BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 197

In the Matter of	)	APPLICATION FOR
	)	RECONSIDERATION OF ORDER NO.
PORTLAND GENERAL ELECTRIC,	)	09-020, SECTION III.B.12., PGE
	)	DECOUPLING PROPOSAL, OF THE
Request for a general rate revision.	)	CITIZENS' UTILITY BOARD OF
	)	OREGON

I. APPLICATION FOR RECONSIDERATION

On January 22, 2009, the Oregon Public Utility Commission (OPUC) entered Order No. 09-020 in Docket No. UE 197. The Citizens' Utility Board of Oregon (CUB), hereby respectfully makes Application for Reconsideration of Order No. 09-020, Section III.B.12, PGE's Decoupling Proposal, pursuant to ORS 756.561 and OAR 860-014-0095(3)(a) and (d), upon the grounds that new evidence that was unavailable and not reasonably discoverable before issuance of the order has come to light. There is good cause for further examination of this evidence, which was essential to the original decision.[1] Attached to this Application For Reconsideration is Exhibit 300. Exhibit 300 is the Testimony of Bob Jenks, Executive Director of the Citizens' Utility Board of Oregon, which sets forth the new evidence that was unavailable and not reasonably discoverable before the issuance of the Commission's Order No. 09-020, Section III.B.12. Mr. Jenks Testimony discusses the new evidence, how the new evidence

[1] OAR 860-014-0095(3)(a) and (d).

impacts the proposed decoupling mechanism and, lists the issues that CUB requests the Commission reconsider.

CUB's Request for Reconsideration is made because PGE is experiencing a significant reduction in its load due to the current economic downturn[2] rather than due to any voluntary efficiency measures taken by residential and other customers of the utility. This load reduction due to the recession is likely greater than the potential energy efficiency load reductions that were discussed during the case, and therefore the decoupling adjustment that customers will be required to pay will be greater than was discussed during this case. As currently set up, the decoupling mechanism cannot distinguish between significant load reductions due to the economic downturn as opposed to modest load reductions actually due to customer voluntary efficiencies. In light of this, CUB believes that the Commission should reconsider whether the mechanism that was established with regard to modest, voluntary, energy efficiency reductions is appropriate for the larger recession caused load reduction.

CUB, therefore, respectfully requests reconsideration of the decoupling mechanism set up by the Commission in UE 197 Order No. 09-020 upon the grounds that new evidence that was unavailable and not reasonably discoverable before issuance of the order has now come to light. There is good cause for further examination of this evidence and this evidence was essential to the original decision. CUB further requests that the Commission reverse, change or modify[3] Order No. 09-020, as set forth below, so as to prevent PGE from receiving a massive financial windfall at the expense of residential and small business customers under the decoupling mechanism contained in the Order:

[2] "We are now in an economic decline that is greater than that of 2000-2001". UE 197/CUB/300/Jenks/4-5
[3] ORS 756.561(3)

CUB believes that the Commission should -

- Reconsider the implications that the economic decline has on decoupling and in light of those implications -
  - Clarify what is an "active customer;"
  - Clarify that ORS 757.355(1) "presently used" (the used and useful standard) must be considered in determining "active customers" during decoupling;
  - Clarify how decoupling adjustments will be spread to customer classes;
  - Clarify how the associated $1.9 million reduction in ROE affects the PCA;
- Reconsider whether the 2% cap should be a hard or soft cap on decoupling adjustments;
- Reconsider whether decoupling should be based on average fixed cost/kWh or marginal fixed cost/kWh; and, most importantly
- Reconsider whether implementing decoupling in the current economic circumstances will have any positive benefits or whether it will eliminate a potential tool that the Commission might wish to use under normal circumstances.

II. HISTORY OF THE CASE

In January 2009 the Commission entered Order No. 09-020, which contained a provision on decoupling.[4] The provision sets forth a two year pilot project whereby PGE will be reimbursed by its customers for monies it would have earned if its customers had not effected energy efficiency measures that reduced the company's load.[5] However, the current provision does not differentiate between load reductions that are the result of energy efficiency savings and those that are the result of declining economic conditions.[6]

During the compilation of the record in this docket in the summer and fall of 2008, economic analysts were predicting market corrections of limited proportions.[7] Although there was some muted discussion of an impending recession and the associated effects of decoupling, it is clear from the record that none of the parties envisioned the severity of the current economic collapse. Indeed, in its rebuttal testimony, PGE argued against drawing any conclusions from staff's hypothetical example of a recession, because "nothing short of the extraordinary events of 2000-2001 seems consistent with the staff scenario."[8] The Commission, therefore, did not have a record that considered the possibility of a massive reduction in customer load due to an economic downturn. Today, economic analysts predict that this recession will be the most severe in the postwar period,[9] and vast amounts of new information are available which evidence that this "recession", "economic downturn", "large scale market correction" – whatever you choose to call it – is having an enormous and devastating effect on PGE's residential,

