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September 9, 2005

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol Street, NE
PO Box 2148
Salem, Oregon 97301

Re: UE 165/UM 1187

Dear Filing Center:

Enclosed for filing please find the original and five copies of the Staff Opening Brief in Docket Nos. UE 165 and UM 1187.

Thank you for your attention.

Very truly yours,

/s/Stephanie S. Andrus
Stephanie S. Andrus
Assistant Attorney General

Enc.
c. service lists

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 165 & UM 1187

In the Matter of PORTLAND GENERAL ELECTRIC Application for a Hydro Generation Power Cost Adjustment Mechanism (Docket No. UE 165) In the Matter of PORTLAND GENERAL ELECTRIC COMPANY Application for Deferral of Costs and Benefits Due to Hydro Generation Variance (Docket No. UM 1187).	STAFF OPENING BRIEF

I. Introduction.

Staff of the Public Utility Commission of Oregon ("staff") and Portland General Electric Company ("PGE") have entered into two stipulations resolving all issues presented by PGE's request for a Hydro Generation Power Cost Adjustment Mechanism ("HGA") in Docket No. UE 165 and its request for deferred accounting in Docket No. UM 1187. The purpose of the Stipulations, which create a temporary and limited power cost adjustment mechanism, is to align the interests of the Company and ratepayers with respect to allocation of costs associated with hydro variability.

In its direct testimony in support of the HGA requested in Docket No. UE 165, PGE noted that current test year ratemaking does not capture the variability and volatility associated with weather-driven changes in hydro production. (PGE/100, Lesh/1.) PGE noted that this was not because variability of hydro production was new, but because the magnitude of the variability and volatility had increased significantly. (PGE/100, Lesh/1.) PGE witness Jim Lobdell discussed this change in magnitude in his testimony:

> [A] 50 MWa deviation in annual hydro production now has an impact of almost $22 million, whereas it would have had an impact of only approximately $9 million in the mid-1990's[.] PGE/200, Lobdell/21.

To address PGE's increased hyrdo-related earnings risk and to bring it back in line with its historical risk profile, PGE proposed a Hydro Generation Adjustment ("HGA") noting that the Commission had previously indicated a willingness to entertain a supplement to test year ratemaking in Docket No. UM 1071.

In Docket No. UM 1071, the Commission stated,

> We are aware of climate changes and other factors, such as hydro availability, that may affect PGE's ability to recover its hydro losses. Therefore, although we do not find that this case is appropriate for deferred accounting, we encourage the parties to this docket or other interested persons to present alternatives to deal with hydro variability . . . For the reasons that Staff provides, and the CUB has cited as well, we

> believe a PCA may be an appropriate way of permanently allocating risks and benefits of hydro variability between shareholders and ratepayers." OPUC Order No. 04-108, pp 10-11.

While staff did not support the particulars of PGE's proposal for a HGA in its direct testimony in Docket No. UE 165, staff did agree that PGE's increased earnings risk warranted consideration and that the best response to the problem identified by PGE is an automatic adjustment clause to address a portion of the hydro-related earnings risk. (Staff/100, Galbraith/8-9.) Ultimately, staff and PGE agreed on an interim mechanism, the System-Dispatch Power Cost Adjustment Mechanism (SD-PCAM), to allocate hydro-related earnings risk, but both parties have stipulated that they anticipate an ongoing mechanism will be adopted as part of a general rate case and will be effective beginning in 2007. (UE 165-UM 1187/Staff-PGE/102, Galbraith – Tinker/3; UE 165 Stipulation.)

