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April 14, 2006

Via Electronic and U.S. Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PORTLAND GENERAL ELECTRIC
Application for Deferred Accounting Treatment of Certain Expenses Associated
with Grid West Loans
Docket No. UM 1256

Dear Filing Center:

Enclosed please find the original and two copies of the Response in Opposition on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket.

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

Sincerely,

/s/ Christian Griffen
Christian W. Griffen

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Response in Opposition of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid.

Dated at Portland, Oregon, this 14th day of April, 2006.

/s/ Christian Griffen
Christian W. Griffen

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1256 / UM 1257

)	
In the Matter of the Application of)	
PACIFIC POWER & LIGHT)	RESPONSE OF THE INDUSTRIAL
(dba PACIFICORP) for an Accounting Order)	CUSTOMERS OF NORTHWEST
)	UTILITIES IN OPPOSITION
)	
_____)	
)	
In the Matter of the Application of)	
Portland General Electric Company for an)	
Order Approving the Deferral of Certain)	
Costs and Revenues Associated with)	
Grid West)	
)	
_____)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits this Response in opposition to both PacifiCorp’s application for a deferred accounting order regarding its Grid West loans (“PacifiCorp Application”) and Portland General Electric Company’s (“PGE”) application to defer its Grid West loans (“PGE Application”) (jointly, the “Applications”). PacifiCorp and PGE (jointly, the “Utilities”) have separately requested that the Oregon Public Utility Commission (“OPUC” or the “Commission”) authorize the deferral of “loans” they previously made to Grid West because Grid West is now being dissolved and will not be able to repay the loans. The Utilities plan to seek cost recovery of any unpaid loans. PacifiCorp Application at 3; PGE Application at 1.

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The Applications should be denied because they violate the deferred accounting statute, depart from the Commission’s precedent regarding deferred accounts, seek the recovery of imprudent costs, and are inconsistent with the Commission’s policy regarding the recovery of regional transmission organization (“RTO”) related costs. The Commission does not have the statutory authority to allow the Utilities to defer any costs that were incurred prior to the date of a deferral request. The Applications violate the deferred accounting statute and the rule against retroactive ratemaking by seeking to defer the costs of “loans” that were incurred prior to the date of the deferral request. The Utilities also fail to provide a coherent explanation regarding how the Applications are consistent with the deferred accounting statute’s requirement and the Commission’s policy that deferrals match costs and benefits or minimize the frequency of rate changes. Finally, the Applications should be denied because they are inconsistent with the Commission’s recent decision regarding RTO costs, and would harm ratepayers by allowing the Utilities to include costs that cannot benefit ratepayers in rates.

II. BACKGROUND

Electric utilities in the Pacific Northwest have been working on the formation of a northwest RTO since the late 1990s. Despite considerable ratepayer-funded expense and effort, customers have not seen any benefits from these efforts to create a northwest RTO. Two previous versions of a northwest RTO, IndeGo and RTO West, culminated in the failure to create a viable transmission organization.

Grid West was the third failed attempt to create a northwest RTO. Grid West has followed in the steps of its predecessors and Grid West has voted to dissolve

itself. Attachment A (Grid West Press Release: Grid West Board Plans to Dissolve).

Grid West plans to terminate its operations in the next several weeks. Id. Obviously, it is now abundantly clear that ratepayers will not see any benefits from Grid West.

In apparent anticipation that Grid West would never become a viable RTO and would be incapable of paying any monies back, PacifiCorp and PGE filed their Applications in mid-March seeking to defer amounts loaned to Grid West. According to PacifiCorp, the Northwest electric utilities “loaned” Grid West money and “Grid West planned to repay the loans through surcharges to customers once it became operational.” PacifiCorp Application at 2. PacifiCorp admits, in a classic understatement, that “Grid West now appears unlikely to function in a manner that would permit it to repay PacifiCorp’s loan.” Id. at 2-3. PacifiCorp must now treat the loan as “unrecoverable” and seeks to have ratepayers pay the costs of this “unrecoverable” loan. Id. at 3. Similarly, PGE is requesting the deferral in the event that PGE writes off a part or all of the Grid West loans. PGE Application at 3. Neither Application includes copies of the actual loans, the loans’ interest rates and other terms, the specifics regarding when the loans were made, or other detailed information that could provide Staff and interested parties sufficient information to properly evaluate the loans or ascertain whether the costs were prudent or beneficial to ratepayers.