[4] UE 197 Order No. 09-020 Section III.B.12, PGE's Decoupling Proposal
[5] *Ibid.*
[6] *Ibid*.
[7] UE 197 / CUB / Jenks / 300 / 6, 8-9
[8] UE 197/ PGE / 2100 / Cavanaugh / 16
[9] UE 197 / CUB / Jenks / 300 / 303/1

commercial and industrial customers. And now, on top of the already increasing economic burden faced by PGE's customers, Order No. 09-020 will result in additional customer costs. Customers will have to remit payments to PGE of monies related to load reduction due to the economic downturn, because there is no way to distinguish between that load reduction caused by the economic downturn and load reduction caused by customer efficiency measures.

Decoupling was implemented to create better incentives for PGE to improve energy efficiency programs. However, by focusing on the average level of fixed cost recovery per kWh rather than the marginal level of fixed cost recovery per kWh, this decoupling mechanism over-compensates PGE for reductions in load. The result is a bizarre incentive mechanism, whereby PGE's profits increase when customers lose their jobs, small businesses close up shop, and houses remain vacant for months on end. As PGE's customers' economic situations get more and more dire, PGE's economic situation improves. This does not represent improved incentives.

Because the full effects of the current recession were unknown to the OPUC when the record in this case was compiled, and when the Commission issued its Order No. 09-020 on PGE's Decoupling Proposal, CUB respectfully requests that the Commission grant CUB's Application for Reconsideration in this docket.

III. ARGUMENT

The Argument which follows is divided into four sections:

1.CUB's Application for Reconsideration Meets the Legal Standard for Reconsideration.

2. The Commission needs to consider the effect that the economic decline is and will have on the decoupling mechanism.

3. The Commission needs to clarify how it intended the decoupling mechanism to be applied.

4. The Commission needs to reconsider certain specific aspects of the decoupling mechanism and whether application of a decoupling mechanism is appropriate during this or any other recession.

1. CUB's Application for Reconsideration Meets the Legal Standard for Reconsideration.

The Commission may grant reconsideration "if sufficient reason therefore is made to appear."[10] Pursuant to the rule implementing the statute the Commission may grant an application for reconsideration if the applicant shows there is (a) "[n]ew evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order" or (d) "[g]ood cause for further examination of this evidence which is essential to the decision."[11] Either of the above grounds, if essential to a decision, constitutes a sufficient basis for granting reconsideration. New evidence supporting this application is set forth in attached Exhibit UE 197 / CUB / Jenks / 300, and discussed below, as is good cause for examination of this new evidence.

This Application For Reconsideration should be granted because the new evidence set forth in UE 197/CUB/Jenks/300, and discussed below, satisfies the standard for reconsideration.

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[10] ORS § 756.561(1).
[11] OAR 860-014-0095(3)(a) and (d).

2. The Commission needs to consider the effect that the economic decline is and will have on the decoupling mechanism.

A. The Economy is Much Worse than When the Record of this Case was Compiled.

The current decline in the economy is severe. The unemployment rate in Oregon reached 11.9% in February. This is significantly above the 8.8% unemployment during the last recession.[12] So far in this recession, unemployment has doubled from 5.3% to 11.9%, meaning that 6.6% of Oregonians have lost their jobs.

The economy in 2009 is much worse than was predicted last September when CUB filed its final round of testimony in this case. At that point the most recent forecast from State Economist, Tom Potiowsky, suggested that the economy "is not expected to grow worse."[13]

B. The Load Forecast that was Used in this Docket Overestimated Demand.

PGE's load forecast in the UE 197 docket was based on information developed prior to Mr. Nguyen's testimony, filed February 27, 2008, and used baseline economic forecasts from December 2007.[14] Mr. Nguyen used the Oregon Office of Economic Analysis (OEA) forecast which predicted an employment decrease of only 0.2% in its worst case scenario.[15] CUB Exhibit 303 is the most recent OEA forecast which predicts an employment decline of 4.3% in 2009. This employment decline is in addition to the employment losses already experienced in 2008.

[12] Oregon Labor Market Information System, Oregon Employment Department, www.qualityinfo.org/olmisj/AllRates
[13] CUB Exhibit 301
[14] UE197/PGE/1100/Nguyen/11-12.
[15] Ibid.