The SD-PCAM will track the annual difference between Base Power Costs established in PGE's RVM proceedings and Updated Power Costs. Updated Power Costs will be determined by taking a base power cost Monet Run ("Base Power Cost Monet run") and updating it, using actual data for hydro generation and market energy prices, while holding all other assumptions constant. Mores specifically, the final RVM Monet runs will be updated with the following actual data:

- Actual hourly hydro generation
- Actual market electricity prices using the hourly shape of the Dow Jones Mid-Columbia Hourly Price Index to share Dow Jones Mid Columbia Daily Index on and off-peak prices to hourly prices
- Actual natural gas prices using daily index prices

The annual difference, the System Dispatch Cost Variance (SDCV), will be subject to sharing between PGE and ratepayers. The amount of sharing will depend on whether the SDCV is positive (i.e., the Updated Power Costs are greater than Base Power Costs) or negative. If the Updated Power Costs exceed the Base Power Costs, PGE must absorb $15 million of the excess costs before any sharing can take place. If the Updated Power Costs are less than Base Power Costs, PGE will be allowed to keep only $7.5 million of the savings before sharing with ratepayers. In either instance, the sharing between ratepayers and PGE is 80/20 (ratepayers/PGE).

In addition to the deadband and sharing, PGE's recovery of the annual SDCV is limited by an earnings test. Under the Stipulations, recovery of any deferred amounts will be limited to those that result in PGE earning no greater than a 10.5% ROE on a regulated basis. All deferral amounts that result in PGE earning an ROE that exceeds 10.5% on a regulated basis will be written off. (UE 165-UM 1187/Staff-PGE/100, Galbraith-Tinker/5-6.)

Staff and PGE agreed to the SD-PCAM mechanism and the method of its implementation through two stipulations, one in Docket No. UE 165 and one in Docket No. UM 1187. In Docket No. UE 165, PGE filed an Application for its HGA. In Docket No. UM 1187, PGE filed a request to defer costs and revenues associated with variation in hydro generation. The particulars of the SD-PCAM are set forth in the UE 165 Stipulation. Under the UM 1187 Stipulation, PGE and staff agree that the SDCV balance obtained by application of the SD-PCAM mechanism are eligible for deferral under the UM 1187 application.

In its testimony in support of the Stipulations, staff stated that it supports the SD-PCAM for the following reasons:

1. The SD-PCAM strikes a reasonable balance between tracking a narrow subset of NVPC and capturing the broad interactions that occur when PGE adjusts its supply of portfolio to changing conditions;

2. The SD-PCAM provides a reasonable sharing of the cost variance associated with deviations in hydro conditions, wholesale electricity prices and natural gas prices;

3. The SD-PCAM earnings test ensures that final rates charged to customers are fair and reasonable;

4. The UE 165 Stipulation secures a commitment from PGE to hire a consultant to study the statistical distribution of power costs. Staff believes this work will inform the development of a fair adjustment mechanism for 2007 and beyond. (Staff/300, Galbraith/3.)

The Industrial Customers of Northwest Utilities ("ICNU") and the Citizens' Utility Board ("CUB") oppose the SD-PCAM for a variety of reasons. As discussed below, the objections voiced by these parties are not well founded.

II. ICNU's arguments.

In testimony opposing the Stipulations, ICNU raised the following objections:

1) Approval of the SD-PCAM retroactively to January 1, 2005, would constitute retroactive ratemaking because the SD-PCAM allows for recovery of cost variations due to fluctuations in electric and gas prices regardless of whether any variation in hydro generation occurs, which is broader in scope than the "hydro-only" deferred account requested by PGE in UM 1187;

2) The Commission decided in UM 1071 that deferred accounting was inappropriate for hydro variations and financial impacts of the magnitude PGE has experienced in 2005;

3) The proposed resolution in the Stipulation does not fall within the range of outcomes supported by the record in UE 165;

4) The deadband and sharing mechanism in the SD-PCAM is without analytical support and is inconsistent with the deadbands and sharing mechanisms adopted by the Commission in the past; and

5) PGE's and Staff's request for approval of the SD-PCAM requires the Commission to accept substantial modeling changes that are incomplete and unproven at this time and also, the opportunity to review the model changes and accuracy of the calculation produced by the changes will be limited. (ICNU/300, Falkenberg/4.)