III. ARGUMENT

1. The Rule Against Retroactive Ratemaking Requires the Commission to Set Rates on a Prospective Basis

Utility rates are established on a prospective basis and, after new rates are in effect, the utilities “bear the risk for changes in normal operating expenses between rate cases.” Re PacifiCorp, Docket Nos. UM 995, UE 121 and UC 578, Order No. 01-420 at 4 (May 11, 2001). Absent specific statutory authority, the rule against retroactive ratemaking prevents the Commission from adjusting rates to recover utility cost increases or decreases that occur between rate cases. Re US West Communications, Docket No. UT 135, Order No. 97-180 at 5 (May 22, 1997). Specifically, the rule against retroactive ratemaking prevents the “setting of rates which permit a utility to recover past losses . . . under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established.” Or. Op. Att’y Gen. No. OP-6076 at 1 (Mar. 18, 1987).

The rule against retroactive ratemaking is one of the “cornerstones of Oregon regulatory law” that protects ratepayers and utilities. Re PGE, Docket No. UM 989, Order No. 02-227 at 8 (Mar. 25, 2002). Customers “should know what a utility service costs” at the time the service is used and customers “should not expect to pay more and the utility should not expect to get less.” Id. This means that customers have the “right to know the rates they are paying for service” and the “right to be free from surprise surcharges after the service has been provided.” Re US West Communications, Docket No. UT 135, Order No. 97-180 at 5. The rule also protects ratepayers by ensuring

efficiency in utilities and keeping overall costs lower. Or. Op. Att’y Gen. No. OP-6076 at 3 (Mar. 18, 1987).

2. The Deferred Accounting Statute Does Not Permit the Commission to Authorize Deferrals of Past Grid West Costs

The Commission does not have the statutory authority to allow PGE or PacifiCorp to defer any costs (including the Grid West loans) that were incurred prior to a formal application to defer such costs. Allowing the Utilities to defer losses that occurred in the past is the classic evil that the rule against retroactive ratemaking is designed to protect against and is not allowed under the deferred accounting statute, ORS § 757.259.

The deferred accounting statute is a limited legislative grant of authority for the Commission to set rates retroactively under specific circumstances. Re PGE, Docket No. UM 989, Order No. 02-227 at 9. The Commission has found that the deferred accounting statute should be construed narrowly and deferrals should not be granted unless they are “clearly within the reach of the statute.” Re PacifiCorp, Docket No. UE 76, Order No. 92-1128 at 8 (Aug. 4, 1992); Re PGE, Docket No. UM 989, Order No. 02-227 at 8.

The deferred accounting statute states that deferrals may only include costs that postdate the deferral request. Under ORS § 757.259(2), the Commission may only authorize deferrals of specific costs after the “application of a utility or ratepayer or upon the Commission’s own motion” The statute further clarifies that the “commission may authorize deferrals under [ORS § 757.259(2)] beginning with the date of the application” ORS § 757.259(4). While the statute allows the deferral of costs

after the date of an application, there is no provision which specifically authorizes the deferral of costs a utility has incurred prior to the date of a deferral request. Since the deferred accounting statute must be narrowly construed, the absence of specific authority to defer past costs means that the Commission does not have such authority.

The Applications violate the deferred accounting statute by requesting to defer amounts prior to the date they filed their Applications. PacifiCorp states that it provided funding to RTO West, the predecessor to Grid West, starting in June of 2000, and that “[f]rom that date to the present, PacifiCorp has loaned a total of \$2.7 million to Grid West, including accrued interest.” PacifiCorp Application at 2. Similarly, PGE has provided RTO funding over the past five years and “PGE’s share of the Grid West loans through 2005 was \$1.2 million” PGE Application at 2.

