

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 370

In the Matter of)
)
PORTLAND GENERAL ELECTRIC)
COMPANY,)
)
Renewable Resource Automatic Adjustment)
Clause (Schedule 122).)
_____)

REPLY BRIEF
OF THE
OREGON CITIZENS' UTILITY BOARD

July 15, 2020



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I. INTRODUCTION

A. Background and Procedural Posture

Pursuant to Administrative Law Judge (ALJ) Arlow’s January 17, 2020 Prehearing Conference Memorandum, the Oregon Citizens’ Utility Board (CUB) hereby submits its Reply Brief in the above-captioned proceeding. In this Brief, CUB responds to arguments raised by Portland General Electric Company (PGE or the Company) in its Opening Brief, filed July 1, 2020 as well as arguments raised by other parties.

On December 3, 2019, PGE filed a request for inclusion of costs, through its Schedule 122 Renewable Resource Automatic Adjustment Clause (RAC), for facilities representing the wind-related portions of the Wheatridge Renewable Energy Facility (Wheatridge). The Company requests an incremental revenue requirement that includes the fixed costs of its

Wheatridge investments and the associated O&M costs, income taxes, property taxes, and other fees and costs.¹

On May 19, 2020, CUB, Staff of the Public Utility Commission of Oregon (Staff), the Alliance of Western Energy Consumers (AWEC), and PGE filed a Stipulation settling the majority of issues in this docket. Should the Public Utility Commission of Oregon (Commission) approve the all-party Stipulation, which CUB respectfully urges it to, there will only be three remaining issues. Those are:

1. The prudence of PGE's decision to move forward with Wheatridge raised by AWEC;
2. Various proposals to ensure an appropriate level of customer benefits are realized; and
3. PGE's Renewable Energy Certificate (REC) Monetization proposal.

These issues have been thoroughly analyzed through various rounds of testimony and discovery. Instead of reiterating prior testimony, CUB will provide constructive arguments in the hopes of helping the Commission reach a resolution that is in the public interest.

B. *Summary of Issues*

CUB believes the Company's decision to move forward with the wind portion of Wheatridge was prudent.² However, even though PGE may be eligible for cost recovery for the wind-related portions of Wheatridge, the Company must share the risk that the level of customer benefits may or may not materialize.³ CUB agrees with Staff that the prudence of PGE's

¹ UE 370 – CUB/100/Gehrke/3.

² *Id.* at 3-4.

³ *Id.* at 4.

decision is intrinsically linked to preserving customer benefits since the Wheatridge investment was justified based upon favorable economics.⁴ Now is the time to guarantee those economics come to fruition for customers who will be paying a favorable profit margin to PGE's shareholders for thirty years. Although parties offer different proposals, all non-Company parties believe the risk around customer benefits must be shared between customers and the Company. This is consistent with the Commission's mandate that resources following from the Request for Proposals (RFP) in question "be limited to high value resources" through the use of a cost containment screen.⁵

Beyond the cost containment screen, the Commission's Order in PGE's 2016 Integrated Resource Plan (IRP) acknowledged the Company's pledge to return REC value to customers.⁶ PGE seeks to honor that commitment here and has proposed to sell the first five years of Wheatridge RECs to customers of its voluntary renewable portfolio options programs.⁷ CUB largely supports PGE's proposal with a small pricing modification. Staff and AWEC do not support PGE's proposal for various reasons. Pursuant to our statutory mandate, CUB advocates for the Company's residential class as a whole, which inherently includes the residential subscribers to PGE's voluntary renewable portfolio options program. Given our unique position, we believe our proposal for PGE to sell Wheatridge RECs at the price specified in CUB's testimony⁸ creates value for both PGE's voluntary renewable portfolio options customers and customers as a whole.

⁴ UE 370 – Staff/400/Storm/3, lines 7-12.

⁵ *In re Portland General Electric Company 2016 Integrated Resource Plan*, OPUC Docket No. LC 66, Order No. 18-044 at 6 (Feb. 2, 2018).

⁶ *Id.*

⁷ UE 370 – PGE's Opening Brief at 7.

⁸ UE 370 – CUB/200/Gehrke/13, line 14.

This Brief will first address issues related to parties' customer benefit proposals before addressing issues around REC monetization.

