BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1147

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff Request to Open an Investigation Related to Deferred Accounting.	**REPLY COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY**

The parties' Opening Comments largely repeat the positions previously stated in the informal and formal phases of this docket. Portland General Electric Company's ("PGE") Opening Comments anticipated and responded to the other parties' positions. We therefore confine these Reply Comments to our recommendations and our response to new issues identified in the other parties' Opening Comments.

We recommend the following:

- The Commission should clarify and identify for the parties the factors that guide its exercise of discretion when considering a deferral application. The factors affecting the Commission's exercise of discretion should include (i) the purpose for which deferred accounting is sought, (ii) whether deferred accounting provides an effective ratemaking tool, (iii) the type of event that gives rise to the application, (iv) the prior ratemaking treatment of the deferred expense or revenue item, and (v) in some cases the financial impact on the utility.

- The Commission should not impose a rigid, mechanical test that unduly restricts the Commission's authority and discretion.

- The Commission should continue to apply the utility's cost of capital as the interest rate applicable to deferred account balances.

- The Commission should adopt new rules for processing deferred accounting applications similar to those proposed in PGE's Opening Comments.

PGE's specific recommendations for each of the issues identified in the ALJ's Scoping ruling are set forth in PGE's Opening Comments. PGE Opening Comments at 2-4. In the remainder of these Reply Comments, we first address the other parties' general comments and then respond to new material raised under the Issues List.

GENERAL COMMENTS

The general comments of several of the parties suggest a misunderstanding of the Commission's deferred accounting practice. We take these up in turn.

A. Deferred Accounting Has Not Been Overused

Some participants argue that the Commission has overused deferred accounting. CUB Opening Comments at 3. They identify little evidence of overuse, and the facts do not support their claim. The list of deferrals for Oregon energy utilities attached to PGE's Opening Comments as Exhibit 2 illustrates that the use of deferred accounting has been modest. There has been no significant rise in the use of deferred accounting. And what use there has been often benefits customers. *See, e.g.*, *In re PGE*, UM 1126, Order No. 04-170 (deferring coal transportation costs expected to result in a $1.5 million rate credit); *In re PGE*, UM 1131, Order No. 04-169 (deferred savings in IT expenditures resulting in a $4.2 million rate credit).

CUB identifies PGE's recent deferral applications based upon drought conditions and the deferrals arising out of UE 115 as justification for limiting the Commission's deferred accounting practice. CUB Opening Comments at 2. In fact, this evidence proves that the deferral statute has not been overused. The Commission denied PGE's 2003 hydro deferral, and PGE withdrew its 2004 hydro deferral application. PGE's last rate case (UE 115) spawned two ongoing deferrals: a Category A advertising deferral for excess advertising expense and an information technology ("IT") deferral for IT capital expenditures. PGE has withdrawn the

Category A advertising deferral for 2004-2005. Nevertheless, PGE has continued the ongoing IT deferral, which credits customers $4.2 million each year until PGE's next rate case. Again, these "recurring" deferrals show no overuse of deferred accounting and have directly benefited customers.

B. Deferred Accounting Reflects an Appropriate Allocation of Risk Between Customers and Shareholders

Other parties claim that deferred accounting should be avoided because "deferrals change the risk allocation between customers and shareholders." CUB Opening Comments at 3. This is simply untrue. Without deferred accounting, greater levels of volatility and risk would have to be incorporated in base rates, whether in the form of higher forecasted expenditures or higher cost of capital. In exchange for the availability of deferred accounting in appropriate circumstances, the current regulatory framework does not compensate utilities for absorbing all levels of variation. Deferred accounting is therefore an integral part of the allocation of risk between customers and shareholders that directly benefits customers by keeping base rates lower than they otherwise would be.

C. The Deferred Accounting Statute Has Sufficient Protections To Prevent "Cherry Picking"

Another faulty premise that recurs throughout the Opening Comments is the assumption that utilities are free to "cherry pick" by seeking deferred accounting treatment for certain costs while ignoring expense items that are lower-than-forecasted. *See, e.g., id.*. According to this argument, the Commission may approve deferred accounting "without considering whether rates are fair with respect to overall costs." *Id.*

This argument ignores the actual provisions of the deferred accounting statute, which prevent "cherry picking" and ensure that rates that include the amortization of deferred amounts remain just and reasonable. First, before a utility may include deferred amounts in

rates, it is subject to an earnings review. ORS 757.259(5). An earnings test will reveal whether rates are out of balance with the utility's overall costs and if so, prevent recovery. Second, a utility must make a rate change filing under ORS 757.210 before recovering deferred amounts. *Id.* That statute requires a hearing upon a customer complaint and requires that rates be just and reasonable. In sum, the deferral statute does not trump but rather fits within the Commission's regulatory framework.

Issues 1 and 2

Our Opening Comments explain why the Commission should retain its flexible approach to deferred accounting and not adopt a rigid "materiality" test. We pause here only to make a few remarks in response to other parties' comments.

First, CUB misreads Commission Order 04-108 in UM 1071 when it states that "the Commission used a band 250 basis points around a utility's return on equity to represent a 'substantial financial impact on the utility.'" CUB Opening Comments at 9. Instead, the Commission expressly declined to set rigid numerical criteria for determining when the financial impact of a risk justifies deferred accounting. *In re PGE*, UM 1071, Order No. 04-108 at 11 ("We decline to set a numerical criterion"). The Commission cited as examples of sufficient financial impact the 250 basis-point deadband in UM 995 and the 700 basis-point impact in the Idaho Power case. However, the Commission was clear that these examples did not amount to a rigid financial impact test but instead illustrated its flexible approach.

Second, we note ICNU's view that "[c]ategorizing the type of risk that a particular event represents and determining whether that risk *was contemplated when rates were established* will help to determine whether a particular request for deferred accounting is justified." ICNU Opening Comments at 11 (emphasis added). We agree. If the Commission

decides to categorize risks as "stochastic" or "scenario," its analysis should also consider the circumstances surrounding the utility's last rate proceeding to determine whether the risk was both foreseeable, actually foreseen, *and* included in rates.

