Contrary to the Company's Assertion, the IRP is an Appropriate Place to Consider Gas Reserve Investment and a General Rate Case is the Appropriate Place to Consider a Specific Contract**

The Company fails to provide sufficient evidence that an investment in gas reserves is incapable of being considered for regulatory acknowledgement in an Integrated Resource Plan ("IRP"). If utilities such as PGE are going to start to consider thirty-plus year investments in gas reserves, then an IRP process will be beneficial to

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<sup>28</sup> *Id.*; see *In re Portland General Electric Company*, Docket Nos. DR 10, UE 88, and UM 989, Order No. 08-487 (Sep. 30, 2008).

<sup>29</sup> PGE's UE 308 Opening Brief at 11.

<sup>30</sup> CS TR. 114 (Jenks) ("[F]irst of all, I don't think this is an activity that we should authorize. And so the timing—the process doesn't really matter if that's my conclusion.").

<sup>31</sup> See CUB's UE 308 Opening Brief at 5-12.

<sup>32</sup> *Id.* at 11.

consider what natural gas resource needs might look like over a long term.<sup>33</sup> An IRP would adequately consider the risks over such a long time period.<sup>34</sup> It would consider various use cases.<sup>35</sup> An IRP is also appropriate because it would examine resource needs under the constantly shifting regulatory structure of greenhouse gases—an aspect that the Company has currently provided no analysis.<sup>36</sup>

While the Company briefly discusses how shifting regulations may affect cost, there are many other risks to consider regarding future regulatory uncertainty.<sup>37</sup> The risk of a one year transaction is markedly different than the risks of changing greenhouse gas regulation over a thirty-five year investment, because a utility can respond to carbon regulation by shifting away from gas generation. To fully understand the deal that PGE is proposing in this case, all parties to this case need the Company to examine natural gas needs under various futures of greenhouse gas regulation. An IRP analysis would provide such thorough vetting. An Annual Update Tariff (“AUT”) proceeding does not.

Despite the need to analyze the Company’s proposal through a more robust process, the Company continues to argue for preapproval of its thirty-year rate based investment in natural gas reserves through the time-limited AUT process.<sup>38</sup> PGE contends that IRP analysis of a generic hedge transaction would not be useful due to changing product availability and a dynamic gas market environment.<sup>39</sup> According to the Company, an IRP analysis is not needed to determine gas requirements for existing

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<sup>33</sup> CS TR. 114 (Jenks).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> CUB’s UE 308 Opening Brief at 15.

<sup>37</sup> See PGE’s UE 308 Opening Brief at 13.

<sup>38</sup> See generally *id.*

<sup>39</sup> *Id.* at 11-12.

plants.<sup>40</sup> PGE attacks CUB's suggestion to place transactions such as this one in an IRP by arguing that the regulatory process would be expanded from months to years, and that no actual transaction could be held open for that long.<sup>41</sup> But the role of the IRP is not to consider a specific capital investment—that is the role of a general rate case. Once an IRP has considered long-term gas procurement, PGE would be able to enter into a contract and bring it forward in a general rate case.<sup>42</sup> The IRP acknowledgement or lack of acknowledgement will tell the Company a great deal about the regulatory risk of the investment. And in a general rate case, the parties can examine the full costs that PGE is seeking recovery of: the investment, and the cost of financing that investment. PGE should utilize IRPs to plan for large capital investments, and general rate cases for prudence review and determination.<sup>43</sup>

#### **D. PGE Mischaracterizes CUB's Alleged Indifference Towards Affiliate Structure**

In its Opening Brief, the Company makes a sweeping assertion that CUB is indifferent between an affiliate structure and direct ownership in this transaction.<sup>44</sup> This argument is off-base, and misconstrues CUB's testimony at hearing. At hearing, CUB asserted that there were no real differences between an affiliate contract and direct ownership from a *ratemaking* perspective.<sup>45</sup> Importantly, CUB was making no claims as to whether or not an affiliate structure is preferable or not from any legal perspective, such as insulating the Company from potential liability.<sup>46</sup> CUB points this discrepancy

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<sup>40</sup> *Id.* at 12.

<sup>41</sup> PGE's UE 308 Opening Brief at 11.

<sup>42</sup> *See* CS TR. (Jenks) 115.

<sup>43</sup> CUB's UE 308 Opening Brief at 12.

<sup>44</sup> PGE's UE 308 Opening Brief at 9.

<sup>45</sup> *See* CS TR. (Jenks) 113.

<sup>46</sup> PGE's UE 308 Opening Brief at 9.



out to note the narrow intent of its commentary at hearing, and to avoid the Company imputing onto CUB an unintended viewpoint.

**E. The Company Fails to Rebut CUB’s Concerns Regarding Cost of Capital, Depreciation, and Non-Power Costs**

In testimony, CUB expressed concerns regarding the Company’s subsequent drilling operations extending further and further from its last general rate case.<sup>47</sup> The Company failed to rebut any of these concerns. If the Company’s proposal is approved, it remains clear that each additional year of subsequent drilling has increasing production risk, and that the subsequent drilling will be proposed as updates to the AUT.<sup>48</sup> By the time the drilling contemplated by the proposed contract is completed, it will have been years since PGE’s cost of capital, depreciation, and non-power costs have been examined in a general rate case.<sup>49</sup> As such, it will no longer be reasonable to establish ratemaking for a capital investment.<sup>50</sup> CUB remains concerned that if this contract is approved, PGE will perceive it as a go ahead for a multi-year program.<sup>51</sup> PGE has still offered no evidence as to size, cost, rate impact, or prudence of subsequent drilling.<sup>52</sup>

**F. CUB Acknowledges PGE’s Argument Regarding the Life of the Company’s Generating Assets**

In its Opening Brief, PGE rebuts CUB’s argument that the fuel supply contract extends beyond the life of PGE’s generating assets.<sup>53</sup> PGE asserts that its gas-fired generating plants have forty-five year useful lives and depreciation schedules, well

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<sup>47</sup> UE 308 – CUB/200/Jenks/34.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> PGE’s UE 308 Opening Brief at 15.

beyond the life of this proposed contract.<sup>54</sup> CUB appreciates the Company pointing out this fact, and notes that it is correct in doing so.<sup>55</sup>

### III. Conclusion

The Company has continually failed to meet its burden to prove that the AUT is the appropriate process to review its proposal, that its proposal is a legitimate activity for an Oregon-regulated electric utility, and that its proposed contract is prudent. For the foregoing reasons, and reasons discussed in ICNU's, Staff's, and CUB's Opening Briefs, CUB urges the Commission to refuse to approve the Company's proposal to ratebase natural gas reserves.

Dated this 12<sup>th</sup> day of October, 2016.

Respectfully submitted,

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<sup>54</sup> *Id.*

<sup>55</sup> CUB filed an errata to its CUB/200 testimony on September 16, 2016 effectively removing this incorrect assertion from the record. CUB does note, however, that the proposed contract does extend beyond the Oregon Department of Energy useful life of PGE's Carty gas plant. PGE is correct that the useful life of the Carty plant for regulatory purposes is forty-five years. See UE 308 – CUB/200/Jenks/10, citing [https://www.oregon.gov/energy/Siting/docs/CGS/Carty\\_Exhibits\\_W-DD.pdf](https://www.oregon.gov/energy/Siting/docs/CGS/Carty_Exhibits_W-DD.pdf), page W-1.