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September 26, 2011

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
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- **CLOSING BRIEF OF PORTLAND GENERAL ELECTRIC COMPANY**

This is being filed by electronic mail with the Filing Center. An extra copy of the cover letter is enclosed. Please date stamp the extra copy and return to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,

DOUGLAS C. TINGEY
Assistant General Counsel

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BEFORE THE PUBLIC UTILITY

COMMISSION OF OREGON

UE 228

In the Matter of	)
	)
PORTLAND GENERAL ELECTRIC COMPANY	)
	)
2012 Annual Power Cost Update Tariff (Schedule 125)	)
	)

CLOSING BRIEF OF

PORTLAND GENERAL ELECTRIC COMPANY

September 26, 2011

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I. Introduction

Portland General Electric (PGE) has shown with comprehensive evidence that its Mid-Term Strategy was prudently designed, adopted, documented, implemented, supervised, and communicated to the Commission and stakeholders. PGE's 2012 power costs should be approved as proposed by PGE.

In their opening briefs CUB and ICNU have ignored reality, misstated the record and PGE's testimony, and demonstrated their fundamental misunderstanding of hedging, energy markets, and changes in those markets in the last few years. In an interesting dynamic, ICNU is apparently departing from many of the arguments it previously made, and instead offers a new argument that is inconsistent with its filed testimony. CUB has likewise seemingly abandoned much of its original argument and testimony, instead now relying liberally on ICNU testimony. CUB also ignores the evidence of PGE, or attempts to dismiss it, not by providing any contrary evidence, but rather by simply saying that CUB does not believe it. That is hardly a meaningful statement or one that adds anything to the record.

While ICNU's and CUB's arguments have changed over the course of the docket, what has not changed is the amount of their proposed disallowance of PGE's power costs. That the disallowance they seek remains constant, while their arguments continually change, demonstrates that their position is not based on any principle, or policy, but is simply a ploy to justify their request for a significant disallowance by whatever means are at hand. Their arguments are not credible.

CUB's and ICNU's briefs are replete with misstatements and unsupported accusations. Below PGE addresses some of the arguments presented by CUB and ICNU. All relevant issues have been addressed, and PGE's positions supported, in PGE's testimony and exhibits in this docket. PGE does not repeat all of those arguments in this brief.

Staff's Opening Brief contains a cogent and thorough analysis of the arguments and evidence in this docket. PGE agrees with Staff's recommendation that the Commission should "reject the proposed disallowance of CUB and ICNU."[1]

II. ICNU and CUB do not meet their burden of proof; neither has presented evidence that PGE's power costs are unreasonable.

The briefs of ICNU and CUB both contain expositions of the burden of proof in Commission proceedings. Both place the burden solely on the utility in ratemaking proceedings. PGE has met that burden. Neither CUB nor ICNU, however, address the burden they bear. In UG 132 the Commission explained:

> Once the company has presented its evidence, the burden of going forward then shifts to the party or parties who oppose including the costs in the utility's revenue requirement. Staff or an intervenor, if it opposes the utility's claimed costs, may in turn show the costs are not reasonable.[2]

In an order in a PacifiCorp docket in 2001, the Commission quoted and adhered to this same language from UG 132.[3] More recently, the Commission addressed the burden of proof in UE 196. This was in the context of a deferral filing, but the Commission's explanation of the burden of proof is consistent with its earlier statements. Order 09-046 states:

> The ultimate burden of producing enough evidence to support its claims is also with the utility. Other parties in the case, however, have the burden of producing evidence to support their argument in opposition to the utility's position.[4]

ICNU and CUB have not met their burden.

ICNU has offered the testimony of a witness that has very little experience with hedging, has in fact never actually done any hedging for a utility, and whose testimony is largely without foundation because he claims it is based on confidential information he

[1] Staff Opening Brief, p. 21.

[2] Order No. 99-697, p. 3.

[3] Order 01-787.

[4] Order 09-046, p. 7-8.

cannot disclose and which Judge Pines ordered stricken.[5] The Commission cannot base a decision on such testimony. ICNU also makes arguments that are contradicted by its own testimony. ICNU has not met its burden.

Likewise CUB has not met its burden by saying it is not convinced, or does not believe PGE's testimony; neither of these statements constitutes evidence. CUB has provided little analysis, and has failed to show how the minimal analysis it has provided applies to PGE. CUB has not shown the costs are imprudent.

III. ICNU and CUB confuse the issue to be decided.

ICNU and CUB urge the Commission to impose a hedging policy on PGE based on what other, mostly unnamed, utilities purportedly do. They then ask that the new policy be applied retroactively to 2007. What is appropriate for one utility may or may not be appropriate for another utility, and neither ICNU nor CUB have presented any analysis as to why their proposed hedging policies are appropriate for PGE. On a more fundamental level, ICNU's and CUB's arguments presume that there is one and only one hedging strategy that is appropriate for PGE. That too is incorrect. There may be more than one reasonable hedging approach for any utility, including PGE. The question is whether PGE's hedging approach was reasonable. PGE has shown, in detail and repeatedly, that it is.