C. The Recession will create a Decoupling Adjustment that is Greater than the Energy efficiency Adjustment Discussed in the Record.

In PGE's testimony, Mr. Piro discussed decoupling in the context of load reductions of 0.5%, stating that under those circumstances PGE would lose $2 million in fixed cost recovery.[16] PGE witness, Mr. Cavanagh went even further, discussing the implications of a 1% load reduction, where the company would lose $4 million in the first year, and up to $60 million over five years assuming PGE does not file a rate case to update its load forecast.[17]

The predictions of load losses of 0.5 to 1% were based on the assumption that those levels of load reduction were attainable due to energy efficiency.[18] But the potential load loses due to a bad economy are much greater. According to PGE's Annual Reports for the years 2002 and 2003, PGE's load declined by 8% for those two years due to that recession.

As Mr. Jenks demonstrates in his testimony a similar 8% decrease in commercial load will lead to decoupling adjustments of $10 million for Schedule 32 customers. [19] Because the 2% annual cap is approximately $3 million, this means that a recession similar to 2001-02 would cause more than 3 years of decoupling surcharges for Schedule 32.[20] But, as previously noted, this recession is already worse than the recession in 2001-02.

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[16] UE 197/PGE/Piro/100/19
[17] UE 197/PGE/Cavanagh/2100/7.
[18] *Ibid.*
[19] UE 197/CUB/304
[20] UE 197/CUB/304

D. This Recession Will Lead to a Decoupling Adjustment that Could Last Several Years.

If the 2001-02 recession caused commercial load to decline by 8%, this recession should cause more significant declines. If commercial load declines by 10% instead of 8%, then Schedule 32 customers will owe the utility $12.6 million. If the load reduction is 12%, Schedule 32 customers will owe the utility more than $15 million, which will take 5 years to pay under the terms of the current Schedule 123. [21] A 5% reduction in residential load would create a two-year decoupling adjustment of $38 million, which is in excess of the 2% rate cap, meaning that some of the money would roll over and be charged to customers in future years.[22]

In addition, as the housing market collapses, thousands of homes languish on the market for an average of 19.2 months.[23] If decoupling were implemented statewide in this housing market, looking only at the effect of these unsold homes upon the decoupling adjustment, the decoupling adjustment for these unsold homes could be, assuming the majority of these homes are vacant, $18.8 million.[24]

E. Maine Had a Similar Experience with Decoupling

Oregon is not the first state that has implemented decoupling just as a recession is hitting. Maine implemented decoupling in the 1990s just as a recession was hitting and the Maine experience provides a valuable lesson as to the effects of recession upon decoupling. CUB Exhibit 304 is a recently-authored report on decoupling in Maine and

[21] UE 197/CUB/304
[22] UE 197/CUB/304
[23] http://portlandhousing.blogspot.com/2009/jps-market-analysis-january-2009.html
[24] UE 197/CUB/300/Jenks/8

makes clear that the issue of decoupling in Maine is still tainted by Maine's experience in the early 90s. [25]

Maine put in place decoupling for Central Main Power (CMP) in 1991, just as the state was heading into a recession. By the end of 1992, the decoupling deferral had reached $52 million and decoupling was "increasingly viewed as a mechanism that was shielding CMP against the economic impact of the recession, rather than providing the intended energy efficiency and conservation incentive impact."[26] Maine ended its decoupling mechanism in 1993 and today Maine does not have decoupling.[27]

3. The Commission needs to clarify how it intends the decoupling mechanism to be applied.

CUB has identified a handful of issues that need clarification given the economic climate that prevails at this time, and will likely prevail for some time to come.

A. Definition of an "Active Customer"

In their testimony, PGE witnesses Jim Piro and Ralph Cavanaugh both state that PGE assumes the risk related to its customer forecasts. [28] They did not, however, define the mechanism by which this forecast is made. This forecast mechanism is very important, as it will largely determine whether customers are assuming nearly all the risk of an economic downturn, or the risk is jointly assumed by customers and the Company.

In analyzing the decoupling effects CUB reviewed the decoupling mechanism which looks at the forecasted versus actual load per customer. CUB noted that the

[25] CUB Exhibit 304, Report of Revenue Decoupling for Transmission & Distribution Utilities, Presented to the Utilities and Energy Committee, by the MPUC, OPA and OEIS. January 31, 2008.
[26] CUB Exhibit 304, Report of Revenue Decoupling for Transmission & Distribution Utilities, Presented to the Utilities and Energy Committee, by the MPUC, OPA and OEIS. January 31, 2008.
[27] Ibid.
[28] UE 197/PGE/100/23; UE 197/PGE/2100/16

schedule implementing the mechanism uses the term "active customers" but CUB was unable to locate a definition for this term.[29] CUB also noted that in its load forecast, PGE defines residential customers as including "dwellings that PGE has connected for electrical service but are not yet occupied."[30]

i. Active Residential Customer.

