

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1633

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into Treatment of Pension
Costs in Utility Rates.

RULING

DISPOSITION: REQUEST FOR DISCOVERY GRANTED IN PART AND
DENIED IN PART

I. INTRODUCTION

On April 24, 2014, I held a telephone conference to address a discovery dispute between the Citizens' Utility Board of Oregon (CUB) and the six utilities participating in this docket. Representatives appeared on behalf of CUB, Northwest Natural Gas Company, dba NW Natural, PacifiCorp, dba Pacific Power, Portland General Electric Company, Idaho Power Company, Avista Utilities, Cascade Natural Gas Company, the Northwest Industrial Gas Users, and Commission Staff.

For reasons that follow, I grant CUB's request that the utilities provide all available pension cost information not previously provided in earlier data responses. I deny CUB's request for information related to defined contribution retirement plans.

II. DISCUSSION

A. Legal Standard

Discovery is intended to produce relevant information for evidentiary use in a legal proceeding. Requests for information must be commensurate with the needs of the case and reasonably calculated to lead to the discovery of admissible evidence.¹ Discovery that is unreasonably duplicative, burdensome, or overly broad is not allowed.²

B. CUB's Request

CUB seeks information related to all forms of retirement compensation. CUB asks each utility to identify monies contributed to defined benefit (pension) plans and defined contribution retirement plans, as well as amounts actually collected for each in rates. CUB requests each utility provide this information beginning the year it first took action to close any portion of its

¹ OAR 860-001-0500(1) and ORCP 36 B(2).

² OAR 860-001-0500(2).

pension plan, and for every subsequent year going forward. CUB acknowledges that the utilities already provided information about pension amounts, but notes that the responses were incomplete and asks the utilities to either provide the missing information or to explain why it is not available.

In its email requesting the discovery conference and at the conference itself, CUB explains it needs the information about all retirement compensation for two reasons. First, CUB states it is trying to determine the relationship between the closing of a pension plan and the growth of a pension asset. In its email, CUB states:

There is undoubtedly a link between the growth in the prepaid pension asset and the closing of the pension plans because the closing of the pension plans reduces FAS 87 expense and the prepaid pension asset is the difference between contributions and FAS 87.³

For this reason, CUB suspects that the current balances of the pension assets may be due, in part, to actions taken by the utilities to restrict or close participation in the pension plans. CUB adds:

To understand the relationship between the status of pension plans (closed, partially open, and fully open) and FAS 87, CUB is seeking information about current non-pension retirement plans. This will help us identify the size of the liability that has moved from the pension plan (and no longer contributes to FAS 87).⁴

Although CUB's email discusses "current" non-pension retirement plans, CUB clarified at the conference that it is looking to determine the impact that closing pension plans had on the historic growth of the pension assets.

Second, CUB also seeks to determine whether ratepayers have benefited by the closure of the pension plans. In its email, CUB opines that, although closing a plan may cause a pension asset to grow, that might not be a problem:

It is possible that closing the pension accounts and converting to a defined contribution plan, while raising the prepaid pension asset, more than offsets that increase by reducing FAS 87 expense and the ongoing costs of retirement.⁵

At the conference, CUB explained why it needed information on defined contribution plans to make that determination:

The money that is contributed to those retirement type 401k plans is monies that would otherwise have been contributed to the pension plans, so we are also trying to determine what affect it had on those plans when those contributions stopped. How would the world be different today if that hadn't happened.⁶

³ CUB's Request for Discovery Conference, April 18, 2014.

⁴ *Id.*

⁵ *Id.*

⁶ Audio Recording, Telephone Conference, Apr 24, 2014 at 11:31.

The utilities object to CUB's request on various grounds, including that it seeks information that is not relevant, already provided, or beyond the scope of the docket.

C. Ruling

I agree with CUB that the utilities should provide all available pension cost information not previously given in earlier data responses. Even the utilities acknowledge that a link exists between the closure of a pension plan and the growth of a pension asset. Idaho Power's witness Bruce McMahon states that "closing a plan may more quickly reduce pension expenses as compared to pension funding, causing upward pressure on the prepaid asset versus the impact of an open plan."⁷ Having complete pension information will allow CUB to determine if it is possible to quantify whether the closing of pension plans affected the growth of pension assets.

CUB has failed, however, to persuade me that information about defined contribution plans will produce relevant information in this docket. First, the amounts utilities have contributed and collected for defined contribution retirement plans will yield no insight into the growth of pension assets. CUB and other parties have filed testimony that identifies the components used to calculate FAS 87 expense.⁸ These factors, such as service cost, interest cost, expected returns, and amortization of unrecognized costs and gains, are limited to variables within the pension plan itself. Amounts utilities contribute to other retirement plans play no role in the calculation of FAS 87 expense and, therefore, cannot affect the calculation of pension assets.

Second, CUB's more general inquiry about whether ratepayers have benefited by the closing of pension plans is beyond the scope of this docket. As stated in the docket caption, this docket addresses the treatment of utility pension costs in rates. The Commission will not examine the prudence of decisions made by certain utilities to move employees to defined contribution plans, or whether such actions should play a role in the recovery of pension costs. Moreover, CUB is mistaken that monies utilities have paid to defined contribution plans would have been paid to pension plans had the pension plans remained open. Although the closing of pension plans may reduce FAS 87 expense as discussed above, the two types of retirement plans are managed separately and subject to different funding requirements.

III. CONCLUSION

CUB's request for discovery is granted in part and denied in part consistent with this ruling.

Dated this 28th day of April, 2014, at Salem, Oregon.



Michael Grant
Chief Administrative Law Judge

⁷ Idaho Power/100, McMahon/8.

⁸ See, e.g., CUB/100, Jenks-McGovern/8; NWIGU-INCUI/100, Smith/14.