IV. PGE provided proper oversight and documentation for its hedging transactions.

PGE provided detailed testimony on the extensive analysis performed for its Mid-Term Strategy, the documentation of that analysis, and the policies in place to manage and oversee the execution of that strategy.[6] Ignoring that testimony and mischaracterizing the record, ICNU inaccurately claims that "PGE made no effort to

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[5] UE 228, Ruling dated September 23, 2011.

[6] PGE/400/Lobdell-Outama/6-21.

document either the appropriateness of each transaction or the liquidity in the market"[7] and that PGE lacked proper oversight over its traders.[8] ICNU's criticisms are contradicted by its own expert, Mr. Schoenbeck, who testified that PGE had written policies in place for hedging and admitted that all of the transactions he reviewed conformed to PGE's policies and preapproval limits.[9]

A. PGE provided substantial analysis and documentation of its policies, procedures and the justification for its hedging contracts.

In detailed testimony, PGE established the following:

1. PGE identified its customers' risk and developed the Mid-Term Strategy to address that risk.[10]

2. PGE presented its Mid-Term Strategy to the Commission and other stakeholders in a public meeting in 2006.[11]

3. PGE's Risk Management Committee reviewed and approved the Mid-Term Strategy.[12]

4. PGE's Board of Directors reviewed and approved the Mid-Term Strategy.[13]

5. PGE developed detailed policies and procedures for execution of the Mid-Term Strategy that are documented in PGE's Energy Risk Management Policies and Procedures ("ERMP&P").[14]

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[7] ICNU Opening Brief at 7.

[8] ICNU Opening Brief at 4.

[9] ICNU Ex. 100/Schoenbeck/5, line 7 – p. 6, line 5; ICNU/109/Schoenbeck Depo/97, lines 1-16.

[10] PGE/400/Lobdell-Outama/6, line 7 – p. 7, line 9; p. 9, lines 1-9; Hearing Transcript/Outama/41, line 14 – p. 42, line 21.

[11] PGE/400/Lobdell-Outama/22, lines 4-10; Hearing Transcript/Outama/51, line 6 – p. 52, line 13; p. 137 lines 4-11.

[12] Hearing Transcript/Outama/139, lines 17-24.

[13] PGE/601/173-182.

[14] PGE/601.

6. As part of the Mid-Term Strategy, PGE's Risk Management team annually performs a comprehensive stochastic analysis of PGE's five-year NVPC for customers, incorporating PGE's projected load and power cost forecasts for PGE's generation assets. The analysis is presented to and used by the Risk Management Committee as part of its work to set targets and limits for the Mid-Term Strategy.[15]

7. At the same time, PGE's Power Operations team performs a market assessment including market liquidity, structural market changes and availability of credit facilities to support potential margining calls, and then makes a recommendation to the Risk Management Committee to assist in its work to set targets and purchasing limits.[16]

8. Each year the Risk Management Committee reviews all the data provided to it from the Risk Management and Power Operations teams, evaluates the progress of the Mid-Term Strategy and sets targets to reduce volatility for customers.[17]

9. On a daily basis, PGE's Vice President of Power Operations and Resource Strategy meets with PGE's traders for a market update.[18]

10. PGE's traders review the liquidity of the market and when an opportunity presents itself, seek appropriate preapproval within documented parameters.[19]

11. Both PGE's General Manager of Risk Management and its Vice President of Power Operations and Resource Strategy review and authorize each pre-approval memorandum.[20]

12. Traders execute their purchases within the limits for tenor, volume, price and date set by the preapproval memorandum and record all details of the transaction in the appropriate system.[21]

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[15] PGE/400/Lobdell-Outama/10-15.

[16] PGE/400/Lobdell-Outama/16.

[17] PGE/400/Lobdell-Outama/17, line 18 – p. 18, line 7.

[18] Hearing Transcript/Lobdell/28, lines 7-14.

[19] ICNU/110/37-141; PGE/400/Lobdell-Outama/12, lines 1-6, p. 35, line 19 – p. 36, line 4.

[20] Hearing Transcript/125, lines 13-25.

[21] PGE/601/85-87.

13. Quarterly, the Risk Management Committee, chaired by PGE's CEO, meets to review the market, the purchases, and the progress toward the set targets for closing PGE's net open position.[22]

14. PGE's Risk Management Committee reports quarterly on its activities to the Audit Committee of the PGE Board of Directors.[23]

15. PGE updates Commission Staff and stakeholders of its progress under the Mid-Term Strategy in the Power Supply Quarterly Update meetings.[24]

These 15 steps demonstrate that PGE prudently developed, carefully executed, and appropriately supervised its Mid-Term Strategy.

B. ICNU misstates the underlying facts.

1. ICNU incorrectly asserts that PGE was required to document the analysis underlying *each* transaction.

ICNU incorrectly asserts that "PGE must document the analysis underlying each transaction."[25] ICNU bases this claim on comments made by Staff when PGE presented the Mid-Term Strategy to the Commission in 2006. However, the transcript demonstrates that ICNU exaggerates the comments made by Commission Staff member Maury Galbraith and seeks to transform them into requirements of the Commission. Staff did not seek an "analysis underlying each transaction" but rather sought "transaction specific documentation to support OPUC prudency review."[26] PGE performed an extensive analysis compiling and modeling its 5-year NVPC.[27] Each preapproval memorandum

[22] PGE/400/Lobdell-Outama/17, lines 1-12; PGE/601/pp. 98-100.