Third, we concur in ICNU's conclusion that the Commission should determine the size of the normal range of risk on a case-by-case basis and retain discretion to determine whether particular costs fall within the range of risk. *Id.* at 14. The Commission will unduly fetter its discretion and deny itself the benefits of deferred accounting as an appropriate ratemaking tool if it adopts a rigid categorization of risk wedded to a mechanistic materiality test.

Finally, the approach some parties advance continues to include an unexplained catch-all exception for "Commission-approved" deferral applications. *See, e.g.,* CUB Opening Comments at 9. The parties advocating this position offer no explanation as to which deferred accounting applications should come within this exemption. If the Commission is inclined to adopt a rigid materiality test whose effect is tempered by a catch-all exception, one of the most critical issues in this docket is what kinds of deferral applications should qualify as "Commission-approved." We have identified the factors the Commission should consider in determining which deferrals are "Commission-approved." PGE Opening Comments at 2-4, 16; *supra* at 1.

Issue 3

We continue to believe that the existing Commission rules governing the initial deferral application are sufficient. These requirements provide sufficient information to enable the parties to understand the nature of the deferred amounts and to participate in the docket

The Commission should reject ICNU's proposal that utilities be required to "submit a new filing requesting approval related to any cost-causing factor that was not

identified in the initial application but that the utility will seek to include in the deferral balance." ICNU Opening Comments at 16. ICNU claims this requirement will (1) avoid "large and amorphous deferred accounts," (2) apprise participants of the nature and magnitude of the deferred amount, and (3) discourage utilities from filing "generic deferrals to recover any variations in cost." *Id.* In fact, ICNU's proposal will have none of these benefits, but will instead lead to unnecessary disputes and potential disallowances based upon overly strict technical requirements

First, ICNU's new requirement will not actually address the concern it identifies. It will not eliminate amorphous and large-scale deferrals. Instead, it will lead to the unnecessary multiplication of deferred accounting applications. In the example ICNU cites (UM 995), ICNU's requirement would have simply resulted in three separate deferred accounting applications (one for high power costs, one for poor hydro conditions, and one for the Hunter plant outage) without any reduction in the size or unwieldiness of the docket or the deferred amounts

Second, ICNU's "cost-causing" requirement is unnecessary. The existing rules already require the utility to describe the items to be deferred and the deferral mechanism. OAR 860-27-300(3). Revenue or cost items not identified in the application plainly can be excluded under the existing rules and statutes. Moreover, if ICNU and others would like updates regarding the deferred amount or have questions regarding what revenues or expenses are deferred, they are free to issue data requests or request a workshop. Finally, a much more targeted and manageable solution is available to address this issue. A rule change requiring regular projections of the deferred amount would address ICNU's concern without requiring multiple deferral applications

Third, there have been no "generic deferrals" seeking to defer "any variations in cost" in recent years. ICNU's proposed requirement is a solution in search of a problem.

Finally, requiring a new deferral application for each "cost-causing" factor will simply add to the list of contested issues in deferral dockets without any real benefit to the Commission or interested parties. For example, assume there is a deferred accounting application for an unplanned plant outage. Would a new deferred accounting application be required if wholesale power prices increased because of:

- Poor hydro conditions?
- Another plant outage for another utility or power generator?
- A Pacific Northwest cold snap?
- A California heat wave?

All these events could have an impact on wholesale power prices and therefore the deferred amount. Would they require a new application under the "cost-causing" test? Some may claim that this concern is merely hypothetical. But it is not. A utility may not defer costs or revenues incurred before the filing of a deferred accounting application. ORS 757.259(4). If the Commission adopts a policy that requires a new application for each "cost-causing" event, utilities will be forced to file multiple deferred accounting applications or else be subject to technical objections that the deferred accounting application did not identify every potential "cost-causing" factor. Alternatively, deferred accounting applications will become exercises in trying to predict every possible factor that someone might later claim "caused" an increase in the amount deferred. No legitimate regulatory purpose is served by increasing the opportunities for such gamesmanship.

Issue 4

Other parties propose changing the Commission's long-standing policy of using a utility's cost of capital as the interest rate for deferred accounts. Some suggest a short-term debt

rate (ICNU Opening Comments at 17), while others propose a treasury bill index (Staff Opening Comments at 1). PGE opposes a change in Commission policy for the following reasons:

1. None of the parties proposing a change in policy disputes that utilities fund deferred accounts just like any other capital investments. There is no reason the interest rate applicable to deferred accounts should be different from the utility's weighted cost of capital which applies to all other capital investments.

2. The proponents of a change in Commission policy seek to apply the new policy in a selective and discriminatory fashion. Their basic justification is that "the utility has a myriad of investment opportunities and each investment has its own likelihood of risk and success." Staff Opening Comments at 2. They seek to lower the interest rate for deferred accounts because they claim the risk of recovery is lower. But if this theory is to be applied consistently, the interest rate (i.e., cost of capital) applicable to investments that are higher risk must be increased to reflect the individual risk of the specific investment. Such investment-by-investment analysis can be conducted only in the context of a general rate case. And it is quite unclear what impact an investment-by-investment risk and return analysis would have on base rates. The approach put forward here, which would selectively lower the interest rates for deferred accounts without making corresponding adjustments for higher risk investments, is unfair and unbalanced.

3. The parties arguing for a change in Commission policy exaggerate the "risk free" nature of deferred accounts. There are substantial regulatory risks associated with deferred accounts. Deferred amounts are subject to a prudence review and an earnings test before the utility can recover the deferred amounts in rates. ORS 757.259(5). Moreover, many deferred accounts are already discounted, either through sharing mechanisms or because the

utility has incurred some expenses before the filing of the deferral application. These are very real risks associated with funding deferred accounts.

4. No party claims that the treasury bill rates Staff proposes are actually available to the utilities. A treasury bill rate would impose a loss on the utility for funding a deferred account.

