

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1633**

In the Matter of)	
)	CITIZENS' UTILITY BOARD
PUBLIC UTILITY COMMISSION OF)	OF OREGON'S ANSWERING BRIEF
OREGON,)	(ISSUE BIFURCATION)
)	
Investigation into Treatment of Pension)	
Costs in Utility Rates.)	

1 **I. PROCEDURAL HISTORY**

2 This docket grew out of NW Natural's request in Docket UG 221 to change how it
3 recovered pension expense. On October 26, 2012, the Commission issued its preliminary order in
4 the UG 221 docket, which stated:

5 4. Pension Costs

6 Since 1986, the Commission has allowed regulated utilities to recover in rates its
7 pension expense based on an actuarial calculation of the utility's "Net Periodic
8 Pension Cost," using the standards established by the Federal Accounting
9 Standards Board in its Financial Account Statement (FAS) 87. NW Natural asks
10 the Commission to change its policy to allow it to recover not only its FAS 87
11 pension expense, but also to determine that its pension contributions made in
12 excess of FAS 87 expense should be included in rate base, and allow the company
13 both recovery of and recovery on the rate-based asset.

14 *Commission Resolution.* NW Natural's proposal is denied. As will be discussed
15 more fully, we are not yet convinced that a change to the Commission's existing
16 policy is warranted or that the changed proposed by NW Natural would be the
17 correct policy choice even if a change is warranted. ***We will open a docket to***
18 ***review the treatment of pension expense on a general, non-utility-specific, basis.***
19 NW Natural will continue to recover its existing FAS 87 expense, and as well as
20 use of the balancing account established in docket UM 1475 as it currently exists.

1 The Commission may conclude during the generic docket that including such
2 assets in rate base is an appropriate policy to apply to all utilities going forward.
3 Should that occur, NW Natural would be able to seek inclusion of an appropriate
4 prepaid pension asset in rate base in future rate proceedings.¹

5 In its Supplemental Order, dated November 16, 2012,² the Commission again emphasized
6 its desire to “open a docket to review the treatment of pension expense on a general, non-utility-
7 specific basis.” In the meantime, NW Natural’s proposal to include its prepaid pension costs in
8 rate base was denied.³ It was CUB understands that the purpose of the “generic” docket was to
9 determine whether the existing method of recovery based on FAS 87 expense is a reasonable
10 method on a going-forward basis, or whether that policy should be changed on a generic basis
11 for all utilities.⁴

12 After this UM 1633 docket was initiated, Judge Grant sent out a Notice of Prehearing
13 Conference (Notice). He noted that at the conference he would propose that the investigation be
14 divided into two phases.

15 The first phase would address how the Commission should treat pension costs
16 when setting rates on a going-forward basis. The second phase would address
17 how the Commission should resolve requests by utilities to recover pension costs
18 incurred in the past.⁵

This Notice caused concern for NW Natural, which submitted a letter noting its concerns, prior
to the Prehearing Conference even taking place. The letter stated:

19 To be clear, NW Natural’s proposal (and we believe the proposals of other
20 utilities) is entirely related to how the Commission should treat pension costs on a
21 going-forward basis. Specifically, NW Natural will be asking to recover on a
22 prospective basis (a) *future* pension expense through FAS 87; and (b) *future* costs
23 to finance the Company’s prepaid pension asset. Given that this request

¹ UG 221 Order No. 12-408 at 4.

² UG 221 Order No. 12-437 at 22-23.

³ UG 221 Order No. 12-437 at 22.

⁴ UG 221 Order No. 12-437 at 23.

⁵ Notice of Prehearing Conference issued March 27, 2013.

1 comprises the core of NW Natural’s proposal, the Company would, by necessity,
2 make this proposal in “Phase One.”⁶

3 At the Prehearing Conference on April 8, 2013, the parties could not agree on a schedule
4 for the docket due to their disparate positions on whether the docket should be phased,
5 and if phased, what the content of each phase would be. A decision was made that the
6 parties would first brief the potential bifurcation of the docket. The utilities have filed
7 two bifurcation briefs, the first from Idaho Power Company (IPCO) and the second from
8 NW Natural, Portland General Electric, Avista Corporation, Cascade Natural Gas
9 Corporation, and PacifiCorp (Joint Utilities).