[23] PGE/601/98.

[24] PGE/400/Lobdell-Outama/24, lines 7-11; Hearing Transcript/p. 121, line 4 – p. 122, line 16.

[25] ICNU Opening Brief at 4.

[26] ICNU/704/6.

[27] PGE/400, Lobdell/Outama/10-15; See also Staff Opening Brief, pps. 3-4.

documents the net open position that it is designed to reduce.[28] The entire analysis together with the preapproval memoranda fulfilled the staff-requested documentation "to support OPUC prudency-review."

The best evidence that Staff is satisfied with PGE's execution and documentation is that after reviewing PGE's filings, supporting work papers, documents provided as Minimum Filing Requirements under Schedule 125, and discovery in this proceeding, Staff continues to recommend that the Commission reject the disallowance proposed by ICNU and CUB.[29]

2. ICNU incorrectly asserts that PGE was required to "document liquidity."

Again, ICNU makes much out of nothing when it asserts that "[p]ursuant to its duty to document, PGE should have kept records demonstrating that there was a liquid bilateral market."[30] First, there was no requirement that PGE document liquidity. Second, PGE provided substantial evidence that the market was liquid for yearly strips at the time PGE purchased them, and relatively more liquid than the alternative products proposed by Mr. Schoenbeck.[31] ICNU incorrectly asserts that the ICE data establishes that the market was illiquid for the calendar strips PGE purchased. To the contrary, the ICE data establishes that monthly and quarterly strips were illiquid in 2007 and 2008 for 2012, but that yearly strips were being traded in 2007 and 2008 for 2012. Mr. Stoddard explained later in the hearing the conclusions he drew from the ICE data:

> As I acknowledged in my rebuttal testimony, the imperfect indicator. <u>I believe what I said this morning is it was indicative but not dispositive as to liquidity</u>, but the conclusion that I draw in my rebuttal testimony are that the

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[28] ICNU/110.

[29] Staff Opening Brief at1, 21.

[30] ICNU Opening Brief at 12.

[31] PGE/500/Stoddard/19, lines 1-16; ICNU/110/Schoenbeck/p. 11-12; Hearing Transcript/p. 34, line 25 – p. 36, line 17, p. 160, lines 1-25 (subject to PGE's Motion to Correct Hearing Transcript).

> monthly data – the monthly contract, although it's very liquid, there a lot of transactions in this for about a 12 month period. We see that that trails off very quickly. The calendar month strips were identified as C near the top panel, even though we don't always have for instance the 2012 data being traded in all quarters of 2007, we have significant volume being traded.
>
> * * *
>
> <u>The fact that we never have 2012 monthly strips being traded in any of this data, except in one month, tells me that there's less underlying liquidity in the whole market for monthly products than there is for elongated calendar products which begin to be traded for 2012 for 2007 and for 2013 by Q2 of 2008</u>."[32]

ICNU also claims that "market liquidity is demonstrated by the number of counterparties that PGE was authorized to buy from in the 3-5 year market."[33] This demonstrates a fundamental misunderstanding of markets and liquidity. Liquidity is not determined by the number of parties PGE transacts with; the relevant inquiry is the number of parties participating in the market. If the market has sufficient participants to be liquid then the price of the commodity is determined by that market, regardless of which of the participants PGE transacts with. For a more basic example: if a consumer usually purchases its milk at one particular grocery store, instead of the hundreds of other stores available to that consumer, it would make no sense to claim that that consumer is not purchasing in a liquid, competitive market. The market price of milk is determined by the market that includes all the other stores that this particular consumer does not patronize. ICNU's argument does not make sense.

Finally, ICNU's own expert admits that the 2007 market for gas hedges out five years was liquid. Mr. Schoenbeck's testimony states:

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[32] Hearing Transcript, Stoddard,160, lines 1-25 (emphasis added) (subject to PGE's Motion to Correct Hearing Transcript).

[33] ICNU Opening Brief at 12.

Q. IN YOUR VIEW, WAS THERE A LIQUID MARKET FOR QUARTERLY OR MONTHLY GAS HEDGES IN 2007 FOR THE 2012 RATE YEAR?

A. Yes.[34]

Mr. Schoenbeck also stated that calendar products were more readily available than monthly and quarterly products in the out years.[35] So, ICNU is arguing, incorrectly, that PGE failed to properly document the liquidity of the market while at the same time ICNU's witness specifically testified that the market was liquid. ICNU then spends a large part of their brief arguing for a disallowance for the claimed failure to document the liquidity of the market that ICNU admits was liquid. ICNU's argument seeks to place form over substance. Its position is further evidence that ICNU is not making policy-based arguments, but rather maneuvering to obtain an unjustified disallowance of power costs.

3. ICNU criticizes PGE for listening to customers' requests.

In an ironic twist, ICNU criticizes PGE for trying to meet customer needs, by asserting that PGE has no support and "merely claims to have 'heard from numerous customers . . . that they value retail price stability.'"[36] Again, ICNU misrepresents the record. PGE's witnesses testified that customers asked for less volatility in rates.[37] To verify what PGE was hearing from some of its customers, PGE conducted a customer survey which confirmed that customers desire less volatility and more stable rates.[38]

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[34] ICNU/108/Schoenbeck/9, lines 3-5.