A. The Stipulations do not require retroactive ratemaking.

ICNU's argument that the Commission should reject the Stipulations because they contemplate retroactive ratemaking is both factually and legally incorrect. In a nutshell, ICNU argues that the Commission cannot use PGE's UM 1187 application for deferred accounting as a vehicle to implement the SD-PCAM because the UM 1187 requested only the deferral of costs or revenues associated with variation in hydro generation, and the SD-PCAM would allow deferral of costs unrelated to hydro conditions, specifically, costs due to changes in wholesale electric prices and natural gas prices because doing so would be "retroactive ratemaking."

First, ICNU's assertion that the costs at issue in the SD-PCAM are not related to hydro variability is factually incorrect. As Mr. Galbraith explains in his testimony, the impact on hydro variation of PGE system operations is much more complex than simply tracking the megawatt-hour variation in hydroelectric generation. The cost of replacing lost hydro is tied to the economic dispatch of PGE's thermal plants and capacity tolling agreements. PGE's dispatch of its thermal plants is dependent on market prices for electricity and natural gas. The pertinent questions and answers in Mr. Galbraith's testimony explaining the inclusion of variability of natural gas and wholesale electricity prices are as follows:

> **Q. Why does the MONET update include actual hydro generation?**
>
> A. Actual hydro generation is used to simulate what the system dispatch would have been, had we perfect knowledge of hydro conditions. With low hydro conditions, reduced hydro generation is likely replaced by a combination of increased thermal dispatch and increased market purchases. With high hydro conditions, increased hydro generation likely results in a combination of decreased thermal dispatch and increased market sales.
>
> The substitution of actual hourly hydro generation is made to reflect any shift in PGE's energy supply curve. Lower than expected hydro conditions reduce supply. Higher than expected hydro conditions increase supply.
>
> **Q. Why does the MONET update include actual wholesale electricity and natural gas market prices?**
>
> A. Actual wholesale electricity and natural gas market prices are used to simulate what the projected dispatch of Beaver, Coyote Springs, as well as PGE's capacity tolling agreements, would have been, had we had perfect knowledge of market energy prices. Importantly this methodology holds thermal unit outages constant at the levels used to set PGE's base rates.

> The substitution of actual market prices for electricity and natural gas is made to reflect the actual prices that affected the dispatch of PGE's thermal units. All other variables are held constant at expected or normalized levels (e.g., planned outages, forced outages, etc.)
>
> **Q. Why does staff support [adjustments to MONET to account for deviations in hydro conditions, wholesale electricity prices and natural gas prices]?**
>
> A. This combination of adjustments isolates the financial impact of deviations in PGE's hydro generation from other impacts such as load deviations or plant outages, while explicitly recognizing that the cost of replacing lost hydro is tied to the economic dispatch of PGE's Beaver and Coyote Springs units and capacity tolling agreements. (Staff/300, Galbraith/5-7.)

As explained by Mr. Galbraith, a broad view of costs associated with hydro variability necessarily requires consideration of costs associated with deviations in hydro conditions, wholesale electricity prices and natural gas prices.

In any event, assuming *arguendo* that not all the costs in the SD-PCAM are properly classified as costs associated with hydro variability, the Commission has authority to use the UM 1187 request for deferral to implement the SD-PCAM. ORS 757.259 authorizes the Commission to defer "identifiable 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 or to match appropriately the costs borne by and benefits received by ratepayers." This is precisely what PGE and staff are requesting that the Commission do. Allowing PGE to defer costs associated with hydro variability by simply tracking the megawatt-hour variation in hydroelectric generation with no consideration for concurrent changes in wholesale electricity and natural gas prices would likely not obtain a match between the costs and benefits of hydro generation variation.

