

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 184

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC,)	CUB RESPONSE TO PGE
)	MOTION TO CONSOLIDATE
General Rate Case Filing regarding Port)	WITH DOCKET UE 180
Westward.)	
_____)	

**OPENING BRIEF
OF THE
CITIZENS' UTILITY BOARD OF OREGON**

May 8, 2006



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OF OREGON**

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I. Introduction

Consistency with regulatory policy and Oregon law strongly suggests that the Commission deny PGE’s motion to consolidate the matter of tariff schedules associated with Port Westward CCCT with PGE’s recently filed general rate case, UE 180. Denial of PGE’s motion allows the Commission to more cleanly establish a revenue requirement based on forward-looking test year costs, as well as follow the used and useful requirements set out in ORS 757.355. Merging UE 184 with UE 180 establishes an incremental ratebase process for establishing rates.

If the Commission believes the tariffs relating to the Port Westward plant are part of a web of issues interconnected with those involved in UE 180, and is inclined to grant the motion, the Commission ought to recognize that those connections may be broken by a delay in operations at the plant and a resulting gap in time between the effective rates for calendar year 2007 and the used and usefulness of the Port Westward plant. A

staggering of rate effects such as would result from a delay in Port Westward operations throws out the concept of setting a revenue requirement to compensate the utility appropriately for overall costs. We provide a few options the Commission may want to consider to condition any consolidation in order to recognize the breach of the assumed connections between Port Westward tariffs and UE 180.

II. Denial Is Consistent With Policy & Law

We begin with a few preliminaries. PGE anticipates new rates effective January 1, 2007. PGE/100/Piro-Lesh/7. PGE currently estimates that Port Westward will become operational, and used and useful, on March 1, 2007. *Id.* at 8. The gap in time, which is the source of the disconnect between the proposed revenue requirement and the rate-basing of a new resource, and, therefore, PGE’s “need” for regulatory gymnastics, is two months. The two-month gap is entirely a function of the timing of when PGE filed UE 180. Had PGE waited two months to file UE 180, our concerns and the Company’s “need” for creative regulatory accounting would be greatly diminished. PGE has unilaterally created a timing problem, is now shocked by CUB’s reaction, and suggests a fix that bends regulatory policy. At the very least, PGE should not be allowed to create a problem and then argue that the problem limits our ability to do anything but what PGE wants.

Port Westward is a \$45 million addition to revenue requirement, representing an almost 3% increase. PGE/200/Tooman-Tinker/27 and 201; Pretrial Brief, p. 10. The addition of Port Westward adds \$279 million to PGE’s rate base, an almost 16% increase. PGE/210/Tooman-Tinker/1; Tr. Br., p. 10.

The traditional regulatory structure relies on the establishment of a revenue requirement based on an examination of total company costs in a test year. The test year is a set of assumed costs, plus known and measurable changes that would allow recovery of utility costs to provide service, plus a return on rate-based investments. See generally, *The Economics of Regulation*, Kahn, Alfred, MIT Press, 1993, pages 26-57. In a rate case, as a utility's revenue requirement is examined, some costs will have increased, while others have decreased since the last rate case. Subsequent additions to a test year revenue requirement, such as PGE's addition of Port Westward, without a commensurate examination of the appropriateness of the overall revenue requirement – other declining costs may have offset the need for a rate increase – is contrary to the concept of establishing *total* utility costs as a basis for rates. The longer the gap between a completed rate case and the inclusion of additional costs, the greater the deviation in rates will be from what would have been established for a total utility cost-based revenue requirement. Utilities should exercise some discipline in timing their rate cases, as the inclusion of new costs is under their control.

In a related concept, the Oregon Revised Statutes state:

... a public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property not presently used for providing utility service to the customer.

ORS 757.355(1).