10 The IPCO brief is noteworthy in that in it IPCO seeks to be excused from the
11 remainder of the proceeding stating that it does not have a prepaid asset, is not incurring
12 any financing costs to be recovered, and “does not believe that it can materially
13 contribute going forward in this docket.”⁷ Nevertheless it goes on to state “[b]ecause a
14 prepaid pension asset represents future pension expense, it would not be appropriate to
15 contemplate regulatory treatment for pension expense recovery without at the same time
16 considering regulatory treatment of the prepaid pension asset.”⁸

17 The Joint Utilities brief is more extensive, but does nothing to convince CUB that the
18 Joint Utilities are in fact seeking only ratemaking treatment on a “going forward” basis. The
19 Joint Utilities state that they are asking, in addition to FAS 87 expense recovery, that:

20 *the prepaid pension asset be added to rate base*, so that they will be allowed to
21 recover prospective financing costs from contributions in excess of FAS 87

⁶ Letter from Lisa Rackner, Attorney for NW Natural, to Judge Grant dated April 5, 2013 (*emphasis in the original*).

⁷ UM 1633 Idaho Power’s Opening Brief on Bifurcation Proposal at 2 lines 25-26.

⁸ UM 1633 Idaho Power’s Opening Brief on Bifurcation Proposal at 2 lines 13-15.

1 expense made to comply with federal mandates.⁹

2 The brief is, therefore, merely a rehash of all of the arguments made by NW Natural in UG 221.

3 CUB, instead of asking that the arguments extraneous to bifurcation be stricken, will address and

4 question a few of those arguments in addition to making its own arguments in support of a

5 modified form of bifurcation.

6 **II. THE COMMISSION’S DESIRE FOR AN ALL PARTY GENERIC POLICY**
7 **DOCKET**

8 By seeking to remove itself from this docket, IPCO is undermining the Commission’s

9 desire for an all-party generic docket to decide on pension policy “going forward.” CUB agrees

10 with the Commission that there is a need for an all-party generic policy docket to confirm/reset

11 Oregon policy for all utilities in the area of pensions on a forward looking basis. CUB, therefore,

12 objects to any utility being excused from this docket.

13 **III. BIFURCATION OF THE ISSUES PROMOTES EFFICIENT USE OF**
14 **COMMISSION TIME – THE BIFURCATION PROPOSED BY CUB IS,**
15 **HOWEVER, DIFFERENT**

16 The Commission has expressed its desire for bifurcation. CUB supports the

17 Commission’s stated procedural plan for the reasons discussed below.

18 Regardless of the arguments made by the Joint Utilities, the proverbial elephant remains

19 in the room – the pension contributions incurred individually by each of the Joint Utilities in the

20 past (prepaid pension asset), which they now want included in rate base, and upon which they are

21 now seeking carrying costs in the future. The Joint Utilities continue to argue that just because

22 they had to pay into their pension funds “in the past” does not negate the fact that the money in

23 question was banked for “use in the future.” To CUB, this is a non issue. The payment was

⁹ UM 1633 Joint Utilities’ Opening Brief at 4 lines 15-17 (*emphasis added*).

1 made in the past. Statutes, rules, and policies in effect during the time period in which those
2 payments were made are the only statutes, rules and policies that may be applied in regard to
3 those payments; to do otherwise would constitute retroactive ratemaking. The policies in place at
4 the time of those contributions limited pension ratemaking to the FAS 87 expense. Pension
5 contributions were not generally recoverable and no utility filed a deferral to allow it to track the
6 contributions for later recovery in rates. Today, the utilities are seeking to go back in time and
7 change policy to allow them to earn a return on pension contributions that were made, in some
8 cases, many, many years ago. Because FAS 87 does not amortize pension contributions,
9 contributions that contribute to prepaid assets may go back decades. A Commission policy
10 change should be forward looking, and should not go back and change the policies and rules
11 related to actions the utilities took in previous decades. Commission action in regard to the
12 “prepaid pension asset” now accrued would constitute retroactive rate making.

