

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2119

In the Matter of)	
)	
ALLIANCE OF WESTERN ENERGY)	
CONSUMERS and OREGON CITIZENS')	
UTILITY BOARD,)	JOINT REPLY COMMENTS OF THE
)	ALLIANCE OF WESTERN ENERGY
Application for an Accounting Order Requiring)	CONSUMERS AND OREGON
Portland General Electric Company to Defer)	CITIZENS' UTILITY BOARD
Expenses and Capital Costs Associated with the)	
Boardman Power Plant.)	
_____)	

I. INTRODUCTION

Pursuant to OAR 860-027-0300(8) and OAR 860-001-0150, the Oregon Citizens' Utility Board (CUB) and the Alliance for Western Energy Consumers (AWEC) jointly submit these Reply Comments to the Public Utility Commission of Oregon (Commission) in the above-captioned proceeding. CUB and AWEC respond to issues raised by Portland General Electric Company (PGE) in its November 2, 2020 Comments.

PGE's comments request that CUB and AWEC's application for an accounting order requiring PGE to defer costs associated with the closure of its Boardman power plant (Application) be denied, citing various legal and policy concerns. PGE also makes a number of fact-based assertions in its Comments. In order to thoroughly examine these issues, the Commission should grant CUB and AWEC's Application to provide an adequate venue to do so.

PGE's comments raise several issues that the Commission should take up when this Application is eligible for potential amortization at the end of the 12-month tracking

period. The Commission should not pre-judge these fact-based issues, and, instead, should only render a decision based upon a robust evidentiary record.

For the reasons discussed herein, CUB and AWEC respectfully request that the Commission grant the Application.

II. DISCUSSION

PGE opposes CUB's and AWEC's Application through a mixture of legal, policy, and factual arguments. Each of these arguments are either incorrect or irrelevant to the task currently before the Commission—to consider whether to approve the deferral Application and begin to track, not whether to amortize deferred amounts that do not yet exist.

PGE, through its non-attorney sponsor, claims that “CUB's and AWEC's Application reflects a novel and unsupported change in the interpretation of Oregon law ...”¹ As CUB and AWEC noted in the Application, however, the Court of Appeals has held that ORS 757.355 prohibits the inclusion of plant that is not used and useful in a utility's rate base.² Thus, far from being a “novel and unsupported” interpretation, CUB and AWEC's Application reflects clear and well-settled law. As these Comments will discuss, the Application also matches the Commission's regulatory treatment for Idaho Power Company's share of Boardman.³

Meanwhile, PGE's citations to state decisions stemming from the *Trojan* lineage fail to tell the entire story of the Commission and courts' discussion of the potential inclusion of the return of and on an investment in rates beyond its cessation date. Regardless, however, PGE's legal arguments are premature. The issue addressed by the Commission in the *Trojan* decisions was whether PGE's rates were just and reasonable overall. That is a factual issue for

¹ PGE Comments at 1.

² Application at 3-4.

³ Chief Administrative Law Judge Nolan Moser's letter indicating the Commission adopted Staff's recommendation in ADV 1179 (Oct. 20, 2020) available at <https://edocs.puc.state.or.us/efdocs/UBF/adv1179ubf115034.pdf>.

consideration when deferred amounts are proposed to be amortized. CUB and AWEC will appropriately address this issue when the Application is eligible for potential future amortization.

Because the removal of plant no longer in service is statutorily mandated, PGE's reference to the Commission's discretionary deferral criteria is similarly off-base. This deferral is not being filed hurriedly to address oncoming costs or benefits from an unexpected event. PGE and its customers have known about Boardman closing since the Company made an agreement with the Oregon Department of Environmental Quality almost ten years ago. From a deferred accounting perspective, responding to a regulatory requirement is more akin to responding to a change in federal tax law or complying with a statutory mandate. When a change in costs is mandated—such as due to regulatory, legislative, or statutory direction—the Commission frequently does not require that traditional deferral criteria be met or an earnings test be applied. PGE itself has sought deferral of numerous statutorily or Commission mandated or authorized costs, and their approval has not been subject to the Commission's discretionary criteria.⁴

The Commission should also grant the Application because it is supported by several policy considerations. For one, the Application is a reasonable means to capture the regulatory lag associated with Boardman's closure. Regulatory lag represents the delay between rate cases when rates are frozen until a new rate is approved.⁵ Regulatory lag significantly impacts customers where it appears on the back end of a capital

⁴ See, e.g., Docket UM 2078 (Residential Battery Storage Pilot); Docket UM 1977 (Community Solar Start-Up Costs); Docket UM 1976 (Demand Response Test Bed)

⁵ OPUC Order No. 12-493 at 17 (citing LEONARD SAUL GOODMAN, THE PROCESS OF RATEMAKING (Vol. I), 44 (Pub. Util. Rpts., Inc. 1998)).

investment's useful life. In between rate cases, customers continue to pay the rates set during a prior rate case for a capital investment that is continuously depreciating.

