

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**


UE 204

In the Matter of)
)
PORTLAND GENERAL ELECTRIC,)
)
Request for recovery of costs associated)
with its Selective Water Withdrawal Project)

DIRECT TESTIMONY
OF THE
CITIZENS' UTILITY BOARD OF OREGON

CONFIDENTIAL

March 18, 2009



BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UE 204

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PORTLAND GENERAL ELECTRIC,) DIRECT TESTIMONY OF
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Request for recovery of costs associated)
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1 My name is Gordon Feighner. I am a utility analyst for the Citizens' Utility
2 Board of Oregon. My qualifications are listed in CUB Exhibit 101.

3 **I. Introduction**

4 The Selective Water Withdrawal [SWW] component of the Round Butte Dam is a
5 significant investment on the part of PGE to improve both water quality and fish passage
6 in the Lower Deschutes River¹. The project is approved by federal and state regulatory
7 bodies for these two key functions², and is scheduled to become operational in May
8 2009.³

9 One of the basic principles of utility regulation is that investments need to be
10 "used and useful" in order to be placed into rates. This principle is codified under Oregon
11 law, which prohibits placing items into the rate base that are "not presently used for

¹ <http://www.deschutespassage.com/deschutes-passage-overview.html>

² UE 204 / PGE / Exhibit 105 / Keil – Schue – Hager

³ <http://www.deschutespassage.com/deschutes-passage-overview.html>

1 providing utility service to the customer”.⁴ CUB is concerned that the fish passage
2 portion of the SWW project will not be successful and will not qualify as used and useful.

3 **II. Used and Usefulness Qualifications of the SWW Facility**

4 CUB accepts PGE’s assessment – verified by FERC and NOAA Fisheries – that
5 the new SWW structure will function as designed for water quality enhancement
6 purposes⁵. The design of the SWW tower and the underlying hydrology, coupled with the
7 water quality enhancement needs downstream, lead CUB to agree that this component of
8 the project will likely remain used and useful for the design life of the project. CUB does
9 not, however, have the same confidence in the effectiveness of the SWW tower to reduce
10 mortality and improve downstream passage for anadromous fish species.

11 CUB’s lack of confidence stems from the fact that the SWW project is “unique”⁶
12 and has not been attempted elsewhere.⁷ Lake Billy Chinook is large, with a surface area
13 of over 4,000 acres. Three significant rivers – the Deschutes River, the Metolius River
14 and the Crooked River – flow into the lake. Fish passage is not currently possible because
15 fish cannot find their way from the three rivers to the dam and fish intake facility.⁸ PGE
16 is attempting to create a water flow in the lake, which will help guide fish to the intake
17 facility. However, with the currents of three rivers coming together in a lake that is in
18 some places hundreds of feet deep, this will not be an easy task.

⁴ **ORS 757.355 Costs of property not presently providing utility service excluded from rate base; exception.** (1) Except as provided in subsection (2) of this section, a public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property not presently used for providing utility service to the customer.

⁵ UE 204 / PGE / Exhibit 105 / Keil – Schue – Hager

⁶ <http://www.deschutespassage.com/deschutes-passage-tower.html> - “This massive structure is truly *unique*—its one-of-a-kind design combines fish collection and water flows for power generation.” [emphasis added by CUB]

⁷ UE 204 / PGE / Exhibit 105 / Keil – Schue – Hager / 3 – “One-of-a-kind structure with no precedence”

⁸ *Ibid.* / 2

1 On its website, PGE offers the following opinion of the project:

2
3 This unique solution involves building a 273-foot underwater tower and fish
4 collection station above Round Butte Dam in Lake Billy Chinook. The fish will
5 be collected, sorted and transported downstream so they can continue their
6 journey to the Pacific . . . The new underwater tower modifies the currents and
7 temperature to mimic the natural conditions of the river. With the new collection
8 station, the fish will be efficiently transported downstream so they can continue
9 on to the Columbia River and out to the ocean. On their return to the river, the
10 fish will be transported by truck above Round Butte Dam to reach the upstream
11 areas to spawn and complete their migration cycle.”⁹

12 “As soon as the project is fully operational, young fish will be transported
13 downstream to continue their migration cycle.”¹⁰

14 In public discussions such as the one above, PGE expresses a great deal of
15 confidence in the ability of the SWW to perform as designed.