II. ARGUMENT

A. *Customer Benefit Proposals*

While CUB, AWEC, and Staff offer different proposals for Commission consideration, there is a common thread—all believe PGE's customers should be assured Wheatridge's benefits outweigh its costs because PGE invested in Wheatridge primarily for economic reasons.⁹ PGE justifies the prudence of Wheatridge on its ability to provide economic benefits to customers over the long term but is content to request traditional rate recovery that would place all risk onto customers if the benefits are not realized.¹⁰

In its Opening Brief, PGE repeatedly argues Wheatridge was the least cost, least risk resource in an attempt to sidestep the Commission's cost-containment requirement.¹¹ If this was the only consideration through which PGE's 2016 IRP was acknowledged, the Company would likely be eligible for cost recovery provided it prudently built or acquired the given resource. Unfortunately for the Company, the Commission's Order in that IRP attached customer protection conditions to "ensure that [its] acknowledgement here is not an open-ended support of a RFP of a certain size resource."¹² This is a unique resource. The Commission Order

⁹ See, e.g., UE 370 – Staff/400/Storm/8, lines 5-8 ("Staff . . . concluded that PGE invested in Wheatridge at this time 'primarily for economic reasons,' and discussed the higher risk to customers of investments for economic reasons such as Wheatridge that have a 'break-even time for PGE customers that is distant from today.')" and UE 370 – AWEC/200/Mullins/3, lines 6-8 ([T]he primary basis for PGE's decision to pursue Wheatridge was the facility's ability to provide economic benefits to customers over the long term.").

¹⁰ UE 370 – AWEC/200/Mullins/2, lines 3-6.

¹¹ See, e.g., UE 370 – PGE's Opening Brief at 3, 4, 6, and 7.

¹² *In re Portland General Electric Company 2016 Integrated Resource Plan*, OPUC Docket No. LC 66, Order No. 18-044 at 6 (Feb. 2, 2018).

acknowledging the action plan was unique. Its procurement was unique. All non-Company parties believe that its ratemaking should be unique as well.

PGE offers several unpersuasive substantive arguments that attempt to undercut the creative proposals offered by CUB, Staff, and AWEC. Before addressing those, this Brief will address non-substantive arguments raised by PGE that are little more than red herrings.

1. *CUB is neither procedurally nor legally precluded from raising customer benefit proposals.*

PGE offers two non-substantive arguments to unpersuasively attempt to quash CUB's and Staff's customer benefit proposals. First, PGE claims CUB's and Staff's customer benefit proposals should be rejected because they were not made until the last round of testimony.¹³ PGE asserts that CUB should be precluded from making customer benefit recommendations because it had no "placeholder" language in its opening testimony to render a later argument appropriate.¹⁴ According to PGE, "new proposals should not be raised in the last round of testimony."¹⁵

PGE is wrong. While there is a generally understood prohibition against raising new *issues* in later round of testimony, there is no such prohibition against raising proposals related to issues already placed on the evidentiary record. Here, both Staff and AWEC addressed the issue of customer benefits in their first round of testimony, and AWEC articulated a fully formed regulatory asset approach to ensure net customer benefits.¹⁶ By responding to AWEC's proposal and proposing an alternative approach, CUB was acting well within the bounds of permissive litigation techniques. If a party does not raise an issue in opening testimony, it is not precluded

¹³ UE 370 – PGE's Opening Brief at 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ UE 370 – AWEC/100/Mullins/21, lines 7-8.

from responding to that issue if raised by other parties in simultaneous testimony. Consider a general rate case. Many issues are simultaneously litigated. If parties were limited to re-raising issues they had raised, rather than responding to issues raised by other parties as well, it would create a sparse administrative record for the Commission. The Commission favors a robust evidentiary record that considers various viewpoints.¹⁷

Further, the Company raises this argument at an incorrect procedural time. PGE could have filed a motion to strike to remove CUB and Staff's arguments from the record while the evidentiary record was still open. This motion would have enabled the Commission to consider their argument. Here, the record is closed.¹⁸ The Commission has historically disfavored motions to strike, but it remains the proper mechanism to challenge arguments that a party believes should not be included in the record. Once a party tacitly allows an argument to remain on the record by failing to file a motion to strike, it cannot then ask the Commission to ignore that argument in legal briefing. The Commission has an obligation to consider the record in front of it. PGE's argument is invalid.

Second, PGE incorrectly argues CUB and Staff are legally barred from making customer benefit proposals because of a Stipulation reached in Docket No. UE 359, PGE's 2020 Annual Power Cost Update Tariff (AUT) docket.¹⁹ The Stipulation reads, in part, that "[t]he Stipulating Parties will not propose changes to PGE's wind forecast methodology until PGE's next general

¹⁷ See, e.g., *in re Public Utility Commission of Oregon Investigation to Determine the Resource Value of Solar*, OPUC Docket No. UM 1716, Order No. 16-404 (Oct.19, 2016) ("[W]e do not believe it to be in the public interest to make findings unless the record is sufficiently robust to inform sound decisions and to provide meaningful guidance and direction.").

¹⁸ *In re Portland General Electric Company*, OPUC Docket No. UE 370, Ruling by Administrative Law Judge Allan J. Arlow – Motions Granted; Testimony and Exhibits Admitted; Record Closed (July 8, 2020).