PGE, perhaps more so than any other Commission-regulated utility, has historically gone to great lengths to avoid any regulatory lag on the front-end of its capital investments. PGE was able to track the capital and fixed costs associated with its Coyote Springs plant into base rates 90 days prior to the expected in-service date.⁶ It received immediate cost recovery provided its Port Westward plant became operational within 60 days of its March 1, 2007 online date.⁷ The Company received similar treatment with phase 1 of Biglow Canyon.⁸ PGE received special tariff riders for its Port Westward 2, Tucannon,⁹ and Carty generating plants.¹⁰ The Company is also able to avoid regulatory lag on all Renewable Portfolio Standard investments through its Renewable Resources Automatic Adjustment Clause. Since utility shareholders have avoided the costs of all regulatory lag on the front end of these investments, enabling customers to avoid regulatory lag for a plant that is no longer serving them would be an equitable and principled result. CUB and AWEC offer this Application to better match the precision with which PGE seeks to eliminate regulatory lag.

Further, by tracking the costs associated with Boardman for potential later amortization, ratemaking will better match the power costs customers will pay in 2021 and beyond. PGE's power costs are currently anticipated to increase by over \$65 million in

⁶ *In re Portland General Electric Company*, OPUC Docket No. UE 88, Order No. 95-322 (Mar. 29, 1995).

⁷ *In re Portland General Electric Company*, OPUC Dockets Nos. UE 180, UE 181, and UE 184, Order No. 07-015 at 49-50 (Jan. 12, 2007).

⁸ Order No. 07-573.

⁹ *In re Portland General Electric Company*, OPUC Docket No. UE 283, Order No. 14-422 (Dec. 4, 2014).

¹⁰ *In re Portland General Electric Company*, OPUC Docket No. UE 294, Order No. 15-356 (Nov. 3, 2015).

2021, relative to 2020 power costs.¹¹ Approximately \$23 million of this increase is directly attributable to the cessation of operations at Boardman.¹² Customers should avoid the capital and O&M costs associated with the Boardman closure to appropriately match the additional power costs they will incur from this closure.

Deferring these costs for potential later amortization would also match the Commission's treatment of Idaho Power Company's share of the plant. There, the utility was authorized to "track and recover the incremental costs and benefits associated with the early shutdown of Boardman."¹³ The Commission ultimately approved a removal of \$276,316 from customer rates, which explicitly included similar revenue requirement amounts that are the subject of this Application.¹⁴ Contrary to the Company's assertion that "the Commission has not to [their] knowledge ever required the removal of retired assets between rate cases," the Commission did just that on October 20th of this year. Since the Commission found it reasonable to pass costs back to customers in that setting, it stands to reason that it may here. The Commission should grant CUB and AWEC's Application to preserve that possibility at later amortization.

Further, approving the Application would match cost allocation methodologies for closing thermal plants used by a different Commission-regulated utility. As part of PacifiCorp's Multi-State Process (MSP) 2020 Protocol, the Company is obligated to propose ratemaking treatments that match costs and benefits when a state chooses to leave

¹¹ Docket UE 377, PGE November 6, 2020 MONET Update (showing forecasted power costs of \$459.1 million, \$65.6 million over the \$393.5 million in 2020 power costs). Power costs are subject to a final update on November 15th.

¹² Docket UE 377, PGE/100, Seulean-Kim-Batzler/43:15-17.

¹³ *In re Idaho Power Company*, OPUC Docket No. UE 239, Order No. 12-235 at 3 (Jun. 26, 2012).

¹⁴ Chief Administrative Law Judge Nolan Moser's letter indicating the Commission adopted Staff's recommendation in ADV 1179 (Oct. 20, 2020) *available at* <https://edocs.puc.state.or.us/efdocs/UBF/adv1179ubf115034.pdf>.

its share of a coal unit.¹⁵ That is, when a state is no longer receiving the benefits (power) from a facility, it should not be responsible for its costs. The same fundamental ratemaking principle applies here. Since PGE’s customers are no longer receiving Boardman’s benefits, the matching principle is furthered by ensuring they are not subject to the costs.

Finally, PGE’s discussion of the applicability of an earnings test and its reference to various investments it has made that have not been reviewed for prudence is also premature, and is a demonstration of exactly why the Commission should approve the Application to explore various issues. While the Application specifically identified that an earnings test would apply, it is ultimately an issue to be considered when amortization is proposed. The Company’s earnings are entirely unknown at this time, as are the incremental investments it has made that are not yet in customer rates. Nevertheless, CUB and AWEC believe the avoided costs from closing Boardman should be passed back to customers, and look forward to addressing these issues at the appropriate time.

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¹⁵ OPUC Order No. 20-024 at Appx. B, p. 14, 2020 Protocol.

III. CONCLUSION

For the foregoing reasons, CUB and AWEC urge the Commission to approve the Application to require PGE to defer and track the O&M expenses and capital costs associated with early cessation at the Boardman power plant.

Dated this 12th day of November, 2020.

Respectfully submitted,



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