

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1147

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF OREGON)	REPLY COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES
)	
Staff Request to Open an Investigation Related to Deferred Accounting.)	
)	

INTRODUCTION

The Opening Comments submitted in this proceeding reflect the disagreement among certain parties with respect to the purpose that deferred accounting serves in the establishment of rates for electric utilities in Oregon. The Industrial Customers of Northwest Utilities (“ICNU”) submits these Reply Comments and urges the Public Utility Commission of Oregon (“OPUC” or the “Commission”) to establish policies or rules that recognize that deferred accounting was not intended to provide a mechanism for general cost recovery between rate cases. ORS § 757.259 authorizes the Commission to approve deferred accounts in only limited circumstances. As a result, the policies adopted by the Commission should identify and define the limited circumstances in which deferred accounting is appropriate in order for those policies to be consistent with the purposes of deferred accounting.

The ruling issued by Administrative Law Judge (“ALJ”) Kirkpatrick on January 13, 2005, requested that the parties address whether oral argument should be conducted in this Docket. The Reply Comments submitted by parties on February 18, 2005, represent the parties’ fourth opportunity to address the substantive and procedural issues in this proceeding. In

addition, prior to submitting written comments, the parties held workshops to discuss the issues. ICNU is not requesting oral argument because ICNU believes that the parties have adequately and clearly stated their positions on the issues to be addressed in this Docket. However, ICNU would be happy to participate in oral argument or a workshop with the Commissioners if that would assist the Commission in resolving the issues in this proceeding.

DISCUSSION

A. Ratemaking Principles Supporting Deferred Accounting

ICNU, the Citizens' Utility Board ("CUB"), and Portland General Electric Company ("PGE") all discussed in Opening Comments the background and purpose of deferred accounting as a ratemaking mechanism in Oregon. Although discussion of the nature and purpose of deferred accounting is helpful to frame certain of the issues to be addressed in this Docket, ICNU disagrees with some aspects of PGE's description of deferred accounting and how it has been used by the Commission.

1. The Commission's Deferred Accounting Policies Should Not Be Based on an "Expansive" Interpretation of ORS § 757.259

PGE states in its Opening Comments that "[s]o long as the application fits within one of the expansive categories eligible for deferrals, there are no statutory limitations on the Commission's exercise of discretion to use this ratemaking tool." Re OPUC Investigation Related to Deferred Accounting, OPUC Docket No. UM 1147, Opening Comments of PGE at 4-5 (Jan. 18, 2005). ICNU disagrees with PGE's description.

The "categories eligible for deferrals" are not "expansive." In fact, the only costs that are eligible for deferral are the five categories of costs specifically enumerated in subsections (a)-(e) of ORS § 757.259(2) and the costs of intervenor funding programs under

ORS § 757.259(3). Deferred accounting would be illegal in Oregon without the specific statutory authorization provided in ORS § 757.259. Or. Att’y Gen. Op. No. 6076 at 8-9 (Mar. 18, 1987). Thus, the Commission has authority to approve deferred accounting for those costs specifically set out in ORS § 757.259, but has no authority to approve deferred accounting for costs that fall outside the purview of the statute.

Subsections (a)-(d) of ORS § 757.259(2) identify four specific types of costs for which the Commission may authorize deferred accounting.^{1/} These categories are by their terms narrow rather than expansive. Subsection (2)(e) establishes a more general category of costs and revenues eligible for deferred accounting;^{2/} however, given that the Commission’s deferred accounting authority is limited to that expressly provided by ORS § 757.259, it would be inconsistent with the Commission’s deferred accounting authority to treat the category of costs contemplated by subsection (2)(e) as “expansive.” Utilities have sought to justify deferred accounting under subsection (2)(e) by claiming that establishing a deferred account will “minimize the frequency of rate changes” because the utility otherwise would be required to file a general rate case. E.g., Re PGE, OPUC Docket No. UM 1071, Opening Comments of PGE at 7 (Jan. 9, 2004). Since the utility controls the timing of rate cases, the assertion is virtually impossible to disprove.