ICNU's retroactive ratemaking argument, which attempts to narrowly confine the Commission's authority to defer costs under ORS 757.259 to those that are expressly and very specifically identified in an application for deferral, elevates form over substance. The scope of Commission's authority under ORS 757.259 should not turn on the eloquence of the party requesting the deferral. Rather, the Commission's authority should be sufficiently broad to address the circumstances giving rise to the deferral application.

In calculating the SDCV, the SD-PCAM focuses on the effect of hydro variability by holding most other variables constant at the levels assumed in the RVM proceeding. By updating Monet with actual gas and electric prices, any re-dispatch (relative to the dispatch assumed in the RVM) allows customers to benefit if market opportunities were present to limit the cost of deficient hydro generation. (UE 165/PGE/900/Lobdell-Niman-Tinker/16.)

> This is explained further in the joint testimony of staff witness Galbraith and PGE witness Tinker:
>
> The SD-PCAM addresses concerns raised by Staff, CUB, and ICNU that PGE's original HGA mechanism did not take into account how hydro conditions could affect the use of PGE's thermal plants, particularly PGE's natural gas-fired generation. Under some circumstances, hydro replacement costs may be reduced by PGE dispatching its natural gas-fired resources. This occurs if spark spreads (i.e., the spread between market gas prices and market electric prices) widen, regardless of the factors driving spark spreads. The SD-PCAM captures the variation in margins associated with thermal plant operation if spark spreads actually change (either increase or decrease) relative to the assumptions used in PGE's final RVM filings. (UE 165-UM 1187/Staff-PGE/100, Galbraith-Tinker/5.)

B. The Stipulations implement an interim power cost adjustment mechanism, and are not inconsistent with the Commission's order in UM 1071.

Contrary to ICNU's assertion, the Stipulations are consistent with the Commission's order in UM 1071. As discussed above, the Commission stated in its order in UM 1071 that it encouraged parties to that proceeding to present alternatives to deal with hydro variability and specifically noted that a PCA may be an appropriate way of permanently allocating risks and benefits of hydro variability between shareholders and ratepayers. OPUC Order No. 04-108 at 10-11. The Stipulations create precisely the solution contemplated by the Commission in Docket No. UM 1071.

Essentially, ICNU asks the Commission to analyze the UM 1187 Stipulation, which allows a one-year deferral of hydro-related costs, in a vacuum and reject it because the Commission rejected a one-year hydro-related deferral in Docket No. UM 1071. In fact, analyzing the UM 1187 Stipulation out of context is inappropriate. The UE 165 and UM 1187 Stipulations, in combination, create a temporary and limited power cost adjustment mechanism. The Commission must consider all the circumstances surrounding the UM 1187 Stipulation when determining its reasonableness.

To the extent that ICNU argues that staff's support of the UM 1187 Stipulation is inconsistent with staff's position in UM 1071, ICNU is incorrect. As noted by the Commission in its order denying reconsideration of Order No. 04-109, it was staff's position in UM 1071 that a long-term solution is preferable to PGE's request for a one-time hydro deferral. Staff entered into the UM 1187 Stipulation authorizing the deferral of hydro costs with the understanding that the deferral mechanism was one step of many to implementation of a long-term solution. Staff acknowledges that the UE 165 and UM 1187 Stipulations are only an interim step to a long-term solution. However, as stated by staff at the hearing in these dockets on August 9, 2005, staff nonetheless recommends that the SD-PCAM "be approved as part of a long-term commitment to fair allocation of power cost risk."

Notably, the fact that PGE and staff agreed to what will only be an interim mechanism is due in part to staff's interest in creating a power cost adjustment mechanism based on Expected Value Power Cost modeling. Currently, PGE does not have the ability to do such modeling, and accordingly, it would not be possible to immediately implement a power cost adjustment mechanism that relies on such. As part of the Stipulations in these dockets, PGE has agreed to spend $100,000 to study the feasibility of developing Expected Value Power Cost modeling. Once this study is complete, stakeholders and the Commission will be able to use the information obtained to determine the reasonableness of a power cost adjustment mechanism that relies on Expected Value Power Cost modeling. While staff could have waited until further investigation into Expected Value Power Cost modeling is complete before agreeing to support any sort of mechanism to recover increasingly variable and volatile hydro costs, staff did not think this would be fair to the Company:

> Part of staff's thinking in entering into the Stipulation is that we believe that – that some sort of supplemental rate making is warranted in this case, and that it is unfair to the utility to put them between the rock and the hard place of requiring Expected Value Power Cost modeling and saying no to one-time deferred accounting. (Tr at 58.)