The Commission should not allow the Utilities to evade the requirements of the deferred accounting statute because the costs have been characterized as “loans.” These are dollars long since spent. Further, it is unclear whether the RTO costs that have been included in customers’ rates included any of these Grid West costs. PGE’s Application implies that, since the amounts they spent on Grid West were allegedly treated as loans, the costs were not incurred in the past. See PGE Application at 2-3. Similarly, PacifiCorp suggests that it is only changing the accounting treatment of the loan, which will make it appropriate to defer past costs. PacifiCorp Application at 2-3. Regardless of whether the costs were loans or what their past accounting treatment was, all monies spent, loaned or incurred by PacifiCorp and PGE from 2000 to March 2006, cannot be deferred now because there has been no advance approval. ICNU has long

complained about the overuse and abuse of the deferred accounting statute. These applications are clear examples of the abuse of deferred accounting.

3. The Commission Should Reject the Deferral of Any Grid West Costs Because They Will Not Minimize Rate Changes

The Utilities request that the Commission grant their deferral of Grid West costs, including future loans to Grid West, because the deferral would allegedly minimize rate changes or fluctuations. PacifiCorp Application at 3; PGE Application at 3. The minimization of rate changes is not merely a stock phrase to be parroted when PacifiCorp or PGE need a deferred account, but it is a statutory requirement that must be met before the Commission can authorize certain deferrals. ORS § 757.259(2)(e). The cursory efforts by the Utilities to establish that this statutory requirement has been met are insufficient to warrant a deferred account for any costs associated with a now defunct organization.

To demonstrate that a deferral will minimize the frequency of rate changes or fluctuations, an applicant for deferred accounting must specifically identify the factual basis upon which rate changes or fluctuations would be reduced. Re Staff Request to Open an Investigation Related to Deferred Accounting, Docket No. UM 1147, Order No. 05-1070 at 5 (Oct. 5, 2005). For example, this requirement can be met “by showing that the deferral would prevent an interim rate filing.” Id.

The deferral of Grid West costs will not reduce the frequency of rate changes because both PGE and PacifiCorp have current general rate proceedings. PacifiCorp claims that it will seek to recover all of its deferred Grid West loan costs in its

current rate case. PacifiCorp Application at 3. However, PacifiCorp has not explained why it did not include these costs in its original rate case filing. PacifiCorp may be attempting to avoid the regulatory lag that would occur if it sought cost recovery in its general rate case. Of course, in the case of PacifiCorp, it is difficult to see any regulatory lag given the frequency of its rate cases. PacifiCorp's proposal is inconsistent with the purpose of the deferred accounting statute and PacifiCorp's Grid West costs should be reviewed like any other expense in a general rate proceeding to determine if will occur during the test period.

PGE proposes a different approach than PacifiCorp. PGE asserts that, without the deferral, it will be required to seek recovery of Grid West funding. PGE Application at 3. However, presumably PGE's general rate case already includes Grid West costs. More importantly, PGE's Application fails to identify how the utility would be able to recover its past costs in a general rate case, or why it would be prudent to allow PGE to recover future costs associated with a dissolved RTO. Again, it is far from clear without extensive discovery to determine whether customers are being charged twice for these costs.

4. The Commission Should Not Authorize the Utilities to Recover Any Costs Associated with Future "Loans" to Grid West

PacifiCorp and PGE have requested that their costs associated with the Grid West loans be deferred because it would match costs and benefits. PGE Application at 3; PacifiCorp Application at 3. It is impossible to match these costs to any future

benefits to ratepayers because Grid West will no longer exist during the time in which these costs would be amortized and included in rates.

When matching the costs and benefits, the “costs and benefits which are to be matched are related to each other.” Re PacifiCorp, Docket No. UE 76, Order No. 92-1128 at 9. The Commission may defer recovery of costs until the time when the related benefits are expected to be provided to customers in the future. Id. Thus, the matching of costs and benefits ensures that costs for which a deferral is sought are incurred for the eventual benefit of the customer, and that recovery of the deferred amounts will occur at roughly the same time as the benefits occur. See Re PGE, Docket No. UM 246, Order No. 90-311 at 1 (Mar. 5, 1990); Re PGE, Docket Nos. UM 594 and UM 571, Order No. 93-1493 at 2, Appendix A at 3 (Oct. 15, 1993). Simply put, there are no customer benefits associated with these costs because Grid West will not exist in the future. Assuming for sake of argument that there were benefits, this matching principle fails for the reasons described below.