[35] ICNU/109/73, lines 5-7.

[36] ICNU Opening Brief at 17.

[37] PGE/400/Lobdell-Outama/6, line 7 – p. 7, line 9; PGE/300/Pope-Valach/6; PGE/500/Stoddard/5.

[38] PGE/301.

Despite the customer survey results that clearly demonstrate that customers overwhelmingly prefer small, more predictable price increases to lower average price, ICNU in its brief says that PGE's evidence that customers value price stability is "so vague and ambiguous as to be meaningless in this proceeding".[39] This criticism is particularly remarkable in light of its own expert's admission that "most people, as a general rule, like more stable rates, predictable, but that always comes at a price."[40]

At no point in this docket has ICNU attempted to produce evidence that customers do not prefer lower volatility. This is particularly telling given that ICNU is an organization made up of large customers. Not one of them has come forward in this proceeding to claim that PGE is incorrect in its assessment of customer desires. ICNU's argument is wholly unsupported.

V. ICNU and CUB fundamentally misunderstand the issues.

A. ICNU misunderstands hedging.

ICNU demonstrates a fundamental lack of understanding of hedging when it contends that PGE "made a huge bet on the price of natural gas."[41] By definition, "bets" and "hedges" are diametrically opposed. Because PGE is an energy-short utility, a "bet" would have been to leave the 2-5 year period completely un-hedged. That would have left customers fully exposed to changes in the market price of gas and power. Entering into hedges resulted in reducing risk because customers were not exposed to changes in the markets.

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[39] ICNU Opening Brief at 17.

[40] ICNU/109/Schoenbeck Deposition/126 at lines 6-8.

[41] ICNU Opening Brief at 3.

B. CUB misunderstands or mistakes the risk of power costs, and power cost ratemaking.

In its opening brief CUB argues that "hedging shifts the risk of commodity price fluctuations from shareholders to ratepayers and removes incentives for the utility to prudently manage commodity costs."[42] CUB either misstates or does not understand how power costs are included in rates. If PGE hedged no power or gas, then through the AUT each November PGE's open position would be priced at the forward curve for power and gas at that time. That means that customers would bear the risk of changes in power and gas prices until that time. Hedging PGE's large open position, however, reduces the risk of customers by reducing their exposure to changes in power and gas prices. There is no shifting risk from shareholders to customers, or customers to shareholders. When the risk is hedged, it no longer exists to be shifted anywhere.

C. ICNU and CUB ignore reality.

ICNU and CUB both argue at some length that PGE first purchased gas, up to its need for 2012, before it purchased power. These arguments paint this as a revelation and something bad. It is neither. PGE has explained its approach at length in its testimony. ICNU's and CUB's arguments ignore two facts: 1) the risk that the Mid-Term Strategy is designed to hedge is the total net open position of PGE – both gas and power, and 2) for PGE, gas is the more efficient hedge of the two until all the fuel requirements for baseload thermal plants have been met.

1. ICNU and CUB disregard PGE's total net open position.

ICNU's and CUB's arguments and testimony only look at PGE's gas open position. They fail to consider, in any way, the total net open position of PGE. ICNU

[42] CUB Opening Brief at 3.

goes so far as to claim that PGE's total net open position is "irrelevant."[43] The total net open position is the risk to which customers are exposed. That is the risk that needs to be hedged, and it is the risk that the Mid-Term Strategy addresses. CUB and ICNU seem to forget PGE's open position for power, which is particularly peculiar given that PGE's ultimate obligation is to deliver power. PGE's total net open position is only "irrelevant," as ICNU contends, if one were to ignore the reality of PGE's obligations to its customers.

ICNU's and CUB's arguments in their briefs also conflict with the testimony of ICNU's witness, Mr. Schoenbeck. Mr. Schoenbeck stated numerous times that PGE must consider its total net open position, including both power and gas, in developing and executing its hedging strategy. When discussing factors related to his then proposed programmatic approach, Mr. Schoenbeck stated: "You'd also have to look at your total need, your total open position at the time."[44] When discussing hedging, Mr. Schoenbeck stated the following:

> Q. * * *Do you agree with me that an electric company should look at its entire open position, both as to electric and gas, when formulating its hedging policy?
>
> A. Yes.
>
> Q. Okay. And then would you agree that looking at its entire open position, that it could use gas to hedge its entire open position, including gas and electric open position?
>
> A. It could hedge gas or it could hedge electricity, but they're both going to serve basically electrical load.[45]

Later in the deposition Mr. Schoenbeck made a similar statement:

[43] ICNU Opening Brief, 22-24.

[44] ICNU/109/Schoenbeck/48-49.

[45] ICNU/109/Schoenbeck/66, line 24-68, line 2.

> Q. And do you think it's appropriate for PGE to look at its overall portfolio, including its gas needs and its power needs, when both formulating and executing its hedging strategy?
>
> A. Yes. I previously stated that.[46]

For ICNU to now argue that the total net open position of PGE is irrelevant is disingenuous. The same is true for CUB since CUB is relying on Mr. Schoenbeck's testimony for its arguments.