13 CUB is concerned that if the Commission allows itself to be bogged down by these
14 contributions, which were incurred in the past, it will be much harder for it to craft a policy to
15 apply to contributions to the fund made in the future. CUB has no objection to considering
16 alternative methods for dealing with pension funds – including basing recovery on contributions
17 rather than expense -- in the future. CUB does, however, object to the constant attempts by the
18 Joint Utilities to embroil the Commission in retroactive ratemaking related to historic
19 contributions.

20 That said, CUB recognizes that the Commission’s proposed bifurcation of the docket, if
21 effected, will defacto result at some point in the Commission and parties having to revisit the
22 issue of the previous contributions. CUB believes that this will require going back and

1 examining decades of pension contributions and expenses to determine the source of the so-
2 called “pre-paid asset.” If a contribution that contributed to the “pre-paid asset” was made two
3 decades ago, then it is necessary to go back two decades and examine the policies that were in
4 place at the time, the record that was established in any proceeding that addressed pensions at
5 that time, and what has happened to that “asset” over time. CUB’s preference would, however,
6 be to deal with those individually banked amounts on an individual basis, in individual Company
7 contested case dockets. This is because the issue of the previously incurred amounts can only be
8 addressed by the statutes, rules and policies in place at the time and not through any future
9 change in policy. Thus, for CUB, bifurcation of the issues really means limiting this UM 1633
10 docket to a policy docket for consideration of what to do with pension funds on a truly forward
11 going basis.

12 The flip side of this is that if the Commission does not bifurcate these issues in this
13 docket, then it will be forced to address seven different issues in this docket:

- 14 ○ First, the forward looking policy question,
- 15 ○ Second, NW Natural’s prior payments into the fund,
- 16 ○ Third, PacifiCorp’s prior payments into the fund,
- 17 ○ Fourth, Cascades, prior payments into the fund,
- 18 ○ Fifth, Avista’s prior payments into the fund,
- 19 ○ Sixth, IPCO’s prior payments into the fund, and
- 20 ○ Seventh, PGE’s prior payments into the fund.

21 This docket will become unruly and completely unmanageable. Policy dockets are supposed to
22 be comment dockets, but the arguments specific to each utility’s prior pension payments would

1 be fact specific and would require testimony as opposed to comments. This hybrid is, in CUB's
2 mind, unworkable.

3 CUB also wishes to address the Joint Utilities' argument that bifurcation will force
4 immediate write offs.¹⁰ This argument, once the mantra only of NW Natural, now appears to be
5 the siren song of all the utilities. CUB disputes the implied premise that write offs will
6 automatically harm a utility's credit. With great fanfare this week, PGE announced a write-off
7 associated with Cascade Crossing.¹¹ Furthermore, the Notice of Prehearing Conference issued
8 in March of this year proposed this docket under a bifurcated schedule. To the degree that such
9 bifurcation requires a write-off, utilities have had a good deal of time to explain the
10 circumstances of this docket to the financial community and to minimize any impact. And
11 finally, we will address the claim that bifurcation would deprive the Joint Utilities of Due
12 Process.¹² The Commission has stated its desire for a generic policy docket to address, on a
13 "going forward" basis, pension contributions for all investor-owned utilities in Oregon. That is
14 the purpose and intent of this docket. CUB, by arguing for bifurcation of the issues, is not
15 seeking to deprive the utility of its right to argue about anything; CUB is only seeking to find the
16 greatest administrative efficiency. Some of the issues here are large policy issues that should be
17 argued in this policy docket, however other issues are not policy issues but fact specific issues,
18 which should rightly be argued in a contested case(s). If anything, the parties will receive greater
19 due process rights (discovery, cross-examination etc.) in individual contested case proceedings.

¹⁰ UM 1633 Joint Utilities Opening Brief at 6 lines 2-7.