In any event, ICNU's reliance on the fact the Stipulations implement only a temporary power cost mechanism is misplaced. Even if the parties had agreed to implement a "permanent" mechanism, there is no guarantee that the mechanism would be in place in two years.

To the extent ICNU argues that the SD-PCAM is inconsistent with UM 1071 and other Commission precedent because of the size of the deadband in the SD-PCAM, this argument is also without merit. As discussed in testimony, the Commission established sharing mechanisms in three similar deferral dockets filed after the Western Power Crisis that included deadbands of 250 basis points. (Staff/100, Galbraith/26). However, the Commission's decisions in these cases are inapposite because the sharing mechanisms were for all components of net variable power costs ("NVPC"). In contrast, the SD-PCAM tracks changes in NVPC associated only with deviations in hydro conditions, wholesale electricity prices and natural gas prices. Because the costs at issue are more limited than those in the Western Power Crisis deferral cases, it is appropriate to have a smaller deadband.

Although the deferral request presented in Docket No. UM 1071 has some similarities to the deferral request that is presented in this case, the Commission's decision in Docket No. UM 1071 is also inapposite. First, although PGE's request was prompted by poor hydro conditions, the deferral request was not limited to costs associated with hydro variability. Instead, as with the deferral mechanisms in the Western Power Crisis cases, the UM 1071 deferral would have tracked all of PGE's NVPC.

Second, ICNU's argument fails to recognize that the deferral at issue in this case is not intended to be a one-time deferral. At the hearing, staff witness Galbraith explained that he opposed a one-time deferral of hydro-related power costs because for purposes of ratemaking, PGE's power costs are set on a normalized basis, and that to the extent PGE experiences hydro costs that exceed or are less than the normalized costs used for ratemaking, the "overs and unders" will balance out over the long term and PGE will have the opportunity to recover its expected costs on a long-run basis. As Mr. Galbraith noted at the hearing, a one-time deferral interrupts the long-term balancing of over recovery and under recovery.

While staff agrees that a similar interruption in the balancing of long-term recovery is presented by the SD-PCAM, the SD-PCAM will be in effect for two years. Unlike the circumstances in the Western Power Crisis dockets, there is a chance in this case that the SD-PCAM may work to customers favor in year 2006. Contrarily, in the Western Power Crisis deferral dockets, it was not only clear ratepayers would obtain no deferred benefits under the sharing mechanisms, but very likely that customers would pay the utilities significant amounts. The same is true of the application for deferral in UM 1071. In that docket, there was little likelihood that customers would obtain deferred benefits. (Tr 30.) Here, whether the SD-PCAM will work in favor of ratepayers or PGE shareholders is not known.

C. Parties have had full opportunity to develop the records in Docket Nos. UE 165 and UM 1187.

As noted above, ICNU asserts the Commission should reject the Stipulations because the UE 165 Stipulation is outside the range of possible outcomes supported by the record developed in UE 165 before the Stipulations were obtained and because the UM 1187 Stipulation is premature. (ICNU/300, Falkenberg/22-23.) Neither contention has merit.

Most importantly, the parties have had ample opportunity to conduct discovery on the Stipulations and present their positions regarding the merit of the Stipulations to the Commission. PGE and staff filed the Stipulations on April 11, 2005. ICNU and CUB filed testimony in opposition to the Stipulations almost two months later, on June 2, 2005.[1] The hearing in these matters was held approximately two months after that on August 9, 2005. Accordingly, in addition to participating in the settlement conferences leading to the Stipulations, the intervenors have had approximately four months to investigate the merit of the Stipulations. In light of these opportunities, any argument that the Stipulations were premature is not persuasive. Any prejudice that could have possibly been caused to intervenors by the timing of the Stipulations has been cured.