As noted in Bob Jenks' Testimony, PGE states in its load forecast that residential customers "are most households, but also include dwellings that PGE has connected for electrical service but are not yet occupied.[31] Given the current average 19 months that new homes are on the market before being occupied, defining new homes as active customers results in a $786 surcharge levied on other residential customers before each new home is occupied.[32] If there are 1,000 unoccupied homes in PGE's service territory that the company has connected, PGE's residential customers will incur nearly $1 million in charges related to decoupling.[33]

Also of note is the fact that while realty companies may have the power turned on in order to show houses to prospective buyers, that usage is minimal, as the homes are not occupied by residential customers. This is why CUB stated above that the statewide decoupling adjustment associated with homes that are on the market could be as high as $18 million. And, this is what prompts CUB to posit the following question for clarification:

- Are vacant homes that have negligible usage "active customers" for the purpose of decoupling?

[29] PGE Schedule 123
[30] UE 197/PGE/1100/6
[31] UE 197/CUB/Jenks/300/17 citing to UE 197/PGE/1100/6
[32] UE 197/CUB/Jenks/300/18
[33] *Ibid.*

CUB also notes that PGE defines a residential customer in load forecast in a manner that conflicts with ORS 757.600 which requires that the "electricity consumer…*reside[]* at a dwelling primarily used for residential purposes" [emphasis added][34]

Based on the forgoing, it is CUB's position that houses that are connected for electrical service but are not yet occupied are not "residential customers"; no one "resides" there; and that such homes should not be counted when determining decoupling benefits.

This is not a small issue. PGE projected 15,000 new residential customers in this docket. In a deepening recession, it is likely that customer growth will fall well short of that number.

A similar issue exists on the on side of the ledger. Are houses that have their electricity shut off counted as customers? Surely PGE does not count as an active customer someone who has had their electricity shut off for non-payment. Requiring other customers to subsidize 49% of the electricity to a house after it is shut off makes little sense.[35] If we are to subsidize people's electric bills, does it not make more sense to subsidize them before they are shut off? Again, based on the forgoing, it is CUB's position that houses to which electricity has been shut off should not be counted when determining decoupling benefits.

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[34] ORS 757.600(28):

> (28) "Residential electricity consumer" means an electricity consumer who resides at a dwelling primarily used for residential purposes. "Residential electricity consumer" does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges and clubs. As used in this subsection, "dwelling" includes but is not limited to single family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles and floating homes. [emphasis added]

[35] UE 197/CUB/Jenks/300/19.

ii. Active Small Business Customer.

The same analysis should be applied on the commercial side. Is a restaurant that is closed 24 hours per day, 7 days per week, an "active customer"? In many cases, commercial customers are renters and do not own their property. Property owners may well want to keep some level of power on in order to show the property or for security purposes, but the usage at an unoccupied property is minimal.[36]

If closed businesses are defined as "active customers", then decoupling adjustments will certainly be larger. Each business that is closed will require a decoupling adjustment amounting to approximately 42% of the bill that the customer would have paid if it had not gone out of business.[37] This again raises the issue of appropriateness: wouldn't it make more sense to subsidize the bill of a commercial customer before it closes down and lays off its workforce?

Even if decoupling adjustments are restricted to only those businesses that have not closed, customers are going to pay heavily for this economic downturn. When a business lays off an employee, the decrease in the demand for electricity associated with that employee will lead to a decoupling adjustment. Likewise, if a business reduces its hours, there will be a decoupling adjustment associated with this reduction.

Again, based on the forgoing, it is CUB's position that businesses to which electricity has been shut off, or whose electricity consumption is reduced due to lay offs or reduction in working hours, should not be counted when determining decoupling benefits. CUB respectfully requests reconsideration of, and clarification of, the definition of an "active customer".

[36] UE 197/CUB/Jenks/300/19-20
[37] UE 197/CUB/Jenks/300/13.

B. ORS 757.355 and the "Active Customer".

ORS 757.355 codifies the "used and useful" standard.[38] This statue was amended to deal with property that was retired in the public interest before its rate base was fully recovered. However, the law does apply to investments in utility rate base that have yet to be "used to serve customers."

As noted in the prior section, PGE defines a new home as a customer when it is hooked up to the grid, even if the home is vacant. This definition is not consistent with ORS 757.355. The rate base associated with the transformer and other elements of the last part of the distribution system cannot, when attached to a vacant dwelling, be considered as "presently used" to serve customers.