5. Some other parties support the use of a short-term debt rate. Aside from being theoretically unsound, there are practical problems with this approach. There is no "authorized" short-term interest rate. The Commission would have to determine on a case-by-case basis what short term debt rate should apply. Such a determination is fraught with complexity and difficulties, not the least of which is the fiction that short-term debt can be tagged and allocated to specific deferred accounts

6. Finally, a contested case proceeding is needed before the Commission can resolve this issue. The suggested change in the Commission's long-standing policy relies on a number of contested factual claims, the resolution of which is essential before the Commission can change its policy. These disputed factual claims include the following:

- The risk associated with recovery of deferred accounts is less than the risk of recovery associated with other capital investments (Staff Opening Comments at 2);
- "Dollar for dollar recovery of deferred accounts, for example, is not affected by economic or political risk, unless such recovery would financially harm customers to such a significant degree that the Commission is force to modify its decision allowing deferral" (*id.* at 3);

- "[A] utility's recovery of deferred amounts is subject to relatively minimal regulatory risk after the monies have been approved for deferral" (*id.*); and
- The proposition that Staff's proposed interest rate accurately reflects the utility's risk of recovery with respect to deferred accounts.

The ALJ's Scoping ruling expressly prohibited such factual claims, particularly when the resolution of an issue depended upon disputed factual claims. *See* ALJ Ruling of November 5, 2004, at 2 ("This proceeding will not attempt to make fact-specific determinations, whether generically or for individual utilities . . . . Identification of factual issues should not render related policy issues incapable of resolution").

Issue 9

As we explained in our Opening Comments, PGE's position is that the Commission should continue applying a flexible, case-by-case interpretation of the two-prong test set forth in ORS 757.259(2)(e). Both the text of the statute and past Commission practice support this approach. ICNU and others, on the other hand, recommend the adoption of new technical requirements that would severely fetter the Commission's exercise of its discretion. These requirements have no statutory basis and misread prior Commission decisions. They would also unnecessarily deprive the Commission of the authority to use deferred accounting in appropriate circumstances.

1. Minimizing the Frequency of Rate Changes or Fluctuation of Rate Levels

ICNU first suggests that the Commission adopt the interim rate relief standard to determine whether deferred accounting will satisfy the first prong of subsection 2(e). It argues that the Commission's decision in *In re PacifiCorp*, UM 995, Order No. 01-085, supports this standard, and it further claims that a utility can only satisfy the interim relief standard by

showing "severe financial distress or some other such reason." ICNU Opening Comments at 22-23.

ICNU's proposal suffers from a number of defects. In the first place, there is no statutory basis for such a restrictive standard. The first prong of ORS 757.259(2)(e) states only that a utility may qualify for deferred accounting treatment by showing that the deferral will minimize the frequency of rate changes or fluctuations of rate levels. As the Commission's past practice has shown, whether a utility satisfies this requirement is a fact-intensive inquiry that should be made on a case-by-case basis.

Second, ICNU misconstrues the Commission's decision in UM 995. In that case, the Commission did not suggest that a utility *must always* show that it could have filed for interim rate relief. Instead, it decided that deferred accounting for excess net power costs was appropriate because, under the unusual conditions in the power markets in 2000-2001, PacifiCorp could have filed for interim rate relief. Order No. 01-085 at 10. ICNU's proposal takes an example of the Commission's exercise of discretion, which turned on its own facts, and elevates it to a rigid new requirement.

Third, the interim rate relief standard is not the "severe financial distress" test that ICNU claims. ORS 757.215(5) provides that "[t]he commission may in a suspension order authorize an interim rate or rate schedule under which the utility's revenues will be increased by an amount deemed reasonable by the commission, not exceeding the amount requested by the utility." The plain language of the statute demonstrates that the standard for interim rate relief is reasonableness.[1] The Commission's decisions since 1981 similarly show that it has taken a

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[1] The legislative history of the interim relief statute is similarly clear. In 1981, the legislature passed SB 259, which contained subsections 4 and 5 of ORS 757.215. Section 3 of the law repealed ORS 757.235, the emergency rate increase statute, under which a utility had to prove

flexible approach to interim rate relief applications and has not adopted a rigid "emergency" or "severe financial distress" standard.[2]

2. Matching Appropriately the Costs Borne By and Benefits Received By Ratepayers

ICNU also proposes that the Commission authorize deferred accounting under the second prong of subsection 2(e) only when "a utility can demonstrate that the costs it is incurring at present will result in a demonstrable benefit to customers in the future." ICNU Opening Comments at 25. We will refer to this as a "benefit over time" requirement

As with ICNU's other proposals, there is no basis in either the text of the statute or prior Commission practice for this requirement. The Commission mentioned in one docket that

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that it was near "corporate termination" before it would be entitled to relief. Deputy Commissioner Gene Maudlin explained to the House Environment and Energy Committee that ORS 757.235 should be repealed because the new interim relief procedure (with the "reasonable" standard) rendered the unsatisfactory "emergency" statute obsolete:

> [Section 3] would repeal the Statute authorizing the Commissioner to grant "emergency" rate increases. The rules under which the Commissioner is guided before granting an emergency increase provide that a utility must be near corporate termination prior to the increase. The present Commissioner would not ever make use of this law under those conditions. Further, the authorization to grant interim increases [subsections 4 and 5 of ORS 757.215] is sufficient for anyone's need, so ORS 757.235 should be repealed.

Deputy Commissioner Gene Mauldin, "Explanation of Proposed Amendments to Senate Bill 259," at 4, House Environment and Energy Committee (July 7, 1981) (attached as Exhibit A).

[2] *See In re PacifiCorp*, UF 377, Order No. 82-252 (the Commission approved application for an interim rate increase of 8.6% based on a "prima facie showing" that the utility needed increased revenues of $34.6 million to continue providing adequate electric service to the public); *In re Pacific Northwest Bell*, UT 42, Order No. 85-1211 (the Commission ordered revised tariffs to take effect on an interim basis); *In re PGE*, UE 81, Order No. 91-1781, UE 81 (the Commission considered application for an interim rate increase related to an outage at the Trojan Plant, which required wholesale power market purchases. The Commission granted interim relief (1) to prevent an erosion of PGE's rate of return below 10%, (2) to allay fears of the investment community regarding PGE's ability to absorb the increased costs of purchased power, and (3) to give appropriate price signals to customers).

the particular cost was appropriate for deferral because it provided benefits to customers over time. *In re PGE*, UM 246, Order No. 90-311 at 1, *cited in* ICNU Opening Comments at 24. However, ICNU fails to point out that the Commission has never imposed a hard-and-fast "benefits over time" requirement, and in fact has approved deferred accounting under this prong of subsection 2(e) where there can be no benefit over time to customers because the utility incurs a current cost for the benefit of current customers

In UM 480, for example, the Commission permitted Idaho Power to defer excess power costs arising from poor hydro conditions because "customers are enjoying the benefits of extraordinary purchases and other actions by Idaho Power which assure continued service." *In re Idaho Power*, UM 480, Order No. 92-1130 at 2.