¹⁹ UE 370 – PGE's Opening Brief at 4.

rate case.”²⁰ PGE argues that Staff and CUB’s proposals are inappropriate because they represent a change to PGE’s wind forecast methodology to be used in power cost cases.²¹

PGE parses the language in the UE 359 Stipulation in an overly narrow manner in a thinly veiled attempt to place Wheatridge’s production risk on customers. CUB is not proposing to change PGE’s wind forecast methodology and has no intent to undercut a binding Stipulation. Rather, CUB proposes a one-time, unique solution in a single-issue ratemaking case to equitably share the risk that a unique resource’s customer benefits may not materialize. CUB’s proposal applies only to this resource, and we are only bringing it up in this proceeding. CUB is not attempting to alter the wind forecast methodology used in the AUT.

Since this is the ratemaking proceeding for the resource in question—rather than the AUT—CUB believes its proposal is entirely appropriate. A new resource’s capacity and ability to provide benefits are commonly at issue in that resource’s ratemaking docket. It is particularly appropriate when the Commission explicitly requested cost containment screen. If anything, not addressing capacity or risk-sharing proposals would be ignoring the Commission’s guidance.

2. *CUB’s proposal is reasonable and would not significantly alter PGE’s risk profile.*

As customer benefits rose to the top of litigated issues in this proceeding, CUB carefully considered a wide variety of alternatives in an effort to equitably share risk between the Company and its customers. Under the current regulatory framework, PGE’s customers bear a significant portion of the quantity risk associated with wind projects.²² Quantity or production risk is the risk that actual wind generation capacity factors are lower than the assumed capacity

²⁰ UE 370 – PGE’s Opening Brief at 4 citing OPUC Order No. 19-329.

²¹ UE 370 – PGE’s Opening Brief at 4.

²² UE 370 – CUB/200/Gehrke/7, lines 10-11.

factor used when planning the facility. This is due to a variety of factors, including the variability of wind over time. While in the current wind generation forecast methodology, the Company does bear some quantity risk in Wheatridge's early years, this is ameliorated over Wheatridge's later years.²³ Conversely, if a wind resource underperforms for a long period of time, the amount of federal Production Tax Credits (PTCs) passed back to customers would be reduced and PGE would have to replace zero fuel cost wind energy with higher cost resources, borne by customers.²⁴

While customers bear a significant portion of the quantity risk, shareholders will be indifferent if PGE is enabled to recover the costs of Wheatridge under a traditional ratemaking paradigm. PGE's shareholders would enjoy a rate of return on its capital investment for the entire thirty years Wheatridge is in rates. Meanwhile, customers face significant risk in the first ten years that the forecasted level of PTCs will not be realized. If this is the case, Wheatridge will fail to meet the cost containment screen the Commission required. PGE's customers will be exposed to higher cost energy charges and will continue to pay a profit to PGE's shareholders, who will shrug their shoulders and look for the next investment opportunity.

Rather than denying or limiting cost recovery, as PGE erroneously asserts CUB's proposal will do,²⁵ CUB's proposal seeks to more evenly share Wheatridge's production quantity risk. Under CUB's proposal, PGE will still be able to earn its rate of return on the capital investment and receive recovery of expenses for the PPA portion of Wheatridge but customers and the Company will more equitably share the quantity risk of the non-PPA portion. This is an

²³ UE 370 – CUB/200/Gehrke/8.

²⁴ *Id.* at 9.

²⁵ UE 370 – PGE's Opening Brief at 4.

important distinction that PGE did not address in its Brief—CUB’s proposal only applies to the non-PPA portion. CUB’s proposal is a thoughtful, reasoned compromise.

Further, by limiting quantity risk sharing to the first ten years, CUB’s proposal addresses the time period during which Wheatridge’s rate impact is highest and it is eligible to earn PTCs.²⁶ As AWEC notes, if the costs in the early years are too high, the economic benefits in the later years might not yield an overall net benefit, which would fail to align with the Commission’s guidance on cost-containment.²⁷ CUB’s proposal seeks to avoid this inequity.

PGE asserts that CUB’s proposal would negatively impact its risk profile and that any changes to its risk profile should be considered in a general rate case proceeding.²⁸ CUB takes issue with this sentiment. As mentioned, if granted cost recovery, PGE’s shareholders will be earning a rate of return for the thirty years that Wheatridge is in customer rates. CUB’s proposal seeks to share only a portion of risk during one-third of that time period. Further, the non-PPA wind portion of Wheatridge makes up a very small portion of PGE’s total MW capacity. For reference, PGE owns or has a share in several thousand MW of generation across its system. The non-PPA wind portion of Wheatridge is only 100 MW.²⁹ A ratemaking change to a small portion of its overall generation fleet is unlikely to significantly alter its risk profile.