It is unclear whether PacifiCorp is seeking to defer any current or future Grid West costs. PacifiCorp asserts that it has loaned Grid West \$2.7 million from June 2000 to the present, and that the total amount of any deferral would be the same, or \$2.7 million. PacifiCorp Application at 2. Thus, it appears that PacifiCorp may be only requesting to defer its past Grid West loan costs, but not any future loan costs. If PacifiCorp is only seeking the deferral of past costs, then the deferral of these past costs cannot benefit future ratepayers or be passed on to future ratepayers under the matching costs and benefits standard.

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5. Any Deferred Grid West Costs Should Be Subject to a Prudency Review Prior to their Amortization

If the Commission allows the deferral of any RTO related costs, then the Commission should hold a hearing and conduct a full prudency review prior to allowing their amortization or other cost recovery. Continued spending on Grid West is imprudent, particularly now, and the Commission should deny recovery of these costs after a hearing, or simply reject the deferral requests at this time.

The Utilities should not loan Grid West any additional amounts since Grid West will never be able to repay the Utilities. PGE states that it intends to loan Grid West an additional \$1.7 million in 2006 and 2007.^{1/} PGE Application at 2. This is a significant amount of money, which exceeds the \$1.2 million PGE has already loaned Grid West and RTO West over the past five years. Id. Any new loans to Grid West are imprudent, as Grid West will no longer operate. At least PacifiCorp has admitted that Grid West “appears unlikely to be able to repay PacifiCorp” and may not be requesting to defer any future Grid West loans. PacifiCorp Application at 1.

Grid West failed because the utilities recognized that Grid West was unlikely to function as a viable RTO, especially in the Pacific Northwestern states of Oregon and Washington. BPA, which owns and operates more than three-fourths of the transmission grid in the Pacific Northwest, stopped participating in Grid West in November 2005. Puget Sound Energy (the largest Washington investor-owned utility), Nevada Power, and Sierra Pacific Power also withdrew from Grid West. The loss of

^{1/} Given the recent Grid West announcement regarding dissolution, ICNU assumes that additional loans will not occur. ICNU, however, does not know if there are any remaining liabilities.

these utilities, especially BPA, prevented Grid West from being a viable RTO in the Pacific Northwest. The Grid West costs do not benefit ratepayers today and any future costs cannot benefit ratepayers.

6. The Utilities Should Not Be Allowed to Earn Excessive Interest on Grid West Deferrals

PacifiCorp has requested that it be allowed to accrue interest on any deferrals at its weighted average of cost of capital. PacifiCorp Application at 3. The issue of an appropriate interest rate for deferrals is being considered in a separate proceeding (Docket No. UM 1147), which should guide the Commission's resolution of the issue in this proceeding. Re Staff Request to Open an Investigation Related to Deferred Accounting, Docket No. UM 1147, Prehearing Conference Memorandum (Jan. 25, 2006). However, regardless of the outcome of Docket No. UM 1147, the Utilities should not be permitted to defer any RTO-related costs at an interest rate that is higher than the actual interest charged to Grid West.

IV. CONCLUSION

The Commission must deny the Utilities' Grid West deferral requests on the basis that it is a violation against retroactive ratemaking to allow recovery of costs incurred starting in the beginning of 2000. Thus, the Commission does not have the statutory authority to defer the majority of the costs because the requests are primarily related to costs that were incurred prior to the date of the Utilities' Applications. In addition, the Commission should also reject the Applications because these RTO costs do not provide any benefit to ratepayers. However, if the Commission authorizes the

deferral of any RTO related costs, ICNU requests a hearing and reserves the right to raise any issues, including prudency issues.

Dated this 14th day of April, 2006.

Respectfully submitted,

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