16 **Begin Confidential Material**

17 However, CUB Exhibit 102, PGE’s confidential risk analysis, suggests that these public
18 statements are overly optimistic as to whether the facility will operate successfully.

19 PGE’s own risk assessment analysis gives a probability of [REDACTED]
20 [REDACTED]”¹¹

21 Furthermore, two other potential scenarios that [REDACTED]
22 [REDACTED].¹² Even though “failure”
23 in these scenarios may mean narrowly missing a fairly high target for fish survival, and
24 even though any such problems have the potential to be remedied (at an unknown cost),
25 the fact remains that the overall potential for the project to fail to meet its target, [REDACTED]
26 [REDACTED]

⁹ <http://www.deschutespassage.com/deschutes-passage-overview.html>

¹⁰ <http://www.deschutespassage.com/deschutes-passage-overview.html>

¹¹ UE 204 / CUB / Exhibit 102 / Feighner / 3.

¹² *Ibid.*

1 **End Confidential Material**

2 CUB must therefore conclude that there is a significant chance that, upon future review
3 of the SWW project's performance, the project may fail tests related to whether or not the
4 project is used and useful.

5 PGE's proposed review period for the SWW's fish passage component consists of
6 three generations of salmon and steelhead runs, or approximately 12 years. While this is a
7 reasonable timeframe to obtain biologically-significant data regarding fish survival and
8 return rates, it is a long period of time to ask customers to pay for a project that may not
9 be functioning as designed or anticipated.

10 **III. CUB Recommendations.**

11 **A. Annual Review of Performance**

12 CUB recommends that the Commission require PGE to provide an annual review
13 of the project's performance, including fish passage statistics. This review should be filed
14 with the Commission and provided to the parties in this docket for a full three generations
15 of salmon and steelhead runs (12 years or more). If the SWW project should at any point
16 prove to be a failure, the Commission would then have the necessary information to open
17 an investigation to consider the appropriate ratemaking treatment for the costs associated
18 with this project.¹³

¹³ This treatment would obviously need to comply with ORS 757.355 (not presently used). Because the law is currently subject to judicial interpretation in the UE 88 (Trojan) appeals, we are refraining from making a recommendation on the treatment that will be necessary if the project is found to not be used and useful.

1 **B. Separation of accounting for fish passage costs.**

2 Separation of the accounting for aspects of construction that relate only to the fish
3 passage component of the SWW would also be helpful in the event of a future dispute.
4 PGE has contended that the two major functions of the SWW project are intertwined in
5 such a way that the construction accounting is inseparable. However, CUB Exhibit 103
6 shows that numerous line items in the project's pricing schedule are clearly for fish
7 passage only. Simply separating out these line items would be a basic start to determining
8 the additional cost of the fish passage components that are separate from the project's
9 water quality functions. CUB is willing to negotiate the accounting methodology as to
10 how the fish passage components are broken out from the rest of the project. CUB
11 recommends that the Commission order the Company to work with Staff and other
12 parties to separate the costs of this project into water quality, fish passage and joint-use
13 investment. Alternatively, the Commission could simply determine that the uncertainty of
14 the project's ultimate success dictates that, pursuant to ORS 757.215(5), it would be
15 appropriate to enter into interim rate making with regard to this project.