Finally, it is telling that when a current expense provides benefits over time, it is often unnecessary to obtain a deferred accounting order under ORS 757.259. In such cases, an accounting order from the Commission authorizing capitalization of the expense is sufficient. *See, e.g., In re PGE*, UM 1170, Order No. 04-686 (authorizing capitalization of gas transportation costs). ICNU's proposal would thus lead to the absurd result that whenever a utility could satisfy the "benefits over time" requirement, the deferred accounting statute would no longer be necessary because a simple accounting order would suffice.

The Commission has taken a flexible, fact-intensive approach to the problem of cost-benefit matching that acknowledges the wide range of reasons why deferred accounting might be beneficial to customers. The Commission should not fetter its discretion in the manner ICNU and others have proposed.

Issue 10

ICNU recommends that the Commission adopt a policy or rule that limits deferred accounting under ORS 757.259(2)(e) to "small-scale, discrete costs incurred under extraordinary circumstances." ICNU Opening Comments at 5. It argues that such a policy would be consistent with the legislative history of the statute and Commission precedent. However, the text of ORS 757.259(2)(e) does not embody these requirements, and neither the legislative history of the statute nor the Commission's past practices support the imposition of such stringent limits on the use of deferred accounting.

1. A Cost Need Not Be "Discrete" to Qualify for Deferred Accounting

The Commission has not recognized a requirement that only discrete costs are eligible for deferred accounting under ORS 757.259(2)(e). ICNU raised the identical argument, and cited the same cases in support of it, in *In re PacifiCorp*, UM 995 & UE 121. The Commission rejected ICNU's argument in Order No. 01-420:

> We note that the requirement of "discrete" costs arises not from the statute but from UE 76, Order No. 92-1128, at 8, where we stated: "For the most part, deferrals under ORS 757.259(2)(c) [now (e)] were to be of discrete items which might substantially affect a utility's earnings on a short term basis" . . . . The language of the statute does not preclude granting PacifiCorp's application, and the discussion in UE 76 does not impose an absolute requirement of discrete costs in a deferred accounting application. We do not accept ICNU's argument about discrete costs.

Id. at 25. The Commission should again reject this argument.

2. Large-Scale Costs Are Eligible for Deferred Accounting

There is no support for ICNU's claim that only small-scale costs should qualify for deferred accounting. The text of ORS 757.259 does not impose this requirement; instead, it provides that the Commission *may* grant a deferral if the expense or revenue fits into one of the listed categories. The original text of ORS 757.259 recognized that both large and small costs

are candidates for deferred accounting. Section 2(5) of the statute retroactively authorized the Commission's earlier deferred accounting orders. 1987 Or. Laws 563 § 2(5) (attached as Exhibit B). Balances in accounts covered by this grandfather clause ranged from $22,000 for administrative costs of a weatherization program to $14 million for PGE's capital restructuring program. *See* HB 2145, Senate Committee on Business, Housing & Finance, Commissioner Davis Testimony (May 21, 1987) (tables summarizing energy utility deferred accounts as of December 31, 1986) (attached as Exhibit C at 2-6).

The Commission's more recent decisions have similarly acknowledged that deferred accounting is appropriate for large balances. In UE 116, for example, the Commission authorized deferred accounting for $131 million in excess power costs that PacifiCorp incurred in 2000-2001. *See* PGE Opening Comments Exhibit 2 at 2 (table summarizing PacifiCorp deferred accounts). Moreover, the "small-scale" limitation makes no sense when placed in the context of the deferral statute. The statute caps annual amortization of deferred amounts at 3% (and in some cases 6%) of the utility's gross revenues. ORS 757.259(6). For PGE, the 3% cap is equal to about $40 million. Such a substantial ceiling indicates that the deferral statute was intended to cover more than just "small-scale" items.

Finally, ICNU's claim that large costs should be ineligible for deferred accounting cannot be squared with its view that the Commission should only authorize such treatment for costs that are "extraordinary in nature," cause "severe financial distress," or otherwise jeopardize a utility's ability to serve the public at reasonable rates. ICNU Opening Comments at 8, 23. If ICNU is seriously advancing both of these positions, it is inviting the Commission to nullify the deferred accounting statute

3. Deferred Accounting Should Not be Limited to Costs that are Extraordinary or Unanticipated

The third component of ICNU's proposed standard is that a cost should be unanticipated or incurred under extraordinary circumstances to qualify for deferred accounting. *Id.* at 5. There is scant historical support for this requirement. During the debate over the original statute and its 1989 amendments, there was testimony indicating that deferrals should be limited to unanticipated expenses. *See* PGE's Opening Comments Exhibit 1 at 5 ("Legislative History"). However, Commission representatives explained to legislators in 1987 that previous deferrals involved anticipated costs, and that unanticipated costs would not be the only way deferrals might accrue under the new statute.[3] *Id.* at 6-7. Individual legislators apparently never reached a consensus on how broadly deferred accounting should be applied.[4] What is important is that, at the end of the day, the legislature never built an "extraordinary circumstances" requirement into the statute, and the grandfather clause encompassed deferrals for both one-time events and ongoing costs. *See generally* Exhibit C at 2-6 .

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[3] ICNU has suggested that statements in the legislative record indicating that deferred accounting could apply to anticipated costs were made in reference to deferrals under subsections (2)(a)-(d), and not deferrals under (2)(e). ICNU Opening Comments at 5 n.2. ICNU offers no evidence in support of this theory, and there is good reason to reject it. Commissioner Charles Davis provided the Senate Business, Housing and Finance Committee with tables of existing deferred accounts keyed to the reasons for deferral that would be recognized under the new statute. The categories now covered by subsection 2(e) encompassed a number of costs that were by no means incurred under extraordinary circumstances. These included weatherization and conservation programs, PGE's pole inspection program, and PGE's capital restructuring program. *See* Exhibit C at 2.