^{1/} The specific costs or revenues enumerated in subsections (a)-(d) of ORS § 757.259(2) are: (a) amounts resulting from changes in the wholesale price of natural gas or electricity approved by the Federal Energy Regulatory Commission; (b) balances resulting from administration of section 5(c) of the Northwest Electric Power Planning and Conservation Act of 1980; (c) costs arising from any purchase from BPA pursuant to ORS § 757.663; and (d) amounts accruing under a plan for protection of short-term earnings under ORS § 757.262(2).

^{2/} ORS § 757.259(2)(e) permits authorization of deferred accounting for “[i]dentifiable 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.”

Applying subsection (2)(e) as a “catch all” provision that encompasses most types of costs would create an exception that swallows the rule, which makes deferred accounting unlawful unless specifically authorized by statute. In the past, the Commission has stated that it construes the deferred accounting statute narrowly. Re PGE, OPUC Docket No. UE 115, Order No. 01-988 at 8 (Nov. 20, 2001). ICNU urges the Commission to adopt policies that reflect this narrow construction of the Commission’s authority under ORS § 757.259 rather than the “expansive” construction of categories eligible for deferral described by PGE. The Commission should not approve deferred accounts based on the mere assertion that doing so would avoid a general rate case.

The deferred accounting statute contradicts PGE’s statement that there are “no statutory limitations on the Commission’s exercise of its discretion to use [deferred accounting].” PGE Opening Comments at 4-5. ORS § 757.259 limits the Commission’s discretion in a number of ways: 1) the Commission may not authorize deferred accounts prior to the date of the application; 2) authorization for deferred accounts may not exceed twelve months at a time; 3) authorization to amortize deferred amounts may only be granted in a proceeding to change rates; and 4) the Commission may only authorize amortization of deferred amounts up to specific limits. ORS § 757.259(4), (5), (8), (10).

Utilities obviously have an interest in the Commission construing and applying its authority to authorize deferred accounting of costs as broadly as possible, because it only will help to facilitate requests to recover costs incurred between rate cases. However, ORS § 757.259 does not support PGE’s view that the categories of costs eligible for deferred accounting are expansive and that the Commission’s discretion is unlimited. The policies adopted in this

proceeding should reflect that deferred accounting is a tool that was intended to be used in specific circumstances and in a limited manner; the Legislature has not delegated unlimited discretion to the Commission in the case of deferred accounting.

2. The Deferred Accounting Applications That Have Been Withdrawn or Denied Are Relevant to the Commission's Examination

Exhibit 2 to PGE's Opening Comments is a list of the proceedings in which the Commission has approved deferred accounting for PGE and PacifiCorp since 1990. PGE states that "the lists dispel the two often-repeated myths about deferred accounting." PGE Opening Comments at 8 (Jan. 18, 2005). According to PGE, these lists demonstrate that "the number of deferrals has not exploded" and "the Commission's practice has not been one-sided in favor of utilities." Id. The lists do not accurately depict the manner in which the utilities have sought to use deferred accounting to recover costs because PGE has removed from its lists any deferred accounting applications that were denied or withdrawn. Id. at 8 n.3. As a result, PGE's list includes only those deferred accounting applications between 1990 and 2004 that the Commission has granted. ICNU is concerned about both the deferred accounting applications granted by the Commission and the manner in which the utilities are seeking to use deferred accounting. As displayed in Table 1, PGE has filed at least six applications for authority to defer costs since December 2002 that have been denied, dismissed, or withdrawn. Furthermore, Table 1 reflects only the applications of which ICNU is aware—there may be additional applications that are not listed.

Table 1

Docket No.	Date	Description	Disposition
UM 1041	10-1-01	Application for Deferral of Changes in Distribution Revenues	Withdrawn
UM 1069	12-31-02	Application for Deferral of Certain Tax Expenses	Application Dismissed; Stipulation Adopted
UM 1071	2-11-03	Application for Deferral of 2003 Hydro Expenses	Denied
UM 1128	12-31-03	Application for Deferral of 2004 Hydro Expenses	Withdrawn
UM 1151	5-7-04	Application for Deferral of Mid-Year 2004 Direct Access Open Enrollment Costs/Benefits	Withdrawn
UM 1157	5-18-04	Application for Deferral Related to Hydro Generation Adjustment Filing	Withdrawn
UM 1187	12-30-04	Application for Deferral of Costs Related to Hydro Generation Variance	Pending
UM 1040	10-1-04	Application for Reauthorization of Deferral of Certain Advertising Costs for 10-1-04 to 9-30-05	Withdrawn