2. ICNU and CUB ignore the fact that hedging with gas first is the most efficient hedging approach.

As explained in detail in PGE's rebuttal and sur-surrebuttal testimony, PGE filled a portion of its annual gas position first for a very good reason: gas is the most efficient hedge for PGE. PGE reduced its large total net open position in the most efficient manner, using gas first. In its rebuttal testimony, PGE witnesses explained the factors considered in deciding which commodity to purchase.[47] The witnesses explained how and why hedging with gas is more efficient.[48] The witnesses explained the market availability of various gas products (including market liquidity), which products are used, and why.[49] At the hearing, PGE's witnesses further explained why hedging gas first is more efficient.[50] Mr. Outama also explained that Mr. Schoenbeck's proposal that PGE should have purchased power instead of gas would have resulted in higher power costs.[51]

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[46] ICNU/109/Schoenbeck/82, lines 15-19.

[47] PGE/400/Lobdell-Outama/12.

[48] PGE/400/Lobdell-Outama/13.

[49] PGE/400/Lobdell-Outama/27-34.

[50] Hearing Transcript/45, line 11 – p. 47, line 15; p. 67, line 19 – p. 69, line 17 (subject to PGE's Motion to Correct Hearing Transcript).

[51] Hearing Transcript/46, line 14 – p. 47, line 15.

CUB and ICNU have not even attempted to rebut this testimony. There is no testimony from any witness that hedging gas first was not the most efficient hedge. ICNU and CUB instead ignore the reality of PGE's large net open position, and ignore the fact that hedging gas first was the most efficient hedging strategy. Then ICNU and CUB argue that because PGE did not employ a more costly hedging strategy of purchasing power, there should be a disallowance of power costs. This argument, too, is nonsensical.

CUB and ICNU also ignore the reality of the hedging position PGE took. In 2007, PGE hedged 19% of its Net Open Position for 2012. In 2008, PGE hedged 23% of its Net Open Position for 2012.[52] Those numbers are well within the range advocated by Mr. Schoenbeck.[53] This is hardly a buying spree as ICNU and CUB claim.

D. ICNU's arguments about Q2 gas hedging are unsupported, and inconsistent with ICNU's other arguments.

On pages 14 and 15 of its brief, ICNU again criticizes PGE's gas purchases for the second quarter of the year (Q2). PGE has responded to these arguments in testimony, and this issue was briefed in PGE's opening brief: PGE does not purchase more gas than it needs on annual basis, and it uses Q2 gas as a hedge against its open position in Q1, Q3, and Q4. For these reasons alone, ICNU's argument fails.

ICNU's brief has an internal factual contradiction between two aspects of ICNU's proposed disallowance. ICNU argues for a disallowance of hedges farther out than 48 months. A second part of its proposed disallowance is its arguments regarding Q2. On page 15 of its brief ICNU fails to differentiate between the two. ICNU's arguments that

[52] PGE/400/Lobdell-Outama/37 at line 5, Table 2.

[53] ICNU/108/Schoenbeck/12 at lines 8-14.

hedges beyond 48 months should be disallowed are dependent on the market being illiquid. In contrast, ICNU's Q2 arguments are dependent on a liquid market so that PGE could have purchased quarterly products instead of calendar products. Yet, ICNU continues to advocate both that the market was simultaneously liquid and illiquid when it seeks a disallowance of costs based on these inconsistent theories.

This argument also suffers from the same error as other ICNU and CUB arguments. It looks only at PGE's gas open position, and completely ignores PGE's total overall (power and gas) net open position. In addition, their Q2 argument fails to recognize a widely accepted hedging strategy – that the Q2 gas position was an effective and efficient hedge for Q1, Q3, and Q4 gas, and for power in Q2. PGE explained this in its rebuttal testimony.[54] This was also discussed at length in PGE's sur-surrebuttal testimony by Mr. Outama.[55] Mr. Stoddard also discussed this, and pointed out that it was discussed in a textbook that Mr. Schoenbeck identified as one of the basis for his hedging expertise.[56] And Mr. Schoenbeck agrees that a utility can hedge its power exposure using gas.[57]

ICNU and CUB attempt to avoid this fact by characterizing it as "an after the fact rationalization."[58] That is not true, and there is nothing in the record to indicate that. Mr. Stoddard simply applied the textbook "label" to the strategy that had been described in earlier testimony. More importantly, ICNU and CUB have not disputed that this is a

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[54] PGE/400/Lobdell-Outama/33, lines 6-10.

[55] Hearing Transcript/47, line 16 – p. 50, line 12 (subject to PGE's Motion to Correct Hearing Transcript).

[56] Hearing Transcript/70, line 22 – p. 73, line 15 (subject to PGE's Motion to Correct Hearing Transcript).

[57] ICNU/109/123, line 4 – p. 125, line 6.

[58] ICNU Opening Brief at 14. CUB Opening Brief at 10.

widely accepted hedging strategy. As Mr. Stoddard testified, PGE's hedging practices were consistent with industry standards, and implemented in an exemplary way.[59] ICNU's and CUB's arguments to the contrary are baseless.