16 **C. Tariff Should Be Updated Annually Until Placed in Base Rates.**

17 PGE is proposing to implement these rates as a special tariff, Schedule 121.
18 However, the proposed Schedule 121 does not include a provision for annual updates.¹⁴
19 As CUB has noted before in dockets dealing with Biglow Canyon, Renewable
20 Adjustment Clauses and Port Westward, the revenue requirement associated with rate
21 base declines each year as the rate base is amortized. When a project's revenue

¹⁴ PGE did not seem to attach the tariff as an exhibit to its testimony. CUB reviewed the proposed tariff from PGE's website:http://www.portlandgeneral.com/about_pge/regulatory_affairs/filings/advice_0filings/docs/PGE_Advice_No._08-15_OL.pdf

1 requirement is being recovered with base rates, we have a regulatory assumption that a
2 new rate base investment is being added that will offset the annual revenue requirement
3 reduction of the existing rate base. This, however, is not true of special schedules where
4 there is no additional rate base that will be coming on to offset the rate base that is
5 amortized. In these cases, after the first year of the schedule, customers will be paying for
6 more than the actual rate base associated with the project. This is poor policy and may
7 violate the “presently used” standard in ORS 757.355. It is also unnecessary.

8 In recent years, as special schedules have been used for ratemaking associated
9 with a new rate base investment, those schedules have come with the requirement that
10 they be updated annually. PGE Schedules 120 (Biglow Canyon) and 122 (Renewable
11 Adjustment Clause) both contain such a requirement:

12 The Biglow Canyon 1 revenue requirements recovered under this schedule
13 that are not otherwise recovered through Schedule 125 will be updated
14 annually and will continue to be recovered under this Schedule 120 until
15 such costs are included in base rates.

16 PGE Schedule 120, page 2.

17 The costs for projects included under this schedule will be undated
18 annually as provided above, and will continue to be recovered under
19 Schedule 122 until such time as the costs are included in base rate or the
20 project is no longer in service.

21 PGE Schedule 122, page 4.

22 CUB proposes that the Commission require the Company to update Schedule 21
23 annually, until the costs are placed into base rates.

24

WITNESS QUALIFICATION STATEMENT

NAME: Gordon Feighner

EMPLOYER: Citizens' Utility Board of Oregon (CUB)

TITLE: Utility Analyst

ADDRESS: 610 SW Broadway, Suite 308
Portland, OR 97205

EDUCATION: Master of Environmental Management, 2005
Duke University, Durham, NC

Bachelor of Arts, Economics, 2002
Reed College, Portland, OR

EXPERIENCE: I have previously given testimony in docket UE 196. Between 2004 and 2008, I worked for the US Environmental Protection Agency and the City of Portland Bureau of Environmental Services, conducting economic and environmental analyses on a number of projects. In January 2009 I joined the Citizens' Utility Board of Oregon as a Utility Analyst and began conducting research and analysis on behalf of CUB.

January 20, 2009

TO: Gordon Feighner
Citizens' Utility Board

FROM: Randy Dahlgren
Director, Regulatory Policy & Affairs

**PORTLAND GENERAL ELECTRIC
UE 204
PGE Response to CUB Data Request
Dated January 14, 2009
Question No. 033**

Request:

Please provide further detail related to the breakout of the \$26 million increase set forth at UE 204 PGE/100 Keil-Schue-Hager/13. Please pay particular attention to the break out of the items labeled as "contingency". Please detail the cause of this \$26 million increase in contract price.

Response:

PGE has performed two Risk Assessments for this project. One was a Failure Modes & Event Analysis (FMEA) and another Risk Assessment exercise was performed. Contingency costs were allocated based on the probability of the risk occurring. PGE also received a Recommended Contingency from the contractor and these risks were also factored in our contingency. The contingency amounts were derived using all of these sources.

The Risk Assessment is included as PGE Attachment 033-A. The FMEA is included as PGE Attachment 033-B. Attachments 033-A and B are confidential and subject to Protective Order No. 08-515. The recommended contingency from the contractor can be found on the "Recommended Contingency" column of the updated pricing schedule PGE provided as Attachment 031-B Supp 1, in PGE's Supplemental Response to OPUC Data Request No. 031, (see PGE's Response to CUB Data Request No. 10). Attachment 031-B Supp 1 is confidential and subject to Protective Order No. 08-515.