[4] For example, Representative Barilla stated that he wanted the "relief under this bill [to] be very narrowly construed." Representative Johnson disagreed: "I'd go the opposite way. The people providing the power have to get paid for producing it or some other product." Legislative History at 9, *quoting* HB 2145, House Environmental & Energy Committee (April 8, 1987).

Consistent with the text of the statute, the Commission has frequently authorized deferred accounting for anticipated, ordinary and recurring expenses in the years since 1987. For example, the Commission has approved DSM deferrals and power cost deferrals even though these costs were expected, ordinary and recurring

CONCLUSION

For the reasons stated above and in PGE's Opening Comments, the Commission should adopt PGE's recommendations.

DATED this 18th day of February, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **REPLY COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY** by mailing a copy thereof in a sealed envelope, first-class postage prepaid, addressed to each party listed below, deposited in the U.S. Mail at Portland, Oregon.

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DATED: February 18, 2006.

/s/ David White
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PUC
Gene Maudlin, Deputy Commissioner
July 7, 1981
Hearing before the House Environment and Energy Committee

Explanation of Proposed Amendments to Senate Bill 259

Deletion of Sections 1 and 2 of SB 259:

Senate Bill 259 was introduced at the request of the Energy Policy Review Committee, but on behalf of Oregon Fair Share. The principal witnesses supporting the bill as it was introduced originally represented Fair Share. They testified that in their belief the bill would require "lifeline rates."

Public Utility Commissioner John Lobdell testified that the language of Section 2 does not and would not require establishing lifeline rates and, further, that the rate structures in effect, and policies of the PUC, already provide rate structures that encourage and reward energy conservation. These policies will be kept in mind, and amplified upon, when the commissioner is required this fall to spread to residential and small farm customers of the investor-owned utilities the benefits of the Regional Power Act.

The Senate Energy Committee itself did not indicate any particular interest in adopting SB 259 since it had before the committee and bill requiring lifeline rates. SB 259 was adopted only after the issue of public hearings on rate increases was surfaced, and Sections 3 and 4 added to the bill.

Deletion of Sections 3 and 4 of SB 259:

Members of the Senate Energy Committee indicated their belief that Sections 3 and 4 would require public hearings be held on rate increases. This was not the case. Those sections

simply provide that when a hearing is held, it will be held in accordance with the Administrative Procedures Act. We testified to the Senate Energy Committee that we have no qualms with coming under the Administrative Procedures Act for this purpose, even though it is not necessary for the public interest to be protected. In any case, Sections 3 and 4 do not require public hearings.

Purpose of amendments to SB 259:

After it was fully understood that SB 259 does not require public hearings on rate increase requests, the Senate Energy Committee used SB 176 as a vehicle to adopt such a provision. SB 176 as amended has been adopted by the Senate Energy Committee and may be brought to a vote on the Senate floor.

That bill is flawed, and it has been recommended that the bill be either defeated or withdrawn. The original sponsor of amended SB 176, the Oregon Committee for Fair and Equitable Utility Rates, agrees with this recommendation and supports the amendments offered to Senate Bill 259 as the proper means to assure public hearings on rate increase requests.

If Senate Bill 259 is amended as we suggest, that all that would be required from the Senate is simple concurrence, which we believe would be granted. Your favorable action would obviate the need for extensive hearings on SB 176 should it reach this committee.

<u>Section 1, amended SB 259</u>:

This provides that if a request for a public hearing on a rate increase is requested, the Public Utility Commissioner must hold such a hearing. There is no provision in present law requiring that a hearing be held on any particular rate increase request.

Subsection 2 provides that the commissioner and his staff may discuss rates or other matters with regulated utilities, but that no decision on a rate increase or on how the rates shall be spread may be made when there is a hearing that is not based on the record of a hearing, when a hearing is held.

In some cases there will be no hearing, such as in a natural gas tracking case where the PUC is simply passing along additional costs imposed by a supplier, such as British Columbia, or the pipeline, which may obtain a rate increase by application to the Federal Energy Regulatory Commission. In such cases, the tracking increase does not improve a gas company's earnings; it simply reflects additional costs.

<u>Section 2, amended SB 259</u>:

Subsections 4 and 5 are new. Subsection 4 requires that if a rate increase goes into effect prior to a hearing, and it is determined in the hearing that the increase was excessive, that the commissioner must order refunds. There is no such provision in present law.

Subsection 5 does two things. First it authorizes the

commissioner to grant interim rate increases prior to a hearing. At present the commissioner can grant a rate increase without a hearing by declining to suspend the request for investigation and hearing. Normally this kind of request becomes effective within 30 days after filing by the utility. There is no provision for a hearing, and no provision for refunds.

The proposed amendments not only require a hearing on rate increases, if requested by any customer, but also require refunds.

The second part of Subsection 5 requires that the rates be spread essentially in the same manner as they were in the last rate case affecting the filing utility. This prevents the commissioner from granting a rate increase and favoring one class of customer over another in advance of a hearing. The rates may not be spread in any substantially different manner until a hearing has been held, and the rate spread must be decided on the basis of the record made in the hearing.

<u>Section 3, amended SB 259</u>:

This would repeal the statute authorizing the commissioner to grant "emergency" rate increases. The rules under which the commissioner is guided before granting an emergency increase provide that a utility must be near corporate termination prior to the increase. The present commissioner would not ever make use of this law under those conditions. Further, the authorization to grant interim increases is sufficient for anyone's needs, so 757.235 should be repealed.

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porations, county, city, and metropolitan-area committees, chambers of commerce, labor organizations and similar agencies interested in obtaining new industrial plants or commercial enterprises.

(5) Act as the state's official liaison agency between persons interested in locating industrial or business firms in the state, and state and local groups seeking new industry or business, maintaining the confidential nature of the negotiations it conducts as requested by persons contemplating location in the state.

(6) Coordinate state and federal economic development programs.