E. ICNU misrepresents PGE's testimony regarding its current hedging practices.

ICNU claims that PGE "now allows traders to buy hedges only 48 months in the future" and argues that this "more prudent" limitation should have been in place in 2007 and 2008.[60] ICNU cites to PGE/400/Lobdell-Outama/16. What that testimony says is:

> The 60-month window is subject to change as market conditions change. As part of the implementation of the MTS, PGE's Power Operations personnel asses the liquidity in the market place. If there is enough liquidity to execute the strategy over the full 60 months, they will be allowed to transact for that entire period. However, because a significant segment of commodities trading is comprised of financial institutions, we have seen liquidity decline as a result of the recent financial crisis. PGE is currently hedging on behalf of customers through 2015, with Power Operations personnel regularly assessing 2016 for liquidity.[61]

That testimony does not, as ICNU suggests, limit traders to 48 months in advance. Because the risk customers are exposed to has not changed, PGE, as it has throughout the administration of the Mid-Term Strategy, continually assesses the market for liquidity for the 60-month window, and transacts when there is sufficient liquidity. PGE has not modified its policy to limit its traders to transactions 48 months in advance, but market liquidity has decreased and PGE is acting accordingly, and prudently.

F. CUB continues to misrepresent the KPMG report.

CUB's brief discussed the KPMG study performed in Northwest Natural Gas (NWN) docket UM 1520. In that study KPMG analyzed three and five-year rolling

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[59] PGE/500/Stoddard/4, lines 10-16, p. 6, lines 8-12; Hearing Transcript/Stoddard/74, line 22 – p. 75, line 14.

[60] ICNU Opening Brief at 4.

[61] PGE/400/Lobdell-Outama/16, lines 12-19.

hedges. CUB's brief incorrectly claims that "KPMG found that three-year options had risks and five year options had the same, if not greater, risks."[62] CUB cites to pages 34 and 35 of the KPMG report, which are in the record in this docket as PGE/411/Lobdell-Outama/36-37. Nowhere on those pages does the report indicate that the five-year option "had the same, if not greater, risks." The report makes no such comparison. Interestingly, however, the report did analyze other hedging strategies, including ten-year hedges. The report was also submitted in support of the NWN Encana transaction which was effectively a 30-year hedge. CUB supported that 30-year hedge transaction as did the Commission.

G. In its Opening Brief CUB makes a number of erroneous claims for the first time and with no support in the record.

CUB's brief contains numerous assertions and claims that are foreign to this docket. They make no cite to the record, and make false claims about PGE.

1. CUB erroneously claims that PGE did not follow its own policies.

In its brief CUB asserts that PGE failed to follow its own policies.[63] CUB had not made this claim before its brief. CUB does not cite to the record, and could not because there is no evidence that PGE did not follow its own policies. In fact, CUB ignores that part of Mr. Schoenbeck's testimony[64] contradicting CUB's assertion:

> Q. My question is, did you find anything that violated their hedging policy? That would be a different way of looking at it.
>
> A. No.

2. CUB erroneously claims that PGE failed to audit its own program to ensure policies are being followed.

In its brief, CUB claims that PGE failed to "audit its own programs to ensure that policies are being followed."[65] Again, this is the first time CUB has made this assertion

[62] CUB Opening Brief at 2.

[63] CUB Opening Brief at 4.

[64] ICNU/109/Schoenbeck/97. lines 13-16.

[65] CUB Opening Brief at 4.

and there is nothing in the record from any witness suggesting that PGE's policies were not being followed, or that there was a failure to audit. CUB again fails to cite to the record in making this assertion.

As discussed above, PGE's testimony describes in detail the process and supervision incorporated into the Mid-Term Strategy. This includes the Risk Management Committee that meets quarterly, reviews the transactions, and "ensures that the transactions are executed in accordance with the policy."[66] As shown above, Mr. Schoenbeck agrees that all transactions were done within policy. CUB's assertions are baseless and false.

3. CUB falsely claims that PGE failed to provide appropriate training and oversight to employees.

Once again, CUB made a new, unsupported claim in its brief. CUB asserts that PGE failed to "provide appropriate training and oversight to all its employees."[67] There is no cite to the record for this assertion. Again, CUB had not addressed this in its testimony.

PGE has explained in detail about the oversight of its employees involved in the Mid-Term Strategy. Mr. Stoddard specifically addressed the training and ability of PGE's employees, which he described as "well trained" and "very knowledgeable".[68] PGE provided an overview of the extensive qualifications of personnel involved with the Mid-Term Strategy in PGE Exhibit 401.

Once again, CUB's assertions are baseless and false.

[66] PGE/400/Lobdell-Outama/20, lines 17-19.

[67] CUB Opening Brief at 4.

[68] Hearing Transcript/75, lines 7-8.

4. CUB falsely asserts that PGE claimed the Mid-Term Strategy had been approved by the Commission.

In its brief, CUB claims that PGE has asserted that the Mid-Term Strategy has "been blessed and approved" by the Commission.[69] Again, CUB does not cite to the record and the record does not support that claim. The claim is not true. PGE never said that the Mid-Term Strategy had been "blessed and approved" or anything similar.