Under normal ratemaking rules, this is not an issue. While the utility may forecast an investment into ratebase, it also forecasts customer growth into its revenue. If the home remains unoccupied, the utility does not add the infrastructure for that customer into its ratebase. Thus, customers are not charged for ratebase that is not providing service to an occupant. [39] Decoupling can change this situation. If, as we believe PGE is doing, empty dwellings are defined as customers, the other "real" customers will be charged the ratebase associated with an unoccupied home.

Again, based on the forgoing, it is CUB's position that vacant new homes and vacant new businesses to which electricity has been connected, and vacant older homes and vacant older businesses - languishing on the market - should not be counted when

[38] **757.355 Costs of property not presently providing utility service excluded from rate base; exception.** (1) Except as provided in subsection (2) of this section, 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.

[39] UE 197/CUB/Jenks/300/21

determining decoupling benefits. It is CUB's position that such infrastructure as PGE has provided, is in those circumstances, not presently used and useful. CUB respectfully requests reconsideration of, and clarification of, the forgoing issue.

C. How The Decoupling Adjustment Should Be Spread Across Customer Classes

Because the bulk of the fixed costs relate to the distribution system that is assigned and dedicated to particular customer classes, we assume that the decoupling adjustments will be assigned to the customer class that causes the adjustment. This particularly makes sense if the adjustment is caused by energy efficiency. If the utility collects its fixed costs through fixed cost charges, then the cost will be recovered from the class to which it is assigned. If the customer class reduces its usage, the fixed costs do not change and continue to be collected from that class. But, PGE does not address how the decoupling adjustments will be spread across customer classes. Mr. Cavanaugh uses the PacifiCorp example from the 1990s to show that the rate impact will be minimal on each class of customers, but does not state whether PGE is in fact proposing the same approach.[40]

CUB knows of no good reason why there should be any variance from the practice worked out with PacifiCorp.[41] Residential customers are obviously the largest class that is decoupled, and CUB does not want residential ratepayers to become the deep pockets who bail out other classes of customers when their loads are lower than forecast.

[40] UE 197/CUB/Jenks/300/22
[41] See Order No. 98-191, PacifiCorp Decoupling.

To do so would place an additional risk on residential customers and make it less likely that CUB would support decoupling in the future.[42]

CUB respectfully requests reconsideration and clarification of this issue.

D. How the ROE Reduction Implicates PGE's PCAM

In Order No 09-020, the Commission required PGE to reduce its ROE by 10 basis points or $1.9 million.[43] The order directed PGE to defer this reduction until it could be placed into permanent rates. PGE's application to defer the $1.9 million listed the deferral as commencing on February 1, 2009. However, neither that application nor Order No. 09-020 states whether the ROE used for the PCAM adjustment is the ROE that is currently in base rates or a combination of the ROE in base rates adjusted by this deferral. With decoupling in place during 2009, and the Company set to receive a tremendous benefit from the associated shift in risk, PGE's ROE in the 2009 PCAM should reflect the ROE adjustment from Order No 09-020.

CUB respectfully requests reconsideration and clarification of this issue.

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[42] UE 197/CUB/Jenks/300/22

[43] UE 197 Order No. 09-020 entered January 22, 2009 at Section III., Subsection 12 PGE's Decoupling Proposal, Resolution subsection (c), page 29; and PGE's Application for Deferral of Revenues Associated With ROE Refund and Sales Normalization Adjustment and Lost Revenue Recovery at page 3, filed January 30, 2009.

4. The Commission needs to reconsider certain specific aspects of the decoupling mechanism and whether application of a decoupling mechanism is appropriate during this or any other recession.

A. Should the 2% Cap be a Hard Cap on Decoupling Adjustments

Decoupling died in Maine because after 2 years of decoupling during a recession customers owed the utility $52 million.[44] Oregon seems to be heading down the same path as Maine, implementing decoupling during a recession. The only protection customers have is the 2% cap, which PGE compares to a circuit breaker.[45] But of course, the 2% cap does not act as a circuit breaker. A real circuit breaker trips and stops the flow of electricity, while this decoupling "circuit breaker" does nothing to stop the flow of dollars. Instead, this "circuit breaker" allows customers to pay decoupling debt over time, but does nothing to stop the flow of dollars that customers owe PGE.