This table reflects use of deferred accounting that is motivated only by cost recovery rather than recognition of policies that establish when deferred accounting may be appropriate. Enunciation of such policies in this proceeding may help to discourage unwarranted requests for deferred accounting. Certain applications in Table 1 reflect attempts to recover cost variations that the Commission determined were already included in rates. See, e.g., Re PGE, OPUC Docket No. UM 1071, Order No. 04-108 at 9 (Mar. 2, 2004) (“Order No. 04-108”). Indeed, many of these applications relate to variations in hydro conditions. Other applications

reflect attempts to recover small-scale costs that are properly borne by the utility between rate cases. See, e.g., UM 1040 (PGE’s excess advertising costs). The policies adopted by the Commission should discourage utilities from submitting unwarranted applications for recovery of expenses properly borne by the utility between rate cases.

In addition, Table 1 helps to provide some context for PGE’s claim that deferred accounting is not one-sided. Most of the deferred accounting applications voluntarily filed by a utility relate to recovery of additional costs rather than returning a credit to customers. Although deferred accounting has been authorized to provide credits to customers, the utilities do not voluntarily file for such action. Indeed, most, if not all, of the deferred accounts labeled as a “customer refund” on PGE’s chart were filed pursuant to a Commission-approved stipulation or some other Commission directive (e.g., UM 374, UM 815, UM 878, UM 1126, UM 1131).^{3/} Customers typically do not possess the information necessary to determine when to file a deferred accounting application to capture increased utility revenues unless a cost reduction is a result of a publicly-known event such as a change to the tax code. In fact, the only deferred account on PGE’s list that was filed by a customer organization was CUB’s application to defer Measure 5 tax savings in 1990. Re CUB, OPUC Docket No. UM 374, Application For Deferred Accounting Treatment Pursuant To Measure 5 Cost Reductions (Dec. 27, 1990). In addition, deferred accounting applications filed pursuant to a rate case settlement typically are the result of a resolution of a larger number of issues. Although deferred accounting may facilitate customer

^{3/} PacifiCorp argues that “setting aside the excess power application [in UM 995], the aggregate of all deferral orders under ORS 757.259(2)(e) has been a *net credit* to customers.” PacifiCorp Opening Comments at 13 (Jan. 18, 2005). PacifiCorp’s one exception for UM 995, however, resulted in a \$130 million charge for customers. With both PacifiCorp and PGE currently requesting substantial relief from the Commission through pending power-cost related deferred accounting applications, the arguments about the benefit of this mechanism to customers are unpersuasive.

refunds in these instances, applications filed pursuant to a rate case settlement should not be viewed as a demonstration that the utilities use deferred accounting to benefit customers.

Table 1 actually supports the argument that deferred accounting is one-sided. If deferred accounting is granted in an expansive manner, a utility can use the mechanism to hedge its bets. For example, if hydro conditions might turn out worse than normal, the utility can file a deferred accounting application, which may not be ruled on for many months. If hydro conditions turn out to be below normal, the utility will recover its costs. However, if better than normal hydro conditions develop, the utility can withdraw the application and retain the benefits of good hydro conditions. The Commission should adopt a policy that prevents the withdrawal of a deferred accounting application that could result in some rate benefit to customers. Such a policy would help to eliminate the opportunity for gaming and the uncompensated shifting of risk to customers.

A specific example of the gaming phenomenon is demonstrated by PGE's applications for deferred accounting related to the tariff proposed by the company to track hydro variances (the "hydro generation adjustment" or "HGA," Docket No. UE 165). These filings reflect the control that the utilities have over the filing and withdrawal of deferred accounting applications. On December 31, 2003, PGE filed an application for deferred accounting for hydro variances in 2004 (Docket No. UM 1128). On May 18, 2004, PGE filed the HGA concurrently with a deferred accounting application (Docket No. UM 1157) that was intended to provide the ability for the HGA to have retroactive effect. On July 2, 2004, PGE withdrew its applications in both UM 1157 and UM 1128 after the Commission suspended the HGA.

