

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 192**

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC	)	REPLY BRIEF OF THE INDUSTRIAL
COMPANY	)	CUSTOMERS OF NORTHWEST
	)	UTILITIES
	)	
2008 Annual Power Cost Update Tariff	)	
Filing.	)	
_____	)	

**I. INTRODUCTION**

The Industrial Customers of Northwest Utilities (“ICNU”) submits this Reply Brief to the Oregon Public Utility Commission (“OPUC” or the “Commission”) in response to Portland General Electric Company’s (“PGE” or the “Company”) Opening Brief. In PGE’s Opening Brief, PGE admits that the Cold Snap contract does not have extrinsic value, and that the Company knew this at the time it entered into the contract. Based on this admission, the Commission should completely remove the Cold Snap contract from rates as imprudent. Further, PGE’s Opening Brief inaccurately characterizes the OPUC’s decision regarding the extrinsic value of the Cold Snap contract in UE 180 and ICNU’s extrinsic value analysis in that Docket. ICNU’s proposed adjustment to 2008 Net Variable Power Costs (“NVPC”) based on the extrinsic value of the Cold Snap contract is entirely consistent with the Commission’s order and ICNU’s prior position, and provides the evidence necessary for the Commission to make such an adjustment.

## II. ARGUMENT

### A. Without Extrinsic Value, the Cold Snap Contract Has No Basis in Rates

As the Commission recognized, without an extrinsic value adjustment, customers do not receive any benefit from a capacity tolling contract such as the Cold Snap contract. Re PGE, OPUC Docket Nos. UE 180/181/184, Order No. 07-015 at 13 (Jan. 12, 2007) (“Order No. 07-015”). Accordingly, if the Cold Snap contract was never expected to have extrinsic value, then customers would never be expected to receive any benefit from the contract. Although the purpose of this Docket is to update PGE’s NVPC, PGE still must demonstrate that all costs are reasonable and prudent before the Commission can include those costs in rates. See Re US West Communications, Inc., Docket Nos. UT 125/UT 80, Order No. 00-191 at 15 (Apr. 14, 2000).

#### 1. PGE’s Decision to Enter into the Cold Snap Contract Was Imprudent

The Commission always reserves the right to review utility actions for prudence. Re PGE, Docket No. UM 1039, Order No. 03-543 at 6 (Sep. 10, 2003). Prudence is based on the reasonableness of a utility’s actions at the time the actions were made based on information available or reasonably available to the utility. Re PGE, Docket UE 139, Order No. 02-772 at 11 (Oct. 30, 2002). PGE’s position in this case is that the Commission found no extrinsic value for the Cold Snap contract in UE 180. PGE Opening Brief at 6. PGE goes one step further, however, and admits that the Cold Snap contract never had extrinsic value, agreeing with Staff’s finding that “‘PGE’s *RFP evaluation* of the Cold Snap contract found no extrinsic value.’” PGE Opening Brief at 8 (quoting Staff/100, Galbraith/3) (emphasis added). If PGE knew that the Cold Snap contract lacked extrinsic value, and thus, lacked any benefit to customers, at the time

PGE made the decision to enter into the contract, such a decision cannot, under any circumstances, be considered prudent.

Without extrinsic value, the Cold Snap contract will never be “in the money.” See Docket No. UE 180, ICNU/103, Falkenberg/20. In other words, it would be more economical to plan on purchasing power on the market during peak times and emergencies than utilizing the Cold Snap contract. PGE admits that it had knowledge of this information at the time it made the decision to enter into the Cold Snap contract. As a result, all costs related to the Cold Snap contract should be disallowed as imprudent.

## **2. The Cold Snap Contract Does Not Provide Any Net Benefits to Customers**

The Commission applies the net benefits test under certain circumstances. Re PacifiCorp, Docket Nos. UM 995/UE 121/UC 578, Order No. 02-469 at 7 (July 18, 2002). This Docket presents the appropriate opportunity to do so. The Commission determined that capacity tolling contracts “assure supply for peak loads and emergency events.” Order No. 07-015 at 13. Because such contracts will rarely be dispatched, however, it is difficult to quantify the benefit these contracts provide to customers. The Commission has applied a net benefits test in the past under such circumstances. See, e.g., Re Northwest Natural Gas Co., Docket Nos. UG 81/UG 84, Order No. 89-1372 at 7 (Oct. 18, 1989) (applying the net benefits test to commercial advertising); Re PacifiCorp, Docket No. UE 116, Order No. 01-787 at 15-16 (Sept. 7, 2001) (applying the net benefits test to the customer benefits of increased financial flexibility).

Under the net benefits test, the utility must demonstrate some quantifiable benefit to customers. Re PacifiCorp, Docket No. UE 116, Order No. 01-787 at 15-16. Determining the extrinsic value of a capacity tolling contract is a reasonable method of quantifying customer

benefits that the Commission accepted in UE 180. Order No. 07-015 at 13. PGE admits the Cold Snap contract does not have and never has had any extrinsic value; therefore, PGE has not demonstrated that the Cold Snap contract provides a “recognizable benefit to the people from whom the utility seeks reimbursement.” Re Northwest Natural Gas Co., Docket Nos. UG 81/UG 84, Order No. 89-1372 at 7. Without any benefit to customers, customers should not be required to bear the costs of the Cold Snap contract.