The cap for Schedule 32 is approximately $3 million/year. The cap for Schedule 7 is approximately $16 million/year. These two caps together total to $19 million/year or $38 million dollars for the two year decoupling period.[46] But if the decoupling adjustment is larger than these amounts, the Commission mechanism will simply roll over the additional amounts with interest to future years. CUB is concerned that these amounts will be exceeded.[47]

This will complicate the review of decoupling. Customers will likely oppose renewal of the decoupling mechanism until customers have paid off the debt from this first proposed decoupling period – and likely for a LONG time after that!

[44] UE 197/CUB/Jenks/305/12-13
[45] UE 197/Kuns-Cody/1200/29
[46] UE 197/CUB/304
[47] UE 197/CUB/Jenks/300/24

An easy way to improve the decoupling proposal is to implement a hard cap, whereby PGE could earn a decoupling adjustment of up to 2%, with no additional costs placed on customers. Under such a cap, PGE would still have the potential to collect $38 million from customers, in exchange for a reduction in ROE of less than $4 million.[48] This nets out to a $35 million benefit to the company, which could be considered a very generous windfall.[49]

Of course, PGE will oppose making this cap a hard cap. The Company will argue that customers are unlikely to go over the cap and that this is just allowing them to recover their actual fixed costs (which they could do by filing a rate case with an updated load forecast). However, if the adjustment is less than the cap, then there is no danger in making the caps real and hard. By opposing hard caps, PGE demonstrates that there is a significant risk that the amount of charges to customers could be greater than the caps and that PGE would rather get its money, even if this practice threatens the viability of decoupling over time.[50]

As to the other argument that these are fixed costs that the company is allowed to recover, CUB must disagree. Using the average fixed cost per kWh rather than the marginal fixed cost per kWh, customers are overpaying PGE for its fixed costs. And, while rate regulation provides PGE with the opportunity to recover its costs, regulation does not guarantee such recovery. PGE is paid a healthy ROE (10%) on its investment in fixed capital assets. This amount is to compensate the Company for the risks associated with this recovery. For the distribution assets which make up most of this decoupling mechanism, the primary risks to recovery are the effects of weather and the economy on

[48] UE 197/CUB/Jenks/300/24-25
[49] I*bid.*
[50] UE 197/CUB/Jenks/300/25

the Company's load forecast. Removing the economic risk moves the Company a long way towards guaranteed full recovery of its capital investment. Of course, under those circumstances, a 10% ROE is not appropriate.[51]

CUB believes that the risk reduction to PGE associated with decoupling is much greater (especially during a recession) than the 10 basis points reduction in ROE that the Commission ordered.[52] This notion should become clearer as customers are facing tens of millions of dollars in decoupling adjustments, while the Company is facing less than $ 4 million in reduced ROE.

But, even with a hard cap, this decoupling mechanism is out-of-whack. With a hard cap, the net cost to customers could approach $35 million. The fact that CUB is asking the Commission to make the cap hard and limit customers' liability to $35 million reflects CUB's view of how this recession will affect decoupling. Making customers – many of whom have lost their jobs and seen their retirement savings plummet – pay an additional $35 million with no guarantee of improved energy efficiency (beyond the elasticity of demand associated with higher rates) is unfair. This does, however, beat having to pay $50 million, $60 million or some higher amount in uncapped decoupling surcharges.

CUB respectfully requests that the Commission reverse, change or modify[53] Order No. 09-020 to ensure that any "cap" inserted in a decoupling mechanism is a hard cap.

[51] UE 197/CUB/Jenks/300/25
[52] UE 197/CUB/Jenks/300/25-26
[53] ORS 756.561(3)

B. Should Decoupling be based on average fixed costs per kwh or marginal fixed costs per kwh.

For residential customers, PGE's decoupling mechanism compares two figures: the amount of fixed costs (distribution, transmission and fixed generation) recovered from a customer at a rate of 4.646 cents/kWh, with a month fixed cost of $41.38/month per customer. The problem with this structure is that 4.646 cents/kWh represents the average amount of fixed costs recovered per kWh, but does not necessarily reflect actual fixed costs recovered for any particular load reduction or load increase.[54]

This structure assumes that PGE recovers its fixed costs equally across all kWh of electricity purchased by a customer; that assumption is false. PGE has a stack of resources with widely varying costs, and these are dispatched hierarchically, using the lowest cost resource first. Hydro and wind resources have little variable cost, so when these resources are consumed, nearly all of the customer revenue goes to fixed cost recovery. Market purchases can be priced near the retail rate, in which case very little of the revenue from these sales goes to fixed costs. If all kWh of demand were met with a blend of all the company's resources, PGE's approach would be reasonable, but this is not the way PGE runs its system.[55]

i. What effect does a 1% loss of residential load have on costs?