(7) Consult and advise with, coordinate activities of, and give technical assistance and encouragement to all parties including, but not limited to, port districts within the state working in the field of international trade or interested in promoting their own trading activity.

(8) Provide advice and technical assistance to Oregon business and labor.

(9) Collect and disseminate information regarding the advantages of developing new business and expanding existing business in the state.

(10) Aid local communities in planning for and obtaining new business to locate therein and provide assistance in local applications for federal development grants.

(11) Work actively to recruit domestic and international business firms to the state whose location will assist in carrying out the provisions of ORS 184.003.

(12) In carrying out its duties under ORS 184.001 to 184.198, the department shall give priority to assisting small businesses in this state by encouraging the creation of new businesses, the expansion of existing businesses and the retention of economically distressed businesses which are economically viable.

SECTION 9. Section 10 of this Act is added to and made a part of ORS chapter 184.

SECTION 10. There is established in the General Fund of the State Treasury the Economic Development Department Special Events Revolving Fund. Moneys in the revolving fund are continuously appropriated for the purpose of accumulating moneys to pay for special events and cooperative efforts with private corporations and individuals.

SECTION 11. Notwithstanding any other law, all sections of this Act are subject to Executive Department rules and regulations related to allotting, controlling, and encumbering funds.

SECTION 12. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1987.

Approved by the Governor July 10, 1987

Filed in the office of Secretary of State July 13, 1987

CHAPTER 563

AN ACT HB 2145

Relating to public utilities; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this Act is added to and made a part of ORS chapter 757.

SECTION 2. (1) In addition to powers otherwise vested in the commission, and subject to the limitations contained in subsection (6) of this section, under amortization schedules set by the commission, a rate or rate schedule may reflect the following:

(a) Amounts lawfully imposed retroactively by order of another governmental agency; or

(b) Amounts deferred under subsection (2) of this section.

(2) Upon application of a utility or ratepayer or upon the commission's own motion and after public notice and opportunity for comment, the commission by order may authorize deferral of the following amounts for later incorporation in rates:

(a) Amounts incurred by a utility resulting from changes in the wholesale price of natural gas or electricity approved by the Federal Energy Regulatory Commission;

(b) Balances resulting from the administration of Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980; or

(c) Utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.

(3) The commission may authorize deferrals under subsection (2) of this section beginning with the date of application, together with interest established by the commission. A deferral may be authorized for a period not to exceed 12 months after the date of application.

(4) Unless subject to an automatic adjustment clause under ORS 757.210 (1), amounts described in this section shall be allowed in rates only to the extent authorized by the commission in a proceeding to change rates under ORS 757.210 and upon review of the utility's earnings at the time of application to amortize the deferral.

(5) Amounts that have accrued in deferred accounts with commission authorization before the effective date of this 1987 Act also may be reflected in rates. However, in order to continue to use such accounts the public utility shall apply for authorization of the commission under subsection (2) of this section.

(6) In any one year, the overall average rate impact of the amortizations authorized under this section shall not

Exhibit B
Page 1 of 2

exceed three percent of the utility's gross revenues for the preceding calendar year.

(7) The provisions of this section shall not apply to a telecommunications public utility.

SECTION 3. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Approved by the Governor July 10, 1987
Filed in the office of Secretary of State July 13, 1987

CHAPTER 564

AN ACT SB 195

Relating to veterans' loans; amending ORS 407.315.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 407.315, as amended by section 5, chapter 221, Oregon Laws 1987 (Enrolled Senate Bill 335), is further amended to read:

407.315. (1) When a veteran assumes a previous loan under ORS 407.305, the interest rate to be paid by the veteran from the date of assumption shall be the rate per annum prescribed [*for the previous loan*] **periodically by the director, taking into consideration the solvency of the loan program and the interest rates currently prevailing in this state for loans secured by owner-occupied residential property.**

(2) The director shall make a cash flow projection to determine if assumptions at the interest rate established under subsection (1) of this section are [*the principal cause*] **among the causes** of a negative cash flow projection for the loan program. The cash flow projection required by this section shall be an estimate of the revenue received from the repayment of mortgages, interest earnings, administrative expenses of the loan program, payment of interest and principal on outstanding debt and other relevant factors during the period in which current outstanding bonds are required to be retired. [*The cash flow projection shall be reviewed and an opinion rendered as to its adequacy by a nationally recognized independent public accounting firm or a nationally recognized financial consulting firm.*]

(3) If the cash flow projection required under subsection (2) of this section indicates that assumptions of loans at the interest rate established under subsection (1) of this section are a [*principal*] cause of a negative cash flow projection for the loan program, the director, by rule and notwithstanding ORS 407.325 (2), shall increase the interest rate to be paid for loans [*subsequently*] assumed under ORS 407.305 to the lowest rate per annum that assures a positive cash flow projection, but not exceeding the rate then prescribed under ORS 407.325.

[*(4) Notwithstanding ORS 407.325 (2), the interest rate for a loan assumed at an interest rate prescribed under this section shall not at any time be less than the rate initially prescribed under this section nor exceed a rate per annum which is one percent higher than the rate initially prescribed under this section.*]

Approved by the Governor July 11, 1987
Filed in the office of Secretary of State July 13, 1987

CHAPTER 565

AN ACT SB 962

Relating to the Oregon International Port of Coos Bay; and providing that this Act shall be referred to the electors of the Port of Coos Bay.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 18 of this Act are added to and made a part of ORS 777.005 to 777.725.

SECTION 2. As used in sections 2 to 18 of this 1987 Act, unless the context requires otherwise:

(1) "Board" means the board of commissioners of the Oregon International Port of Coos Bay.

(2) "Port" means the Oregon International Port of Coos Bay.

SECTION 2a. The Port of Coos Bay is hereby renamed the Oregon International Port of Coos Bay.

SECTION 3. Notwithstanding ORS 777.135 to 777.165, 777.410 and 777.415, sections 2 to 18 of this 1987 Act apply to the Oregon International Port of Coos Bay.

SECTION 4. The power and authority given to the port is vested in and shall be exercised by a board of five commissioners. The board may exercise such powers, at regular or special meetings, as is usual and customary with similar bodies.

