



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

June 21, 2006

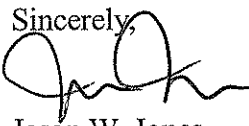
Administrative Hearings Division
550 Capitol St NE Suite 215
PO Box 2148
Salem, OR 97308-2148

RE: UM 1256, UM 1257, & UM 1259 – Correction to Initial Staff Analysis

On June 19, 2006, Staff filed the “Initial Staff Analysis” in these proceedings. On page 1, line 23 of its analysis, Staff cited to previous staff public meeting memorandums in stating that both ICNU and CUB had taken a position on the deferred applications at issue in this proceeding.

In fact, only ICNU has previously taken a position in these proceedings. To correct this oversight, I am re-serving the parties with a corrected copy of the Initial Staff Analysis, which removes the words “and CUB.” I apologize for any inconvenience.

Please feel free to contact me if you have any questions.

Sincerely,


Jason W. Jones
Assistant Attorney General
Regulated Utility & Business Section

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1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 1256, UM 1257 & UM 1259

4 In the Matter of

5 PORTLAND GENERAL ELECTRIC
6 COMPANY, (UM 1256)

7 PACIFICORP, dba PACIFIC POWER &
8 LIGHT COMPANY (UM 1257)

8 And

9 IDAHO POWER COMPANY (UM 1259)

10 Applications for Deferral of Certain Costs and
11 Revenues associated with Grid West.

INITIAL STAFF ANALYSIS

12 The Public Utility Commission of Oregon Staff (“Staff”) submits its initial analysis of the
13 two issues to be addressed in this proceeding.

14 **1. Do the requests of Portland General Electric Company, PacifiCorp, and Idaho**
15 **Power Company seek to defer expenses incurred prior to the date of the**
16 **application?**

17 In late-March and early-April, Portland General Electric Company (“PGE”), Pacific
18 Power & Light (“PacifiCorp”), and Idaho Power Company (“Idaho Power”) filed applications
19 for deferred accounting of costs related to the development of Grid West.¹ In public meeting
20 memorandums, Staff recommended that the Commission approve the utilities’ respective
21 requests to defer the costs associated with loans provided to Grid West pursuant to ORS
22 757.259(2)(e).²

23 As Staff noted in each of its respective public meeting memorandums, the Industrial
24 Customers of the Northwest Utilities (“ICNU”) contented that the Grid West loans were issued
25 prior to the deferral application and, therefore, were prohibited from deferral treatment pursuant
26 to ORS 757.259. At the time of the applications for deferred accounting were filed, however, the

¹ The requests were filed on March 21, 2006, March 23, 2006, and April 4, 2006, respectively.

² Instead of repeating the details of Staff’s public meeting memorandums, Staff incorporates them here by reference.

1 Grid West loan costs were listed as a promissory note (*i.e.* loan) on the balance sheets. The
2 loans will become an expense when the Generally Accepted Accounting Principles (“GAAP”)
3 require the respective utilities to write-off the promissory notes as uncollectible debt. As a
4 result, the applications for deferred accounting were filed before the loans become an expense as
5 determined by GAAP.

6 ORS 757.259(2) provides in relevant part:

7 Upon application of a utility . . . the commission by order may authorize
8 deferral of the following amounts for later incorporation in rates:

9 * * *

10 (e) Identifiable utility expenses or revenues, the recovery or refund of
11 which the commission finds should be deferred in order to minimize the
12 frequency of rate changes or the fluctuation of rate levels or to math
13 appropriately the costs borne by the benefits received by ratepayers.

14 In response to Staff’s public meeting memorandums, ICNU filed a Response in
15 Opposition on April 14, 2006. By a letter dated May 8, 2006, ICNU further responded to the
16 utilities’ applications for deferral and Staff’s public meeting memorandums.

17 In interpreting ORS 757.259, the objective is to determine the intent of the legislature. In
18 *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993), the Oregon Supreme
19 Court established the method of statutory interpretation to employ when determining the intent
20 of the legislature. Furthermore, predicting how a court would interpret ORS 757.259 requires
21 consideration of whether the phrase or phrases at issue in that statute are “exact terms,” “inexact
22 terms,” or “delegative terms.” *See Springfield Education Assn v. School Dist.*, 290 Or 217, 223,
23 621 P2d 547 (1980). The phrase “[i]dentifiable utility expenses” is an inexact term. *See Id.*, 290
24 Or at 223. In determining the meaning of inexact terms and phrases, courts will use the
25 interpretive method of statutory interpretation developed in *PGE v. BOLI*, 317 at 610-12.