¹¹ <http://investors.portlandgeneral.com/releasedetail.cfm?ReleaseID=768816>

¹² UM 1633 Joint Utilities Opening Brief at 6 l.

1 **IV. THE NON-BIFURCATION ISSUES RAISED BY THE JOINT UTILITIES**

2 To the extent that having some insight into later arguments that will be made has some
3 bearing on the Commission’s determination of whether this docket should be bifurcated, CUB
4 will address certain of the non-bifurcation issues raised by the Joint Utilities.

5 The Joint Utilities seek to blame their pension problems on the Pension Protection Act of
6 2006 (PPA) and the subsequent market declines that occurred, yet are seeking a return on
7 contributions made prior to the PPA.¹³ CUB intends to prove that the issue was more
8 complicated than the utilities are portraying.

9 The Joint Utilities admit that “[t]his condition is expected to reverse in the future, with
10 pension expense overtaking contributions and reducing the prepaid balance eventually to zero.”¹⁴
11 Because FAS 87 expense does not amortize pension contributions, CUB believes that this
12 statement is, at best, misleading.

13 The Joint Utilities are proposing to continue recovering through FAS 87¹⁵ (the methodology
14 they have been assuring us is broken) and now, in addition, they are asking for a return on pre-
15 paid assets related to historic contributions.

16 While the utilities may be correct that future contributions could benefit customers by
17 reducing FAS 87 expense, that argument is only true on a going forward basis. Allowing
18 retroactive recovery for previously incurred contributions is not beneficial to consumers, and
19 takes away any incentive for the utilities to properly manage their companies – this is because it
20 gives the impression that ratepayers can always be tapped to cover expenses for past
21 mismanagement.

¹³ UM 1633 Joint Utilities Opening Brief at 3 lines 3-7.

¹⁴ UM 1633 Joint Utilities Opening Brief at 3 lines 7-9.

¹⁵ UM 1633 Joint Utilities Opening Brief at 3 lines 15-19.

1 Contrary to the argument made by the Joint Utilities, allowing recovery of costs to
2 finance the prepaid asset is not consistent with “Commission policy allowing utilities to add to
3 rate base cash contributions made on customers’ behalf before recognition in expense, such as
4 material and supplies”;¹⁶ if it were consistent, there would be no point to the Commission
5 opening this docket. As stated by CUB in its Opening Brief in docket UG 221, several
6 commissions have described pension costs as expenses, rather than “pre-paid obligations”¹⁷
7 appropriately included in rate base.¹⁸ As stated by the Pennsylvania Public Utility Commission,
8 “[i]t is an axiom of ratemaking that pension fund costs are recurring and are a traditionally
9 claimed expense item in any and all base rate filings made by jurisdictional utilities which
10 provide such pension benefits.”¹⁹ The Maryland and the District of Columbia commissions have
11 found that pension costs were “classic, ongoing costs of running a utility company” and did not
12 qualify for “specialized ratemaking treatment.”²⁰ Even utilities themselves have described
13 pension costs as expenses appropriate for deferral. In arguing that deferral and amortization of its
14 out-of-period pension loss was appropriate, Delmarva Power & Light Company likened pension
15 expenses to expenses incurred in restoring the system after a major storm.²¹

16 Additionally, the mere fact that pension expenses may be considered “pre-paid” does not

¹⁶ UM 1633 Joint Utilities Opening Brief at 3 lines 23-25.

¹⁷ UG 221 - CUB Opening Brief, pages 16-17. .

¹⁸ See e.g.: *Re: Application of San Diego Gas & Electric Company (U902M) for authority to update its gas and electric revenue requirement and base rates effective on January 1, 2008*, Application 06-12-009, Decision 09-09-011 (Cal. PUC Sept. 10, 2009)(discussing SDG&E pension contributions as expenses that would impact revenue requirement); *Re: Delmarva Power & Light Company for an Increase in Electric Base Rates and Miscellaneous Tariff Changes, et al.*, Docket No. 09-414 and 09-276T, Order No. 8011 at 56 (Del. PSC Aug. 9, 2011).