SECTION 5. (1) The board shall be composed of electors registered in the port.

(2) A person is eligible for appointment as a commissioner of the port who at the time of the appointment is a citizen of the United States and of the State of Oregon, and who has for one year immediately preceding appointment resided within the port.

SECTION 6. (1) Upon the expiration of the term of a commissioner, a successor shall be appointed by the Governor, subject to confirmation as provided by ORS 171.562 and 171.565. Except as provided in sections 7 and 10 of this 1987 Act, appointees, when confirmed, shall hold office for a term of four years and until their respective successors have been appointed, confirmed and qualified.

(2) If a vacancy occurs by death, resignation or disqualification of a commissioner, the vacancy shall be filled by appointment by the Governor for the unexpired

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BEFORE THE SENATE BUSINESS,
HOUSING & FINANCE COMMITTEE

HOUSE BILL 2145

Testimony of Charles Davis
Oregon Public Utility Commissioner

May 21, 1987

Background

To explain the reasons for this legislation, it is first necessary to describe some principles used in setting utility rates.

Utility rates are set for the future. All rates now in effect are based on expectations of utility company expense for this period. Those expectations were based on facts presented at the time the Commissioner set rates. As with any forecast, those expectations of the future can never be exactly correct. Whether or not a utility has net earnings during the time today's rates are in effect, the utility cannot ask for an increase in rates to make up past losses or improve past earnings.

If in looking to the future the utility expects its present rates will not cover its expenses and provide a reasonable rate of return for its investors, it may apply to the Commission for authorization to increase its rates. In doing so, its proof of need is based on its future expectations.

There are a few circumstances in which expenses unanticipated at the time rates were approved by the Commissioner would have been included in rates had the Commissioner known of them. These often are the result

ENERGY UTILITY DEFERRED ACCOUNTS

Covered by Attorney General's Opinion of March 18, 1987

Summary List as of December 31, 1986

Description	$ Balance Incr. or (Decr.)	% of 1986 Oregon Revenues	Reason for Deferral*
PORTLAND GENERAL ELECTRIC			
RPA Balancing Account (A)	$ 18,758,783	2.836%	3
IBP Deferral	660,000	.100	5
PCA Balancing Account (C)	(3,563,000)	(.539)	5
Capital Restructuring Program Deferral	14,258,566	2.155	5
State Tax Normalization Deferral	517,000	.078	5
Pole Inspection Program Deferral (C)	883,761	.134	5
WHIP Admin. Indirect	924,000	.140	5
Weatherization Program - Admin. Costs (B)	22,000	.003	5
Water Heater Wrap - Summer Blitz	81,000	.012	5
WHIP - Direct Incentives	392,000	.059	5
Water Heater Wrap Program	355,000	.054	5
Low Income Weather. Program	140,000	.021	5
Uncollectible Weatherization Write-Off	586,000	.089	5
Unamortized Indirect Costs - Weather. Program (B)	4,944,000	.747	5
Total	$ 38,959,110	5.789%	
CP NATIONAL - ELECTRIC			
RPA Balancing Account (A)	$ (825,464)	(3.213)	3
Inverted Rate Balancing Account	(374,031)	(1.456)	5
CSPP Deferrals	2,480,726	9.655	5
Total	$1,281,231	4.986%	

*Key to Reasons for Deferral.

1. Retroactive changes imposed by a governmental agency.
2. Wholesale price change approved by the Federal Energy Regulatory Commission.
3. Regional Power Act changes.
4. Minimize frequency of rate changes or fluctuations of rate levels.
5. Match costs and benefits or actual costs.

Footnotes:

(A) This account may be exempt from application of the Attorney General's opinion because of the provisions of Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980.

(B) Part of the balance in this account may be exempt from application of the Attorney General's opinion because of the specific statutory provision that actual program costs be recovered.

(C) Established within the context of a general rate proceeding under ORS 757.210.

Note: Accounts with credit balances may be exempt from application of the Attorney General's opinion if the utility has a binding commitment to reduce rates to reflect amortization of the balance.

ENERGY UTILITY DEFERRED ACCOUNTS

Covered by Attorney General's Opinion of March 18, 1987

Summary List as of December 31, 1986

Description	$ Balance Incr. or (Decr.)	% of 1986 Oregon Revenues	Reason for Deferral*
PACIFIC POWER & LIGHT COMPANY			
RPA Balancing Account (A)	$ (353,129)	(.067)	3
Recapitalization Program	1,651,993	.314	5
IBP Deferral	(1,025,933)	(.195)	5
Colstrip 4 Deferral (C)	5,876,741	1.115	4
Jim Bridger Pollution Control Deferral (C)	1,788,555	.339	4
Weatherization Loan Program - 0% Interest	3,705,907	.703	5
Residential Water Heater Wrap Program	38,325	.007	5
Hood River Conservation Program	(8,521)	(.002)	5
Total	$11,673,938	2.214%	
IDAHO POWER COMPANY			
CSPP Deferrals	$545,465	3.229%	5
IBP Deferral	42,454	.251	5
Total	$587,919	3.480%	

*Key to Reasons for Deferral.
1. Retroactive changes imposed by a governmental agency.
2. Wholesale price change approved by the Federal Energy Regulatory Commission.
3. Regional Power Act changes.
4. Minimize frequency of rate changes or fluctuations of rate levels.
5. Match costs and benefits or actual costs.

(A) This account may be exempt from application of the Attorney General's opinion because of the provisions of Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980.

(C) Established within the context of a general rate proceeding under ORS 757.210.

Note: Accounts with credit balances may be exempt from application of the Attorney General's opinion if the utility has a binding commitment to reduce rates to reflect amortization of the balance.