26 Under *PGE v. BOLI*, the first level of analysis is the text and context of the statute. In
interpreting the text of the statute, we do not insert what has been omitted nor omit what has
been inserted and we give words their “plain, natural and ordinary meaning.” *See PGE v. BOLI*,

1 317 Or at 610-11; ORS 174.010. If the statute’s text and context unambiguously disclose the
2 legislature’s intent, the inquiry is at an end. *See PGE v. BOLI*, 317 Or at 610-11.

3 In this case, the first level *PGE v. BOLI* analysis is dispositive and the Public Utility
4 Commission of Oregon (“Commission”) has the discretion to allow the applications for deferred
5 accounting because the applications were filed before the loans became, or will become, an
6 “identifiable utility expense.” ICNU’s claim that an expense can only mean the act of spending
7 ignores the text and context of the statute.

8 As described above, the phrase “identifiable utility expense” is an inexact term. ICNU’s
9 simplistic assertion that an expense can only be the act of spending is incorrect and ignores the
10 context of the statute and related statutes. As an inexact phrase, the Commission should employ
11 its expertise as to its meaning, along with the context of the Oregon regulatory scheme, in order
12 to define “identifiable utility expense.”

13 In fact, the Commission has previously allowed the deferral of expenses that were a result
14 of a failure of a party to pay the utility an amount due. *See* Order No. 01-231. In that Order, the
15 Commission authorized the deferral of certain power costs, including the losses that PGE
16 incurred, or was expected to incur, as the result of the failure of parties to pay PGE amounts due
17 from the sale of power. *See Id.*, Appendix A at 9, section 3.4. In such a situation and in this
18 situation, the Commission has the discretion to grant an application for a deferred accounting to
19 track these new expenses, even though they do not involve the act of spending money.

20 Furthermore, the fact that the utilities could have filed deferred applications at an earlier
21 time when the loans were expected receivables or revenues does not mean that they are
22 precluded from filing when those expected revenues change into expected expenses. ORS
23 757.259(2)(e) provides that the application may be for identifiable utility expenses or revenues.

24 ICNU also contends that allowing these deferred accounting applications would allow
25 “huge loopholes.” However, its argument ignores the fact that the Commission’s approval of
26 deferred applications is discretionary. *See* ORS 757.259(2) (“the commission by order may

1 authorize deferral . . .”). Thus, the Commission is not required to approve every application for
2 deferred accounting. Indeed, the Commission has substantial discretion to grant or deny these
3 applications based upon policy considerations. However, the Commission is not legally
4 precluded from granting these applications based upon the text and context of the statute.

5 **2. Are the expenses appropriately subject to the deferral under ORS 757.259(2)(e)?**

6 The Commission has recently noted that “[t]he Commission has used deferrals for a
7 variety of reasons, including to: . . . encourage utility or customer behavior consistent with
8 regulatory policy. *See* Order No. 05-1070 at 2. Because the expenses that are now likely to be
9 incurred were a result of utility behavior consistent with regulatory policy, the expenses are
10 appropriately subject to deferral under ORS 757.259(2)(e). Staff notes that the Commission
11 ultimately determines whether the utility’s behavior is consistent with regulatory policy. Again,
12 this dovetails with the Commission’s overall discretion to grant or deny deferred accounts and
13 allows the Commission discretion in determining whether the behavior is consistent with
14 regulatory policy.

15 Furthermore, granting the applications would “match appropriately the costs borne by
16 and the benefits received by ratepayers.” *See* ORS 757.259(2)(e). ICNU argues that “since Grid
17 West is dissolving, there is no possible way in which these costs can be matched to a time in
18 which ratepayers will receive any benefits.” Again, ICNU is creating requirements in the statute
19 that are unwarranted according to its text and context.


20 The statutory language does not support such a narrow interpretation as ICNU suggests.
21 For example, Grid West’s dissolution does not necessarily mean that ratepayers will not receive
22 benefits from the utilities’ past participation in Grid West activities. As mentioned above, Staff
23 believes that the utilities’ participation was consistent with regulatory policy and will benefit
24 customers. The statute simply does not require an activity to reach fruition for it to be
25 considered beneficial to customers. Presumably, if the Commission did not believe an activity to
26 be beneficial to customers it would exercise its discretion and deny the applications.

1 For the foregoing reasons, Staff respectfully submits that the Commission has the
2 discretion to grant the respective applications for deferred accounting.

3 DATED this 21st day of June 2006.

4 Respectfully submitted,

5
6 HARDY MYERS
Attorney General

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8 

9 Jason W. Jones, #00059
10 Assistant Attorney General
Of Attorneys for Staff of the Public Utility
Commission of Oregon

CERTIFICATE OF SERVICE

I certify that on June 21, 2006, I served the foregoing upon all parties of record in this proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

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