On December 30, 2004, PGE once again filed a deferred accounting application seeking to establish an account that could be used to give retroactive effect to the HGA (Docket No. UM 1187). On January 21, 2005, PGE amended its application and requested approval of the deferred account regardless of whether the Commission approved the HGA. In other words, PGE, customers, and the Commission were back in the same positions as in 2004, when PGE had both the HGA and a hydro-related deferred accounting application before the Commission. In addition, PGE made most of these hydro-related filings after the Commission had denied the Company's application in UM 1071 for a deferred account related to below-normal hydro conditions in 2003.

These filings reflect: 1) the utilities' complete control of the filing and withdrawal of applications for deferred accounting related to utility costs; 2) the utilities' possession of the information necessary to determine when filing or withdrawing such an application will be advantageous to the utility; and 3) that the filing and withdrawal of applications currently is driven more by the motivation for cost recovery and the likelihood of success instead of the recognition of OPUC policies that establish when deferred accounting is appropriate. The utilities' ability to use deferred accounting to the maximum advantage of shareholders is far superior to intervenors' ability to use the mechanism to benefit customers. The use of deferred accounting is not symmetrical, and the Commission's policies should both reflect this asymmetry and establish principles that will clearly define when an attempt to recover costs through deferred accounting is unwarranted.

B. ICNU's Response to the Discussions of the Issues on the Issues List

1. Should the requirements for a deferral request differ depending on the circumstances underlying the request, e.g. materiality requirements that differ depending on whether the costs at issue are associated with stochastic risk or scenario risk?

The framework announced by the Commission in Order No. 04-108 for determining whether it would exercise its discretion to authorize deferred accounting is helpful to define the circumstances under which deferred accounting is appropriate. The Opening Comments of PGE and PacifiCorp make clear that these parties do not agree with the Commission's order and wish to construe the result as narrowly as possible. PGE and PacifiCorp both argue that the focus of Order No. 04-108 was not Staff's distinction between "risks that can be predicted as part of the normal course of events and those that are not susceptible to prediction and quantification." Order No. 04-108 at 8. According to PGE and PacifiCorp, the Commission's focus was on the level of hydro variability already included in base rates. PGE Opening Comments at 15 (Jan. 18, 2005); PacifiCorp Opening Comments at 5 (Jan. 18, 2005). PGE goes so far as to state that Order No. 04-108 stands for the proposition that "if the utility is not being compensated in base rates for the variance, then the Commission should grant the Application." PGE Opening Comments at 14 (Jan. 18, 2005). Based on this view of Order No. 04-108, PGE and PacifiCorp argue that adoption of a policy similar to that announced in Order No. 04-108 would unduly restrict the Commission's discretion and create an unnecessarily rigid deferred accounting standard. *Id.* at 15-16; PacifiCorp Opening Comments at 3 (Jan. 18, 2005). PGE's and PacifiCorp's interpretation ignores the Commission's conclusion in Order No. 04-108 that Staff's distinction between stochastic and scenario risks was "useful to characterize the type of risk we consider appropriate for deferral." Order No. 04-108 at 9. Thus,

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the Commission made clear that it was the “characterization” of the type of risk that was important, not just the fact that the risk at issue had been modeled in rates.^{4/}

ICNU does not, as PGE suggests, recommend that the Commission implement an “inflexible approach” for consideration of deferred accounting requests by adopting a policy that reflects the Commission’s findings in Order No. 04-108. In fact, ICNU acknowledged in its Opening Comments that it not been demonstrated that the Order No. 04-108 framework would apply as easily in all circumstances, and ICNU urged the Commission to recognize the findings underlying Order No. 04-108 as a means of developing a flexible policy with respect to deferred accounting. ICNU Opening Comments at 11 (Jan. 18, 2005). Order No. 04-108 established a framework in which the Commission can exercise its discretion within the limitations of ORS § 757.259. Staff has attempted to clarify and enhance that framework by developing the chart it proposed in Opening Comments. This framework does not eliminate the Commission’s ability to consider all the facts and circumstances surrounding a deferred accounting application or to deviate from that framework if the Commission articulates some rational basis for doing so. The Commission’s discussion merely describes a methodology by which to evaluate whether the facts and circumstances surrounding an application warrant exercise of the Commission’s discretion to approve that application. Such a policy, when combined with recognition of the rationale underlying the Commission’s decision (i.e., that deferred accounting under ORS § 757.259(2)(e) is warranted only in extraordinary circumstances), provides a sound basis upon which to consider deferred accounting applications in the future.