PGE Exhibit 105 detailed the \$26 million increase and this exhibit has been updated with additional information where possible and is included as PGE Attachment 033-C. The updates are in section "Design Cost & Schedule Changes", beginning on page 3.

UE 204
Attachment 033-B

Confidential and Subject to Protective Order No. 08-515

Provided Electronically (CD) Only

Failure Modes & Event Analysis (FMEA)

UE 204
PGE's Third Supplemental Response to CUB Data Request 010-
Attachment 010-E Supp3

January 27, 2009

TO: Vilie Bailey-Goggins
Oregon Public Utility Commission

FROM: Randy Dahlgren
Director, Regulatory Policy & Affairs

PORTLAND GENERAL ELECTRIC
UE 204
PGE Supplemental Response to OPUC Data Request
Dated January 8, 2009
Question No. 030

Request:

Concerning Staffs data request #25, all correspondences with Barnard construction, please only provide those documents that pertain to negotiations, cost over runs, and delays. Please do not provide e-mails or letters that deal with day to day operations.

Response (January 21, 2009):

PGE objects to this request on the basis that "all" is unduly burdensome. Without waiving its objection, PGE responds as follows: Attachments 030-A through 030-F contains available PGE correspondence with Barnard pertaining to negotiations, cost over runs, and delays. The correspondence is generally organized by mailbox, then by folder within that mailbox. Attachments 030-A through 030-F are confidential and subject to Protective Order 08-515. PGE is providing both a hardcopy and a CD for Staff's review.

Supplemental Response (January 27, 2009):

PGE Attachment 030-G and H are an e-mail and attachment that were inadvertently omitted from PGE's initial response. Attachment 030-G is an email received in hard copy format and Attachment 030-H is the spreadsheet the correspondence references. Attachment 030-H shows the "Dix" fees broken out for most items in the column "subcontractor costs". At this point in time (July 2006), not all of the items and amounts were finalized and, therefore, some of the numbers in red may have Dix fees still

UE 204

PGE's Third Supplemental Response to CUB Data Request 010
Attachment 010-E Supp3

PGE's *Supplemental* Response to OPUC Data Request No. 030

January 27, 2009

Page 2

included. For example, the Fixed Fee for Profit number indicated for Dix is different than the final agreed upon amount, because not all of the fees for Dix had been broken out.

Attachment Attachments 030-G and H are confidential and subject to Protective Order 08-515. Attachment 030-H is provided electronically only because of the color coding in the spreadsheet.

On January 7, 2009, PGE asked relevant employees to forward any e-mails, either in their e-mail box or printed to Regulatory Affairs, who then filtered them per the criteria provided by Staff. PGE Attachments 030-A through F should have had more descriptive titles. They are:

Attachments 030-A and B - "emails from the mailbox of Nick Loos".

Attachment 030-C - "miscellaneous emails received in hard copy format".

Attachments 030-D and E - "emails from the mailbox of Doug Sticka".

Attachment 030-F - "emails from the mailbox of Steve Nichols".

UE 204

PGE's Third Supplemental Response to CUB Data Request 010
Attachment 010-E Supp3

UE 204

Attachment 030-H Supp1

Confidential and Subject to Protective Order No. 08-515

Electronic (CD) Format Only

Attachment to Correspondence

UE 204 – CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of March, 2009, I served the foregoing **DIRECT TESTIMONY OF THE CITIZENS' UTILITY BOARD OF OREGON** in docket UE 204 upon each party listed in the UE 204 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 the 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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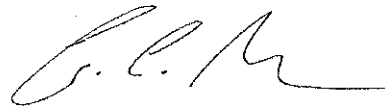
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