ENERGY UTILITY DEFERRED ACCOUNTS

Covered by Attorney General's Opinion of March 18, 1987

Summary List as of December 31, 1986

Description	$ Balance Incr. or (Decr.)	% of 1986 Oregon Revenues	Reason for Deferral*
NORTHWEST NATURAL GAS			
ISA Deferral (C)	$5,610,833	2.067%	5
	229,755	.085	5
ISA Amortization	987,069	.364	5
TSSA Balancing Accounts (C)	(554,615)	(.204)	5
	(689,436)	(.254)	5
TSSA Contribution Account (C)	(731,407)	(.269)	5
Uncollectible Weatherization Contracts	(8,709)	(.003)	5
Throop Weatherization Survey Costs	220,126	.081	5
Def. Steam Heat Balancing Account (C)	92,535	.034	5
1986 Leakage Réconstruction Program (C)	1,214,903	.448	5
Interim Rate Increase (C)	517,768	.191	4
Transportation Increment	156,044	.057	5
Northwest Pipeline Refund	304,988	.112	2
Northwest Pipeline IS-1 Savings	(172,945)	(.064)	2
Northwest Pipeline D-1 Charge	46,645	.017	2
Northwest Pipeline Demand Chg. Credit	(452,731)	(.167)	2
Def. Cost of Gas Amortization	(65,331)	(.024)	2
Cost of Gas Amort.	(274,755)	(.101)	2
Northwest Pipeline Refund	(69,663)	(.026)	2
Northwest Pipeline Section 104 Refund	(266,359)	(.098)	2
Def. Gas Cost Decrease	(435,431)	(.160)	2
Def. Gas Cost	318,520	.117	2
CIG Refund	(504,608)	(.186)	2
Total	$5,473,196	2.017%	

*Key to Reasons for Deferral.
1. Retroactive changes imposed by a governmental agency.
2. Wholesale price change approved by the Federal Energy Regulatory Commission.
3. Regional Power Act changes.
4. Minimize frequency of rate changes or fluctuations of rate levels.
5. Match costs and benefits or actual costs.

(C) Established within the context of a general rate proceeding under ORS 757.210.

Note: Accounts with credit balances may be exempt from application of the Attorney General's opinion if the utility has a binding commitment to reduce rates to reflect amortization of the balance.

ENERGY UTILITY DEFERRED ACCOUNTS

Covered by Attorney General's Opinion of March 18, 1987

Summary List as of December 31, 1986

Description	$ Balance Incr. or (Decr.)	% of 1986 Oregon Revenues	Reason for Deferral*
CASCADE NATURAL GAS			
Oregon Water Heater Program	68,930	.323	5
Astoria Cleanup Costs	315,000	1.474	5
Oregon 8/1/86 Gas Cost Decrease	(177,630)	(.831)	2
Northwest Pipeline Demand Chg. Credit	(53,683)	(.251)	2
1986 Northwest Pipeline Refunds	(69,313)	(.324)	2
Northwest Pipeline Commodity Cost Decreases	(63,261)	(.296)	2
Oregon Gas Cost Reduction Credit (4/85)	33,436	.156	2
Oregon 5/85 Technical Adj. No. 1	13,181	.062	2
Oregon 5/85 Technical Adj. No. 3	3,454	.016	2
Oregon 5/85 Technical Adj. No. 2	(2,865)	(.013)	2
Oregon 7/1/85 Gas Cost Decrease	(1,319)	(.006)	2
11/1/86 Oregon Demand Cost Increase	14,283	.067	2
Total	$ 80,213	0.377%	
CP NATIONAL - GAS			
ISA Balancing Account (C)	$(28,426)	(.098)	5
Northwest Pipeline Refund	(66,989)	(.231)	2
CIG Surcharge Refund	(51,796)	(.179)	2
I.S. Overcollection	(21,293)	(.073)	2
Incentive Gas Overcollection	(10,078)	(.035)	2
Interim Commodity Cost Balancing Account	(81,197)	(.280)	2
Northwest Pipeline 11/1/86 Decrease	(88,328)	(.305)	2
$150 Water Heater Rebate Deferral	62,376	.215	5
Total	$(285,731)	(0.986)%	

*Key to Reasons for Deferral.
1. Retroactive changes imposed by a governmental agency.
2. Wholesale price change approved by the Federal Energy Regulatory Commission.
3. Regional Power Act changes.
4. Minimize frequency of rate changes or fluctuations of rate levels.
5. Match costs and benefits or actual costs.

(C) Established within the context of a general rate proceeding under ORS 757.210.

Note: Accounts with credit balances may be exempt from application of the Attorney General's opinion if the utility has a binding commitment to reduce rates to reflect amortization of the balance.

ENERGY UTILITY DEFERRED ACCOUNTS

Not Covered by Attorney General's Opinion of March 18, 1987

Summary List as of December 31, 1986

Description	$ Balance Incr. or (Decr.)	% of 1986 Oregon Revenues
Property Sales		
Portland General Electric		
Boardman	$(96,605,174)	(14.604)
Columbia - Willamette	(2,333,750)	(.353)
Statutory Mandate		
Portland General Electric		
Weatherization Rebate Program	226,000	.034
Comm./Ind. Energy Mgt. Program	987,000	.149
Pacific Power & Light		
Weatherization Loans - 6 1/2%	458,857	.087
Commercial Conservation Program	340,115	.065
Nuclear Waste Disposal Costs	228,408	.043
Idaho Power		
Weatherization Loans - 6 1/2%	99,737	.590
Cascade Natural Gas		
Weatherization Costs	(13,455)	(.063)
Commercial Weatherization	2,040	.010
Utility Commitment for Rate Reductions		
Portland General Electric		
Nuclear Fuel Storage Collection *	(5,986,748)	(.905)
BPA Weatherization Refunds	(929,000)	(.140)
Northwest Natural Gas		
Special Purchase Gas Savings	(131,993)	(.049)
Special Purchase Gas Savings	(706,981)	(.260)
Cascade Natural Gas		
Self-Help Gas Cost Credit - 1985	(41,662)	(.195)
Self-Help Gas Cost Credit - 1986	(189,464)	(.887)

*If this account had not been amortized to offset interim Colstrip No. 4 costs, the balance would have been about $(33.4) million.

Notes:

1) If a deferred account had been authorized to accumulate Portland General Electric's Colstrip No. 4 costs, the balance at year-end 1986 would have been about $27.4 million.

2) As of March 1, 1987, Pacific Power & Light began voluntarily to defer for the ratepayers' benefit rate reductions arising from the Tax Reform Act of 1986 in the approximate annual amount of $(13.2) million.

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