^{4/} PacifiCorp’s suggestion that the Commission change the first column on Staff’s chart implementing Order No. 04-108 from “Stochastic Risk” to “Risk Stochastically Modeled in Rates” is inappropriate for this reason. PacifiCorp Opening Comments at 6 (Jan. 18, 2005).

2. For what types of deferrals should the Commission apply the concept of a normal risk range? How should it determine the size of the range?

The discussion of this issue in the parties' Opening Comments raises no new issues. The Commission should apply the concept of a normal risk range to all deferred accounting applications. As the Commission found in Order No. 04-108, deferred accounting is inappropriate for costs related to events that fall within the normal range of risk, unless there is a "substantial" financial impact on the utility. Order No. 04-108 at 9.

3. Should deferrals be limited to the costs associated with the cost-causing factors identified in the original application for deferred accounting?

The Commission should limit deferred accounts to the cost-causing factors identified in the application and require applicants to submit a new filing requesting approval for any factor incorporated in the deferral balance that is not identified in the initial application. PGE and PacifiCorp claim that the existing Commission rules requiring an applicant to describe in its application the reason for the deferred account and the revenue or expense item provide sufficient notice to interested parties. PGE Opening Comments at 16 (Jan. 18, 2005); PacifiCorp Opening Comments at 9 (Jan. 18, 2005). In response to Issue No. 5, below, ICNU discusses in detail why the information requirements associated with deferred accounting applications should be enhanced to provide more certainty to the Commission and interested parties.

PGE states that "separating out the cause of the deferred amount is not always easy." PGE Opening Comments at 17 (Jan. 18, 2005). The Commission's policies should not be formulated according to what is "easy" for the utilities, especially not policies related to deferred accounting, which is a form of extraordinary relief. In addition, regardless of the ease with which the utilities can separate out the individual causes of a multi-factor deferred account,

ICNU discovered in UM 995 that it is virtually impossible for an intervenor to complete that task. Intervenors do not have access to the information necessary to break down a deferred account and are at the mercy of the utilities with respect to obtaining that information in discovery. PacifiCorp never provided its own estimate of what portion of the \$259 million deferred account at issue in UM 995 was attributable to each cost-causing factor.

The Commission's policies and rules should unequivocally delegate to the utilities the responsibility of identifying and distinguishing each cost-causing factor that contributes to the balance of a multi-factor deferred account. The Commission's policies or rules should also require the utilities to allocate a portion of the total deferred account balance to each cost-causing factor. Such information is necessary if the Commission is to authorize recovery of deferred costs. If it is not possible to make such an allocation, then a separate deferred account should be established for each cost-causing factor.

4. What interest rate should be applied to a deferral balance?

ICNU recommended in its Opening Comments that the Commission adopt a policy of applying the utilities' cost of short-term debt to deferred account balances. Staff provides a well-reasoned explanation in its Opening Comments for applying a one-year treasury rate to deferred accounts under ORS § 757.259(2)(b) and (c) and an average rate of the one-, three-, and five-year rates, recalculated each quarter, for all other deferred accounts. Staff Opening Comments at 1-3 (Jan. 18, 2005). Staff correctly points out that deferred accounts do not pose the same level of economic risks as do long-lived assets and reduce the overall level of risk for utilities. *Id.* at 2-3. Under these circumstances, an interest rate other than the utility's cost of capital is more appropriately applied to deferred account balances. ICNU supports a

Commission policy that applies an interest rate that is equivalent to the utility's cost of short-term debt or the interest rates proposed by Staff.

5. What should be the filing requirements and process for deferred accounting investigations?

The issues surrounding the process by which the Commission evaluates deferred accounting applications are difficult. In the initial round of comments filed in this Docket, ICNU indicated its support for reform of the Commission's current procedures. ICNU Opening Comments at 8-9 (Oct. 7, 2004). In the last round of Opening Comments, ICNU stated that the process could be improved but recommended no change because of the difficulty of formulating a proposed process that was both flexible enough to address uncontested applications but definitive enough to provide sufficient certainty to the parties. ICNU Opening Comments at 17-18 (Jan. 18, 2005). The Commission's current process provides flexibility. Since the last round of comments, however, PacifiCorp filed its Application for Deferral of Costs Related to Declining Hydro Generation on February 1, 2005, which provides very little support for the significant relief sought by the Company. Re PacifiCorp, OPUC Docket No. UM 1193, Application for Deferral of Costs Related to Declining Hydro Generation (Feb. 1, 2005). This application demonstrates the problems with the initial evaluation and processing of deferred accounting applications that are unsupported by relevant information.