Further, ICNU's argument that the UE 165 Stipulation is beyond the scope of the record developed in UE 165 is incorrect. The SD-PCAM is designed to address at least some of the concerns voiced by staff and intervenors in response to the Hydro Generation Cost Adjustment mechanism ("HGA") originally proposed by PGE in UE 165. For example, in direct testimony in UE 165, ICNU, CUB and staff noted their concerns that the HGA did not take into account how hydro conditions could affect the use of PGE's thermal plants, particularly PGE's natural gas-fired generation. (ICNU/100, Falkenberg/7; CUB/100, Jenks-Brown/4-8.) The SD-PCAM is specifically designed to address this concern. Staff and intervenors also opposed the HGA because it was not asymmetrical. (ICNU/100, Falkenberg/5-6; CUB/100, Jenks-Brown/20). Again, the SD-PCAM is designed to address this particular concern.

[1] ICNU also filed rebuttal testimony on March 15, 2005 and staff and PGE filed rebuttal testimony on April 18, 2005.

D. ICNU's concerns regarding review of costs collected or refunded under the SD-PCAM are unfounded.

ICNU asserts the Commission should reject the Stipulations because there is no opportunity for parties to review or present evidence concerning the SD-PCAM calculations before any amounts deferred under the SD-PCAM are recovered in rates. As pointed out by PGE in its surrebuttal testimony, ICNU is incorrect. As PGE notes in the surrebuttal testimony of Lesh and Tinker, "amoritization of any collection or refund under the SD-PCAM will require a tariff filing and thus, trigger all of the statutory and Commission processes pertaining to tariff filings. The review process will include the ability to examine the Monet model and results, including changes made to implement the [UE 165 and UM 1187 Stipulations]." (UE165/PGE/1100, UM 1187/PGE 200, Lesh-Tinker/20.)

III. CUB's arguments.

CUB opposes the Stipulations because the SD-PCAM uses computer-modeled costs rather than actual costs and because the SD-PCAM does not include an update for load changes. First, contrary to CUB's assertion, neither ORS 757.210(1) nor ORS 757.259(2) require the use of "actual costs" as opposed to cost estimation or cost approximation. To conclude otherwise would be to insert into these statutes requirements that are simply not there.

Second, CUB's assertion that actual costs could be used for purposes of the SD-PCAM is questionable. Even after-the-fact, the "actual" cost and revenue impact of specific events, for example poor hydro conditions or a prolonged thermal outage, may be unknown, but is ultimately determined for regulatory purposes by estimation and approximation.

CUB's complaint that the SD-PCAM does not adjust for loads does not point out a flaw in the SD-PCAM mechanism, but merely reflects CUB's position that the power cost adjustment mechanism should be broader than that arrived at by staff and PGE. Staff entered into the Stipulations to address increasing risk associated with hydro variability, not load variation. Staff does not believe it is necessary to include updates to load in the SD-PCAM MONET runs to appropriate match costs and benefits associated with hydro variability.

CONCLUSION

For the foregoing reasons, the Stipulations between PGE and Staff in Docket Nos. UE 165 and UM 1187 should be approved.

DATED this 9th day of September 2005.

Respectfully submitted,

HARDY MYERS
Attorney General

/s/Stephanie S. Andrus______
Stephanie S. Andrus, #92512
Assistant Attorney General
Of Attorneys for Public Utility
Commission of Oregon

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September 2005, I served the foregoing document upon all parties of record in this proceeding by delivering a copy by U.S. Mail postage prepaid, or by hand delivery and by electronic mail pursuant to OAR 860-13-0070.

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