**B. PGE’s Assertion that ICNU Is Relitigating the Issue of Extrinsic Value for the Cold Snap Contract Is Incorrect**

PGE asserts in its Opening Brief that ICNU’s claims lack credibility, citing to ICNU witness Randy Falkenberg’s testimony from UE 180 where Mr. Falkenberg found no extrinsic value for the Cold Snap contract. PGE Opening Brief at 6. What PGE fails to mention, however, is that Mr. Falkenberg’s own analysis also produced no extrinsic value for the Super Peak contract. Docket No. UE 180, ICNU/103, Falkenberg/10. The Commission accepted ICNU’s proposed adjustment on the Super Peak contract.

ICNU’s position in UE 180 rested entirely on PGE’s own analysis of extrinsic value that the Company produced through discovery for the Super Peak contract. Id. PGE did not, however, produce an extrinsic value analysis for the Cold Snap contract. Therefore, as the Commission correctly concluded: “The record contains evidence on the extrinsic value of the Super Peak contract, but not the Cold Snap contract.” Order No. 07-015 at 13.

ICNU is simply providing the Commission with the evidence that was absent from the UE 180 record regarding the Cold Snap contract that the Commission relied on for the Super Peak contract. ICNU’s position in this Docket is entirely consistent with both Order No. 07-015 and ICNU’s previous position in UE 180.

**C. Updating the Extrinsic Value of the Cold Snap Contract Is Appropriate in This Docket**

PGE asserts that ICNU's proposed adjustment "violates the terms of Schedule 125." PGE Opening Brief at 6. PGE's Schedule 125 is intended to update the Company's NVPC. Order No. 07-015 at 17. Such updates are intended "to account for *new information*." Id. at 18 (emphasis added). "New information" is precisely what ICNU is providing the Commission in this case.

As previously explained, the Commission did not find that the Cold Snap contract had no extrinsic value. Rather, the Commission merely lacked the evidence necessary to make an adjustment based on extrinsic value. Without an extrinsic value adjustment, PGE's power costs would reflect "all of the costs, and none of the benefits of the contract[]." Id. at 13. Accounting for the extrinsic value of the Cold Snap contract addresses PGE's concern in UE 180 that Schedule 125 was necessary to "ensure that PGE is able to charge for the costs actually incurred to provide service." Id. at 17. Accounting for the extrinsic value of the Cold Snap contract is an appropriate update to PGE's power cost forecast and is therefore appropriate in this Docket.

**D. The Commission Should Adopt the Forced Outage Rate Adjustment Proposed by the Citizens' Utility Board ("CUB")**

In Order No. 07-015, the Commission ordered the removal from forced outage rates of an extreme outage period (November 18, 2005-December 31, 2005) at Boardman for which PGE obtained a deferral. Id. at 15. PGE's proposed forced outage rates in this Docket reflect that order.

In its Opening Brief, however, CUB argues for the rejection of PGE's proposed forced outage rate for Boardman. CUB's position is that the entire years of 2005 and 2006 should be removed from the calculation of forced outage rates because that entire period represented abnormal outages. CUB Opening Brief at 2-3. CUB proposes to replace those years with the years 2001 and 2002. Id. at 5-6.

ICNU is highly supportive of CUB's position. In order to best predict future outage rates, the goal should be to use data that most reasonably forecasts future events. CUB has established that the entire years of 2005 and 2006 are not indicative of normal outage rates. One would hope that the severe problems PGE has encountered with Boardman in those years do not mean that there will be similar problems for the plant in the future. Under PGE's proposed forced outage rates, customers will bear the unnecessary cost of an unlikely performance forecast for Boardman.

### **III. CONCLUSION**

For the foregoing reasons, the costs of the Cold Snap contract should be completely removed from rates as an imprudent cost, as PGE admits that it has known from the beginning that the contract would never benefit customers. Alternatively, the Commission should adopt ICNU's proposed adjustment to the Cold Snap contract so that customers receive the benefit of the contract. In addition, ICNU supports CUB's forced outage rate adjustment.

Dated this 18th day of September, 2007.

Respectfully submitted,

/s/ Allen C. Chan

Melinda J. Davison

Allen C. Chan

Davison Van Cleve, P.C.

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

mail@dvclaw.com

Of Attorneys for Industrial Customers

of Northwest Utilities

# Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com  
Suite 400  
333 SW Taylor  
Portland, OR 97204

September 18, 2007

***Via Electronic and US 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 COMPANY 2008 Annual  
Power Cost Update Tariff Filing  
**Docket No. UE 192**

Dear Filing Center:

Enclosed please find the original and six copies of the Reply Brief of the  
Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Ruth A. Miller  
Ruth A. Miller

Enclosures  
cc: Service List



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Reply Brief 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, and/or via electronic mail to those parties who waived paper service in this proceeding.

Dated at Portland, Oregon, this 18th day of September, 2007.

/s/ Ruth A. Miller  
Ruth A. Miller

<b>OREGON PUBLIC UTILITY COMMISSION</b> ED DURRENBURGER PO BOX 2148 SALEM OR 97308-2148 ed.durrenberger@state.or.us	<b>DEPARTMENT OF JUSTICE</b> STEPHANIE S ANDRUS 1162 COURT ST NE SALEM OR 97301-4096 stephanie.andrus@state.or.us
<b>PORTLAND GENERAL ELECTRIC</b> DOUGLAS C TINGEY RATES & REGULATORY AFFAIRS 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com pge.opuc.filings@pgn.com	<b>CITIZENS' UTILITY BOARD OF OREGON (W)</b> LOWREY R BROWN JASON EISDORFER ROBERT JENKS 610 SW BROADWAY, SUITE 308 PORTLAND OR 97205 lowrey@oregoncub.org jason@oregoncub.org bob@oregoncub.org

**(W) = Waive Paper Service**