PacifiCorp requests that the Commission approve a deferred account on the basis of below-normal hydro conditions in 2005 and states that these conditions will result in approximately \$58 million in increased system power costs. Id. at 1. PacifiCorp also claims that the company has experienced drought conditions for the last five years, which has resulted in increased power costs of almost \$600 million on a system-wide basis. Id. PacifiCorp requests

the authority to track these costs for later recovery through an amortization schedule or power cost adjustment mechanism (“PCA”). Id.

One of the primary problems with PacifiCorp’s application is that the company provides only minimal support for its claims. This makes initial consideration of applications such as PacifiCorp’s very difficult, and it presents a problem that the Commission should adopt rules or policies to address. Indeed, Staff pointed out in its comments that “many deferred accounting applications have become perfunctory with few workpapers supplied with the filing. Applicants should be required to fully support filings with all relevant information.” Staff Opening Comments at 5 (Oct. 7, 2004). ICNU agrees with Staff’s assessment, and PacifiCorp’s application in UM 1193 provides a prime example of this problem. PacifiCorp has alleged that this hydro variation has had a substantial financial impact on the company, but it provides only two worksheets to support its claim. The Commission’s rules or policies should deem such applications insufficient.

PGE supports revision of the Commission rules for processing applications, but the process proposed by PGE would put every application on the fast track to approval. PGE Opening Comments at 20-21 (Jan. 18, 2005). Under the process proposed by PGE, the initial period to comment on a deferred accounting application would be shortened and Staff and intervenors would have the opportunity to request additional information if the initial application was insufficient. Id. at 20. In addition, PGE proposes that all factual claims in the application be deemed to be true if Staff and intervenors do not request a hearing within a specified time frame. Id. For a deferred accounting application for which a hearing was requested, the Commission

would have to complete all of this process and issue an order within six months of the original or supplemental filing. Id. at 21.

The Commission should not adopt PGE's proposed process. This process would place the burden on Staff and intervenors to request "supplemental" information from an applicant under a restricted timeframe and would deem true certain factual assertions that parties may not have had time to fully examine. As described above, many applications are deficient. In addition, deferred accounting for costs is an extraordinary remedy to be granted in limited situations. All statements in an application should be fully supported regardless of the opposition from Staff and intervenors. The Commission should not adopt PGE's process because it would inappropriately shift the burden of proof to Staff and intervenors.

Revising the requirements regarding the information that must be filed with a deferred accounting application may be a relatively simple way to ensure more detail is provided at the beginning of the deferred accounting process, which will be helpful to determine the nature of the proceeding for evaluating a particular application. However, enhancing the informational requirements will not require establishment of an entirely new procedure that could result in a loss of flexibility in how to evaluate differing applications. ICNU recommends that the Commission adopt the following revisions to the rules in OAR § 860-027-0300(3) to help ensure that all deferred accounting applications include sufficient detail:

- 3) Contents of Application: Application for deferred accounting, by an energy or large telecommunications utility or a customer, shall include:
 - (a) A detailed description of the particular utility expense or revenue for which deferred accounting is requested as well as a detailed description of the methodology used to determine

this particular type of expense or revenue when setting a utility's base rates;

- (b) For accounts that will include expenses or revenues related to multiple expense- or revenue-causing factors, the applicant shall identify each factor that will contribute to the total estimated amount of the deferred account;
- (c**b**) The specific reason(s) deferred accounting is being requested and a reference to the section(s) of ORS 757.259 or 759.200 under which deferral may be authorized. For deferred accounting applications under ORS § 757.259(2)(e), the applicant must provide a detailed description of how the application meets the requirements of that section;
- (d**e**) The account proposed for recording of the amounts to be deferred and the account which would be used for recording the amounts in the absence of approval of deferred accounting;
- (e**d**) A detailed description of the methodology that the applicant proposes to determine the amount of expense or revenue to be recorded in the account;
- (f**e**) An estimate of the amounts to be recorded in the deferred account for the 12-month period subsequent to the application. For multi-factor deferred accounts as described in subsection (b), the applicant shall allocate a portion of the estimate of the amount provided in this section to each expense- or revenue-causing factor; and
- (g) A copy of the notice of application for deferred accounting and list of persons served with the notice; and
- (h) All relevant workpapers, testimony, or other evidence to fully support all factual assertions in the application.