We could use confidential information from PGE's power cost filing to calculate the market price that the Company would receive if it sold excess power for the market price. However, using confidential information will make it difficult to discuss the

[54] UE 197/CUB/Jenks/300/26
[55] UE 197/CUB/Jenks/300/27

problems surrounding this decoupling mechanism with members of the public. CUB has, therefore, decided to use more generic data to demonstrate its concerns.

A 1% loss of residential load would reduce PGE's variable costs. As we have said, hydro and wind have little variable costs, but hydro and wind would not be affected by a loss in load. The production of hydro, wind, coal and any other resource whose variable cost is less than the market price would be unaffected by a loss of load. Even when customers do not need base load power, its variable cost is less than the market price, meaning that PGE would continue to operate the plant and sell the power on the market.[56]

Exhibit 300 contains an example of a 1% loss of residential load with a market price of 7 cents/kwh. Under the decoupling implemented in Schedule 123, PGE's decoupling adjustment would be 77 million kWh times 4.646 cents/kWh, or $3.58 million. In this example, reduced load due to energy efficiency would reduce PGE's net income by $2.31 million, but the Company would be allowed to surcharge customers $3.58 million. PGE would recover 155% of its losses in this scenario.[57]

ii. PGE should be required to model what a 1% loss of load will cost.

CUB believes it is poor policy to assume that a loss of load will affect fixed cost recovery at 4.646 cents/kWh. This assumption is based on using the average fixed cost revenue per kWh. But as CUB has shown here, the amount of fixed cost revenue varies depending on the cost of the power that is being sold. CUB believes that a better approach is to assume that the lost load is valued at market prices, and then use that load

[56] UE 197/CUB/Jenks/300/27
[57] UE 197/CUB/Jenks/300/28

to determine the amount of fixed cost revenue that would have been paid to PGE if the conservation had not taken place.[58] This can be tested by having PGE model a 1 % reduction in residential and small commercial loads and comparing the reduction in revenue to the reduction in cost. The difference between these two represents the revenue that will no longer be available for fixed cost recovery.[59]

iii. PGE will likely argue that the PCA deals with power costs changes, so we don't have to address them here.

PGE will likely argue that CUB is proposing to bring changes in power costs into decoupling, and that these changes would be more appropriately addressed in the PCA. For the purposes of decoupling, CUB does not care whether power costs are higher, lower or the same as forecast. What CUB is concerned with here is the change in fixed cost recovery due to changes in load. To determine this it is necessary to identify the fixed cost revenue per kWh on the margin that is built into customer rates. In the most recent rate case, PGE did not actually forecast that it would collect 4.646 cents/kWh of fixed cost recovery for the first kWh it sold and for the last kWh it sold. The company projected an average of 4.646 cents/kWh. This tells us little about fixed cost recovery on the margin. Even if power costs stay exactly where they were, the forecast marginal fixed cost recovery is not the same as the average fixed cost recovery.[60]

The consequence of getting these calculations wrong and not using marginal fixed cost recovery is that customers will be overpaying PGE. Customers will pay the Company more than its net loss. CUB respectfully requests that the Commission reverse,

[58] UE 197/CUB/Jenks/300/29
[59] *Ibid*.
[60] UE 197/CUB/Jenks/300/30

change or modify[61] Order No. 09-020 to ensure that marginal fixed cost recovery is used when calculating decoupling surcharges,

C. Should the Decoupling Mechanism Be Suspended and Preserved for More Normal Circumstances.

It should be noted that decoupling an electric utility is different than decoupling a gas utility. The impact of decoupling during an economic recession is much more severe for an electric utility. As cited earlier, tens of thousands of Oregonians have lost their jobs in the last few months. Nearly every one of these people used electricity as part of their job, in the form of lighting, computing, heating, etc. The falling electric consumption of employers results in a decoupling adjustment. On the natural gas side, many employees have no incremental impact on their business's use of natural gas, and, therefore, their job losses do not translate into automatic decoupling adjustments.

For this reason, Oregon should recognize that electricity decoupling requires a different approach. The PUC should consider a policy that allows the Commission to suspend decoupling for electric utilities when there is a severe economic recession. The purpose of decoupling is to make it easier for utilities to implement energy efficiency under more normal circumstances. Decoupling should be preserved during "normal" circumstances, while at the same time recognizing that electric decoupling should be suspended when energy efficiency benefits are overwhelmed by economic troubles.[62]

[61] ORS 756.561(3)
[62] UE 197/CUB/Jenks/300/31

i. Decoupling itself should be subject to a cost-effectiveness test.