What is undisputed, however, is that PGE presented the Mid-Term Strategy to the Commission in 2006, and received positive feedback both from the Commission and Staff.[70] What is also undisputed is that PGE regularly communicated with Staff, CUB and ICNU regarding power costs through its Quarterly Power Supply Update meetings. These included at times explicit discussion of the Mid-Term Strategy. CUB now attempts to minimize these meetings, and CUB's understanding in general. The arguments are not credible. The Mid-Term Strategy has been clearly and openly communicated with the Commission and interested parties since before its implementation. Mr. Stoddard, based on his national experience with hedging policies and practices, described the communication as exemplary.[71] If CUB did not understand the Mid-Term Strategy, it is only because CUB chose not to take advantage of the numerous opportunities where PGE discussed the Mid-Term Strategy and made its management available to answer questions and provide insight.

5. CUB argues issues regarding confidentiality from another docket in this docket.

In its brief[72] CUB complains about the designation of material as confidential in this docket and in PacifiCorp's UE 227 docket. As it has done before, CUB has made no motion or any other attempt to bring this issue to the Commission during the proceeding, and has instead waited to make complaints in its brief. The only motion regarding

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[69] CUB Opening Brief at 26.

[70] ICNU 703.

[71] Hearing Transcript/75, lines 8-14.

[72] CUB Opening Brief at 33-34.

confidentiality in this docket was brought by ICNU, and it was limited in scope. If CUB has issues, the appropriate avenue is to actually bring them to the Commission in a fashion when there can be a discussion and resolution by the Commission. It is improper to fail to bring the issues up during the proceeding but then complain in its briefs.

CUB's complaints also seem aimed as much, if not more at PacifiCorp. It is improper to argue PacifiCorp issues in this docket, and to attempt to paint the two companies with the same brush. CUB's brief even includes a complaint about the designation of material as "highly confidential". PGE did not designate, or attempt to designate, any material as highly confidential. CUB's complaints against PacifiCorp have no place in this docket.

H. CUB has ignored testimony in the record.

CUB makes numerous arguments and assertions that are clearly at variance with the record in this docket. In many of these instances, CUB repeats unsupported or discredited arguments made by ICNU's witness Mr. Schoenbeck; assertions that have been fully addressed in PGE's testimony. CUB has not acknowledged, let alone attempted to rebut, that testimony. CUB's arguments are not supported, and should not be given any weight.

1. CUB ignores testimony regarding PGE's review of the Mid-Term Strategy.

Starting on page 15 of its Opening Brief, CUB makes the following statement:

> Other things that PGE should have done include reviewing its hedging strategy at least once a year, if not quarterly. In terms of hedging strategy implementation, PGE should have been reviewing its implementation daily. And PGE should have been taking into account market changes, necessary collateral, and transaction fees.[73]

PGE did all of this and explained it in testimony. An annual hedging strategy review has been part of the regular Mid-Term Strategy process since the beginning.[74] The Risk

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[73] CUB Opening Brief at 15-16 (numerous footnotes, all to Schoenbeck testimony, omitted).

[74] PGE/400/Lobdell-Outama/16, lines 1-10.

Management Committee's quarterly review was also clearly established.[75] Finally, Mr. Lobdell also testified about his participation in daily meetings that monitor and track market conditions:

> MS. KANER: And is it correct to say that you have daily updates of the energy activities of the company, including market conditions?
>
> MR. LOBDELL: I participate in a 6:45 AM call every single workday where we get updates on what is the current in the marketplace, whether it be generation transmission, crisis or other issues that are happening at either state or federal level.[76]

Further, PGE's reply testimony describes in detail PGE's approach to market assessment:

> Q. What is the next step after the analysis is completed?
>
> A. Along with analyzing the data, PGE's Power Operations group performs a market assessment before making a recommendation to the Risk Management Committee. This assessment considers several aspects, including:
> - Market liquidity – must be sufficient in order to implement the strategy;
> - Structural market changes – would make us recommend a slow down or acceleration of the purchase strategy; and,
> - Availability of credit facilities – to weather the potential demand of margining calls.
>
> Once we have considered these factors, Power Operations and Risk Management will proceed with recommending a target for procurement.[77]

CUB's claims are misplaced.

2. CUB ignores evidence regarding the market sources PGE considers in its analyses.

CUB claims "It appears from PGE's data responses to ICNU that PGE relies mainly on information it gathers from ICE in order to perform its limited market analyses. . ."[78] Again, CUB ignores, and makes no attempt to rebut, testimony in the record. PGE's sur-surrebuttal testimony is clear that PGE relies on ICE, NYMEX, broker quotes, and other information from counterparties. Mr. Outama stated:

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[75] PGE/601/98.

[76] Hearing Transcript/28, lines 7-14.

[77] PGE/400/Lobdell – Outama/16, lines 1-10.

[78] CUB Opening Brief at 16.

MS. KANER: Okay. Does PGE consider NYMEX when assessing the liquidity of the product?

MR. OUTAMA: Yes. That's one of the main tools we use.

MS. KANER: And what other sources of information does PGE rely on in reaching a conclusion about whether a product is liquid?

MR. OUTAMA: We make -- we develop an order of what's liquid versus what's not liquid as whether or not it's offered a different platform, so we have access to ICE, which is where most of the transactions are offered and bid, and we use that as a measure of liquid. So if a product is available in ICE, that certainly is an indication of liquidity. We supplement that with intelligence that we gather on a daily basis with conversations with our counter parties.
We also use brokers. We have four brokers on our call box that we contact on a daily basis. We have access to NYMEX the screen, and we look at price there to inform us to which is liquid and which is not liquid.