OAR § 860-027-0300(3) (ICNU revisions to original underlined) Enhancing the informational requirements that accompany a deferred accounting application will assist in the eventual processing of those applications to ensure that the Commission, Staff, and intervenors have as much information as possible at the time of the initial filing. Such information will help to better

inform the parties in determining the process by which the Commission should examine a particular application.

6. What are the alternatives to deferred accounting for recovery of excess utility costs or revenues between rate cases?

Whether deferred accounting or some alternative will be appropriate for a particular cost will depend on the facts of the case.

7. Do the Commission's deferred accounting practices and procedures ensure symmetrical treatment of deferrals for excess utility costs and deferrals for excess utility revenues?

The Commission's policies should recognize the one-sided nature of deferred accounting. As described above, the utilities are in control of the timing of the filing and withdrawal of most deferred accounting applications as well as the information supporting those applications. The ability of Staff and intervenors to submit applications for deferred accounting for excess revenues is limited. As a result, most of the filings voluntarily made by the utilities request authority to defer excess costs. The policies adopted by the Commission should reflect the fact that benefits and risks of deferred accounting to the utility and customers are asymmetrical. This means that deferred accounting should be limited to situations in which it is absolutely necessary.

8. Should there be an overall cap on the amount of costs that a utility can defer in one year?

ICNU supports imposition of a cap on the overall amount of costs that a utility can defer in one year. ICNU urges the Commission to adopt a cap that limits the amounts that a utility can defer to 6% of the utility's gross revenues for the previous calendar year. The Commission retains the discretion to allow deferrals in excess of this cap if the limitation could

result in a detriment to the public safety, welfare, or continuing electric service. In most circumstances, when a deferral might exceed 6%, a general rate case may well be warranted. Allowing the utility to determine in all circumstances whether to file a rate case or create a deferred account allows the utility to choose the worst result for customers in each case.

9. What must an applicant show to demonstrate that a deferral under ORS § 757.259(2)(e) will either (a) minimize the frequency of rate changes or fluctuation of rate levels, or (b) match ratepayer benefits and costs?

Guidance from the Commission regarding how it interprets the following phrases will be helpful to process future deferred accounting applications under ORS § 757.259(2)(e):

1) minimize the frequency of rate changes or fluctuation of rate levels; and 2) match appropriately the costs borne by and benefits received by ratepayers. ICNU recommended in its Opening Comments standards that the Commission should apply to interpret these phrases. ICNU Opening Comments at 21-25 (Jan. 18, 2005). The Commission should recognize these standards as a matter of policy.

PGE and PacifiCorp both argue that if an applicant represents that deferred accounting will either minimize the frequency of rate changes or match ratepayer benefits and costs, and no party challenges that claim, the Commission should accept that representation for the purpose of meeting the statutory test. PGE Opening Comments at 24 (Jan. 18, 2005); PacifiCorp Opening Comments at 13 (Jan. 18, 2005). This is a curious argument. The Commission's policies should not encourage the wholesale acceptance of unsupported representations with respect to the statutory test when considering deferral of utility costs. The utility has the burden to show that it meets the statutory test, regardless of whether the application is opposed. In addition, in the case of deferral of utility costs, the Commission should

not adopt policies under which intervenors have the burden to “challenge” the utilities’ statements and disprove the representations in an application. Indeed, as noted above, it would be virtually impossible for an intervenor to disprove a utility’s claim that it would have filed a rate case in the absence of deferred accounting.