¹⁹ PA PUC at 35-36.

²⁰ *Re: Application of Delmarva Power & Light Company for an Increase in its Retail Rates for the Distribution of Electric Energy*, Case No. 9192, Order No. 83085 at 15-16 (Md. PSC Dec. 30, 2009); see also *Re: Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Formal Case No. 1076, Order No. 15710 (D.C. PSC Mar. 2, 2011).

²¹ *Re: Delmarva Power & Light Company for an Increase in Electric Base Rates and Miscellaneous Tariff Changes, et al.*, Docket No. 09-414 and 09-276T, Order No. 8011 at 56 (Del. PSC Aug. 9, 2011)(The Commission ultimately denied Delmarva’s request for deferral and amortization of its out-of-period pension losses.).

1 mean that they should be included in rate base. As stated by the West Virginia Public Service
2 Commission:

3 The Companies proposed that the amounts placed in their Pension Funds as
4 prepayments be included in rate base. Staff and CAD proposed that the so-called
5 Prepaid Pension Asset not be included in rate base.

6 *The Commission will not include the amounts recorded by the Companies as*
7 *Prepaid Pension Assets in Rate Base. We do not agree with the Companies’*
8 *arguments that these Pension Assets represent payments by the Companies upon*
9 *which they are entitled to earn a return in the same manner as we provide a*
10 *return on Utility Plant in Service that is used and useful for the provision of utility*
11 *service. We recognize that pension accounting is a complex area and that*
12 *providing funds to build up pension assets that will provide for future pension*
13 *benefits that have been promised to employees is an important and prudent thing*
14 *to do. We cannot presume, however, that because pension costs are “prepaid” in*
15 *the sense that money is deposited into a separate pension fund, the pension assets*
16 *represent prepaid expenses that either require or deserve rate base treatment. We*
17 *must be careful of including any and all prepayments in rate base.*

18 Prepayments should be subject to the same review as any other investment or
19 expense of a utility. Inclusion of prepayments in rate base should not be used for a
20 utility to find a convenient place to deposit funds and then expect to earn a return
21 on those funds. (emphasis added).²²

22 The Joint Utilities contributions were to fund ordinary and recurring expenses that are, in fact,
23 subject to the rule against retroactive ratemaking.

24 Contrary to what the Joint Utilities are arguing, Commissions have been unwilling to
25 allow such contributions into rates due to violation of the rule against retroactive ratemaking.

26 For further examples please see CUB’s UG 221 Opening Testimony.

27 **V. CONCLUSION**

28 CUB believes strongly that for administrative efficiency this docket should be bifurcated.

29 It could be bifurcated as initially stated by Judge Grant in his Prehearing Memorandum or

²² Appalachian Power Company and Wheeling Power Company, Both dba American Electric Power Case No. 10-0699-E-42T at 38-39.

1 bifurcated as suggested by CUB in this Answering Brief. The bottom line is that these issues
2 need to be bifurcated. This is true because when there are elephants from the past and present
3 already in the hearing room, it will be hard for all of the parties and the elephant of the future to
4 get in the door and talk.²³ Notwithstanding this fact, should the Commission rule in favor of the
5 Joint Utilities and fail to bifurcate this docket, CUB respectfully reserves all of its rights to argue,
6 on any and all of the issues it deems relevant, in the un-bifurcated single - phase docket.

Dated this 5th day of June, 2013.

Respectfully submitted,



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²³ Put another way, and with my sincere apologies to Charles Dickens, there is little hope of the parties coming to a mutual decision on how to deal with the ghost of pensions future (going forward) if the ghosts of pensions present and past are at the back of the room kibitzing.

UM 1633 – CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of June, 2013, I served the foregoing **CITIZENS' UTILITY BOARD OF OREGON'S ANSWERING BRIEF (ISSUE BIFURCATION)** in docket UM 1633 upon each party listed in the UM 1633 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. C. M.', with a long horizontal flourish extending to the right.

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