It is clear from PGE's testimony and from the PUC order adopting it that decoupling serves a single purpose: removing the disincentive that PGE has to improve energy efficiency and conservation:

> PGE currently recovers most of its fixed costs through rate charged on a per-kilowatt-hour (kWh) basis. PGE asserts that reduced energy sales from efficiency and conservation result in reduced fixed cost recovery and earnings and therefore that there is a disincentive for the Company to promote demand-side management programs.

Order 09-020, page 26.

As a program that is designed to encourage conservation, decoupling should be subject to a cost-effectiveness test similar to other conservation programs. When PGE requested the ability to hire new employees to encourage customers to take advantage of Energy Trust programs, CUB and the Commission Staff demanded that the company demonstrate that the cost of these employees be lower than the energy efficiency savings they produced.[63] The cost of decoupling should also be subject to a similar test.[64] As customers and as regulators, we should demand results that are at least as great as would be achieved by an equivalent amount of additional funding for the Energy Trust.

ii. If decoupling will not be cost-effective, then it should be suspended.

CUB suspects that PGE, Mr. Cavanaugh and other decoupling proponents will oppose the idea of requiring a cost effectiveness test for this two year decoupling period. Proponents know that the decoupling adjustment associated with the recession will be too much to overcome, and decoupling will therefore not result in energy efficiency

[63] PGE Schedules 109 and 110.
[64] UE 197/CUB/Jenks/300/32

programs that justify its cost.[65] If that is the case, the solution is simple: decoupling should be suspended until the economy has improved to the point that it can be cost-effective again. This is a reasonable expectation, and one that merits a reconsideration of the Commission's decision.

CUB respectfully requests that the Commission reverse, change or modify[66] Order No. 09-020 to prevent decoupling on the electric side of the utility industry from being implemented during periods of economic downturn. Put another way, CUB respectfully requests that the current Order No. 09-020 Section III.B.12, PGE's Decoupling Proposal be suspended during the current economic downturn.

IV. CONCLUSION.

As explained above, CUB's request for reconsideration is made because PGE is experiencing a significant reduction in its load due to the current economic downturn, rather than due to any voluntary efficiency measures taken by residential and other customers of the utility. As currently set up, the decoupling mechanism cannot distinguish between load reductions due to the economic downturn as opposed to load reductions actually due to customer voluntary efficiencies.

As further set forth above, CUB respectfully makes Application for Reconsideration of Order No. 09-020, Section III.B.12, PGE's Decoupling Proposal, pursuant to ORS 756.561 and OAR 860-014-0095(3)(a) and (d), upon the grounds that new evidence that was unavailable and not reasonably discoverable before issuance of the order has come to light. There is good cause for further examination of this evidence,

[65] UE 197/CUB/Jenks/300/33
[66] ORS 756.561(3)

which was essential to the original decision.[67] CUB respectfully requests that the Commission, which did not previously have the necessary recor to consider the effects of a massive economic collapse or decoupling, reconsider its prior order and reverse, change or modify[68] Order No. 09-020 in the ways set forth above so as to prevent PGE from receiving a massive financial windfall at the expense of residential and small business customers under the decoupling mechanism contained in the Order.

If PGE gets overpaid for load reductions, then the Company will find a closed business to be more profitable source of revenue than an open business. When an employee of a PGE customer gets laid off, PGE's profits will increase because the electricity that employee is no longer using, will show up to PGE as conservation. If the Commission allows decoupling to apply to vacant houses, then a house that is vacant will be more profitable to the Company than a house that is occupied. In other words, PGE's incentives now run counter to the overall good of Oregon and our economy. This is not the right incentive.

Dated this 23rd Day of March, 2009

Respectfully submitted,

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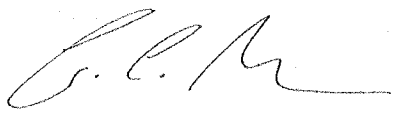
[67] OAR 860-014-0095(3)(a) and (d).
[68] ORS 756.561(3)

UE 197 – CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of March 2009, I served the foregoing **APPLICATION FOR RECONSIDERATION OF ORDER NO. 09-020, SECTION III.B.12., PGE DECOUPLING PROPOSAL, OF THE CITIZENS' UTILITY BOARD OF OREGON** upon all parties of record in docket UE 197, as listed in the PUC Service List, by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending an original and 5 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

Respectfully submitted,



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UE 197 CERTIFICATE OF SERVICE APPLICATION FOR RECONSIDERATION OF ORDER NO. 09-020, SECTION III.B.12., PGE DECOUPLING PROPOSAL, OF THE CITIZENS' UTILITY BOARD OF OREGON