a. Minimize the Frequency of Rate Changes or Fluctuations of Rate Levels

PGE and PacifiCorp also refer to the notion that a deferred accounting application may minimize the frequency of rate changes or fluctuations of rate levels if it prevents an alternative filing for interim rate relief. PGE Opening Comments at 23 (Jan. 18, 2005); PacifiCorp Opening Comments at 13 (Jan. 18, 2005). This notion is consistent with ICNU’s suggestion that the Commission apply the interim rate relief standard when it evaluates a claim that a deferred account minimizes the frequency of rate changes because it avoids a rate filing. ICNU Opening Comments at 22-23 (Jan. 18, 2004). Adopting such a standard will discourage unsupported representations that a general rate case would have been filed in the absence of deferred accounting. The Commission should also recognize that using deferred accounting to minimize the frequency of rate changes may not always be in the public interest. For example, if costs are changing rapidly, it may be appropriate to adjust rates to send more accurate price signals. Likewise, filing a general rate case may be a good thing for customers. This could be the case if a utility’s cost of capital were declining.

b. Match Ratepayer Benefits and Costs

PGE argues that a utility meets the statutory standard of matching ratepayer benefits and costs “if it seeks to defer cost incurred for the benefit of customers.” PGE Opening Comments at 23 (Jan. 18, 2005). The Commission should reject this standard because it would render the statutory language meaningless. All costs that a utility seeks to include in rates should be incurred for the benefit of customers. Indeed, the Commission has a long history of not allowing utilities to recover costs that were not incurred for customer benefit, much less allowing recovery of those costs through deferred accounting. Re PacifiCorp, OPUC Docket No. UE 116, Order No. 01-787 at 15-16 (Sept. 7, 2001); Re Northwest Natural Gas Co., OPUC Docket Nos. UG 81/UG 84, Order No. 89-1372 at 7 (Oct. 18, 1989); Re Northwest Natural Gas Co., OPUC Docket No. UF 3222, Order No. 76-594 at 4 (Aug. 30, 1976). To interpret the matching of costs and benefits in the manner suggested by PGE would simply restate a fundamental principle of utility ratemaking. Deferred accounting was not intended to apply this broadly.

As ICNU explained in detail in its Opening Comments, the Commission should adopt as a matter of policy the Commission’s application of the “matching of costs and benefits” test in Order No. 90-311 in Docket No. UM 246. ICNU Opening Comments at 24-25 (Jan. 18, 2005). Under this test, deferred accounting is appropriate when the costs a utility seeks to defer can result in some demonstrable benefit to customers, in the form of lower rates, in the future. Furthermore, the amounts should be allowed in rates only to the extent that customers actually benefit from the deferred costs.

10. What types of costs are eligible for deferred accounting (e.g. do the costs have to be extraordinary, unanticipated, nonrecurring, and/or discrete)?

Deferred accounting is a limited mechanism that the legislature has authorized to allow recovery of discrete costs under extraordinary and unanticipated circumstances. The authority delegated to the Commission for deferred accounting is limited to only that expressly provided by ORS § 757.259. Deferred accounting is unlawful in Oregon outside the bounds of that statute. As a result, the Commission should limit the use of deferred accounting rather than expand the practice. Deferred accounting may be appropriate in certain circumstances to allow recovery of discrete costs incurred in extraordinary circumstances between rate cases. The policies adopted in this Docket should recognize the nature of deferred accounting and restrict its use accordingly.

CONCLUSION

ICNU appreciates the Commission's review of this important ratemaking topic and the opportunity to help shape the Commission's deferred accounting policy. Deferred accounting is a largely one-sided mechanism and can result in serious detriment to customers if utilities are allowed to recover general cost increases between rate cases. The use of deferred accounting also can result in delay of a rate case that may well be in the public interest. The Commission's policies should encourage the use of deferred accounting in limited situations and in a manner consistent with the statute.

Dated this 18th day of February, 2005.

Respectfully submitted,

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February 18, 2005

Via Electronically and US Mail

Ms. Carol Hulse
Oregon Public Utility Commission
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff
Request to Open an Investigation Related to Deferred Accounting
Docket No. UM 1147

Dear Ms. Hulse:

Enclosed please find an original and six (2) copies of the Reply Comments of the Industrial Customers of Northwest Utilities in the above-captioned Docket.

Please return one file-stamped copy of the document in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely yours,

/s/ Ruth A. Miller
Ruth A. Miller

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply Comments of the Industrial Customers of Northwest Utilities upon the parties listed below, listed on the official service list for Docket No. UM 1147, by causing the same to be mailed, postage-prepaid, through the U.S. Mail, as well as an electronic copy via email.

Dated at Portland, Oregon, this 18th day of February, 2005.

/s/ Ruth A. Miller
Ruth A. Miller

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