Without going into the history and current litigation associated with this provision, in general, this statute says that an investment intended to serve customers cannot be included in rates until it is shown that the investment is functioning and can be used to actually serve customers. Until such time as the investment is useful, ratepayers

cannot be charged the costs associated with that investment. The manner to recover the costs of a new useful investment is through a general rate case process where that cost can be examined with all other utility costs in establishing an overall revenue requirement. The cost of a new resource that has not been reviewed in a general rate case cannot be recovered before the next rate case and should not be recovered after the last rate case. If a new investment is proposed to come on-line on a certain date shortly after a completed rate case, there is no assurance that the proposed start up date will be met, and because of ORS 757.355(1), the utility may not recover the costs until the investment is actually up and running. If, in fact, the start up date is delayed, then the new cost becomes increasingly disassociated with the overall revenue requirement, and theoretically the Commission should begin its examination of costs all over again before it includes the cost of the new investment.

Traditional regulatory examination of costs and establishment of revenue requirement dictate that a new resource cost be reviewed along with other costs. PGE suggests that Port Westward will be used and useful only two months after the UE 180 rates go in effect. PGE suggests approval of tariffs that will bring Port Westward costs into rates when Port Westward comes on-line. There is no way to know as a certainty that Port Westward will come on-line two months after rates are in effect, or six months or twelve months. That is why the better solution is to time the rate case in such a way as to make it more likely that a new resource is operating as the costs are being examined. While the timing may never be perfect, we would avoid the case presented here, where we know that the resource will come on after rates are in effect, we just don't know how

much later. Traditional regulation and existing law strongly argues that Port Westward cost be included in the rate case examination as it becomes used and useful.

III. If Tariffs Are Approved, They Should Come With Conditions

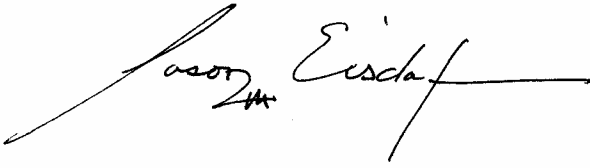
If the Commission is inclined to consolidate UE 180 and UE 184, the Commission should not take the chance that Port Westward is delayed and the Commission has established a revenue requirement that no longer reflects the relevant costs. CUB suggests a couple of conditions the Commission might consider if it is inclined to grant PGE's motion.

The first option is to take PGE at its word, that Port Westward will be on-line March 1st, and approve tariffs that are only valid until March 2nd. If Port Westward comes on-line as scheduled, the tariffs can be automatically extended. However, if Port Westward is delayed, and proves to be a bigger regulatory stretch than PGE has suggested, then PGE will have to file a new rate case application to begin recovery of Port Westward.

A second option is to condition approval of the tariff after March 1st on examination of declining costs that would amend the revenue requirement. So, if Port Westward comes after March 1st, but before the end of the year – by which time a new rate case is certainly warranted anyway – the Commission will proceed with an examination of PGE's costs to determine if there has been any identifiable decreases in costs. These cost decreases and the delayed Port Westward cost increase would both amend the revenue requirement at the same time. If the search for cost decreases after rates become effective January 1, 2007 seems one-sided, recognize that PGE has asked for the other side of the one-sided situation, *i.e.*, an extension of time to add — and only

add — additional costs. Either of these conditions alleviates the problem of establishing a revenue requirement before a significant cost is legally recoverable, and before the costs themselves are relevant to the Company's revenue requirement.

Respectfully Submitted,
May 8, 2006

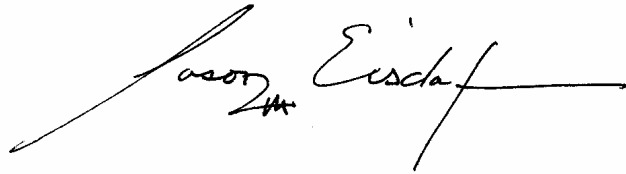
A handwritten signature in black ink, appearing to read "Jason Eisdorfer". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Jason Eisdorfer #92292
Attorney for the Citizens' Utility Board of Oregon

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2006, I served the foregoing Response to Motion to Consolidate UE 180 and UE 184 of the Citizens' Utility Board of Oregon in docket UE 184 upon each party listed below, by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending 6 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

Respectfully submitted,



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