MS. KANER: So based on the additional information that you mentioned, talking to brokers, dealers, what have you concluded about whether or not ICE data demonstrates liquidity in a product?

MR. OUTAMA: For ICE data -- and this is really speaking to the products that we are using here, and the argument of whether quarterly or monthly product is available liquidly versus calendar strips. We gathered evidence and we confirm with ICE data we concluded at the time, confirmed with ICE data, that past a 24 month is not liquid. What is liquid and is in direct contrast with other products that are available five years in, which are the calendar strips, which is power, as well as gas, assume it's Rockies and AECO.[79]

The evidence in the record is contrary to CUB's assertions. CUB has not addressed that testimony.

I. Many of the hedges in question have previously been included in PGE's rates.

ICNU's brief contains a somewhat lengthy discussion of "issue preclusion." PGE did not assert issue preclusion. What PGE pointed out is that the very contracts at issue, which are multi-year contracts, have been included in PGE's rates through prior AUTs. ICNU is right that those prior dockets were resolved by a Stipulation adopted by the Commission. It is also true that these contracts, or hedging in general, were not

[79] Hearing Transcript/34, line 25 - 36, line 8. See also ICNU/110/11-12, 33-34.

addressed in those stipulations. They were not an issue in those dockets. Yet now, those same contracts are being questioned.

ICNU's argument is that

> [t]he Commission must consider market liquidity issues which are not identical to those which could have been raised in prior AUT cases – that is, even though the same hedging transactions may have been included in previous AUT cases, a five year hedging strip implicates different liquidity considerations in, for example, the fourth or fifth years. A decision to hedge three years out may be prudent while a decision to hedge five years out may be imprudent, based on differences in market liquidity between those years.[80]

This argument is incorrect for at least two reasons. First, ICNU's own witness stated unequivocally that the market was liquid for 2012 when these transactions were entered.[81] There then cannot be "different liquidity considerations." Second, prudence is measured at the time of execution of the contract, for the contract as a whole. The contract itself was entered as a whole, with the length of the contract and the price in each year as part of the overall deal each party agreed to. If the years were purchased piecemeal, the prices would very likely be different. It is not appropriate to say that some years of a multi-year contract are prudent and others are not. ICNU's view is incorrect.

ICNU's suggestion that a multi-year hedging contract can be deemed prudent in some years and then found imprudent in later years creates inconsistency that elevates the perception of risk by investors in Oregon's regulatory framework.[82]

Perhaps the point that ICNU meant to argue was an earlier assertion by ICNU – that PGE's administration of the contract was not prudent. PGE responded to that in its sur-surrebuttal testimony explaining that PGE properly managed the contracts, that the only option available to manage a contract would be to sell it, or a corresponding

[80] ICNU Opening Brief at 20-21.

[81] ICNU/108/Schoenbeck/9, lines 3-5; ICNU/109/p. 73, lines 5-7.

[82] PGE/300/Pope-Valach/13.

position, and that doing so would be contrary to sound hedging practice and would increase transactional costs.[83]

PGE prudently entered into and managed these contracts. They have been included in previous AUT's, and should be included in this one as well.

J. CUB's request that the Commission retroactively impose limits on PGE's hedging similar to Avista is unsupported.

On page 15 of its brief, CUB recommends that the Commission impose a limit to PGE's hedging volumes similar to those Avista agreed to in another docket. CUB again does not provide any analysis of how the risks Avista is hedging compare to the risks PGE is hedging. Nevertheless, PGE has stated that it would be amenable to a Commission process to look at hedging practices on a going-forward basis.[84] What would not be appropriate is to adopt changes or limitations in this docket and attempt to impose them retroactively to 2007, as CUB and ICNU are proposing.

VI. Conclusion.

This docket is about PGE's Mid-Term Strategy. ICNU and CUB have, through multiple rounds of testimony, attempted to justify a substantial disallowance of power costs that PGE will incur to serve customers. Their arguments have changed over the course of the docket. Their current arguments are not only unsupported by their own testimony, they are contradicted by testimony in this docket. PGE has shown that the Mid-Term Strategy was designed and implemented to provide to customers reduced volatility in power prices. It is undisputed that customers want reduced volatility and that the strategy has successfully accomplished that goal. The Mid-Term Strategy was well thought out, properly supervised, appropriately documented, and repeatedly communicated to the Commission and stakeholders beginning before the strategy was

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[83] Hearing Transcript/52, line 14 – p. 54, line 1.

[84] Hearing Transcript/101, line 12 – p. 102, line 7.

implemented. PGE has implemented the Mid-Term Strategy according to its policies, and in a manner not only consistent with industry standards, but according to a national expert, PGE's implementation has been "exemplary." PGE's 2012 power costs should be approved as proposed by PGE.

DATED this 26th day of September, 2011

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused **CLOSING BRIEF OF PORTLAND GENERAL ELECTRIC COMPANY** to be served by electronic mail to those parties whose email addresses appear on the attached service list for OPUC Docket No. UE 228.

Dated at Portland, Oregon, this 26th day of September, 2011.

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