CUB respectfully urges the Commission to adopt its proposal to forecast the non-PPA portion of Wheatridge output using a 50% blend of the five-year rolling average of actuals and the P50 forecast for the first ten years.³⁰

²⁶ See, e.g., UE 370 – AWEC/200/Mullins/5, lines 12-14 (“Taking into account all benefits from Wheatridge, the net revenue requirement increase approximately \$15 million in the first year.”).

²⁷ UE 370 – AWEC/200/Mullins/5, lines 17-18.

²⁸ UE 370 – PGE’s Opening Brief at 4.

²⁹ UE 370 – PGE/100/Armstrong-Batzler/11, lines 4-5.

³⁰ UE 370 – CUB/200/Gehrke/9.

B. *REC Monetization*

PGE proposes to sell the RECs generated between the project's commercial operation date and December 31, 2024 to the residential and small commercial customers of its Schedule 7 and Schedule 32 voluntary renewable portfolio options programs.³¹ CUB supports this proposal with a small change to the sale price.³² CUB's pricing modification ensures that both PGE's portfolio options customers and its customers overall benefit from REC sales. Portfolio options customers will benefit by receiving high value, Oregon-based RECs at a reduced yet reasonable price, and PGE's customers as a whole will benefit through the Wheatridge total cost offset that REC monetization provides.³³

Staff and AWEC do not support PGE's proposal, and both argue PGE should retain the Wheatridge RECs for future use as a long-term hedge against cost, risk, and higher RPS compliance targets.³⁴ CUB's proposal is superior, as it captures benefits now and aligns with Commission guidance in acknowledging PGE's pledge to return the value of RECs to customers.³⁵ Because this resource was acknowledged due to its economic benefits, CUB believes it is important to capture these benefits now while Wheatridge's costs are at their highest. If Wheatridge RECs are banked and deferred for later use, ratepayers would be paying for a benefit now that would not materialize until much later and would therefore flow to different customers. This benefit transfer creates intergenerational equity concerns.

³¹ UE 370 – Staff/500/Moore/2, lines 2-8.

³² UE 370 – CUB/200/Gehrke/13, line 14.

³³ See UE 370 – CUB/200/Gehrke/13, lines 19-20 and UE 370 – PGE's Opening Brief at 7.

³⁴ UE 370 – PGE's Opening Brief at 8 and UE 370 – CUB/200/Gehrke/13, lines 3-4.

³⁵ *In re Portland General Electric Company 2016 Integrated Resource Plan*, OPUC Docket No. LC 66, Order No. 18-044 at 6 (Feb. 2, 2018).

Further, the value of Wheatridge RECs if banked for future use is speculative. CUB's proposal would return real benefits to customers now.³⁶ As AWEC notes, the RECs in PGE's bank will provide no value to customers in the future if the Company continues down its current path to comply with the Renewable Portfolio Standard (RPS) entirely through physical resources.³⁷ According to the Company, future RECs may not have a value that is greater than zero, and, even if they did, it is likely more valuable to sell RECs now.³⁸ CUB's—and PGE's—proposal would avoid this future uncertainty and return value to customers in a manner that aligns with what the Commission contemplated in the 2016 IRP.

Staff expresses concerns that PGE's REC monetization proposal is not being raised in the correct docket. CUB disagrees. The concept of monetizing Wheatridge RECs explicitly spelled out in the Commission's IRP order. To CUB, this proposal is linked to the economic benefits promised by Wheatridge, much like the aforementioned customer benefit proposals. It is entirely appropriate to consider approaches to monetize Wheatridge RECs in the resource's own ratemaking proceeding. The Commission's order was clear that "Staff may request that we open a docket to address this issue at a public meeting," but Staff has yet to do so.³⁹ While CUB believes there may be merit in a separate investigation, CUB's proposal should be adopted to capture the benefits of REC monetization. To the extent that the Commission is interested in a separate investigation on REC monetization, it would be administratively efficient to roll it into the investigation already planned to examine the scope of the Portfolio Options Committee.

³⁶ UE 370 – CUB/200/Gehrke/14, lines 2-3.

³⁷ UE 370 – AWEC/200/Mullins/11-12.

³⁸ UE 370 – PGE/300/Armstrong-Batzler/25-31.

³⁹ *In re Portland General Electric Company 2016 Integrated Resource Plan*, OPUC Docket No. LC 66, Order No. 18-044 at 6 (Feb. 2, 2018).

To be clear, however, CUB shares some of Staff's concerns and thoughts. CUB supports Staff's position that Wheatridge RECs must truly provide additionality beyond RPS compliance to PGE's portfolio options customers.⁴⁰ We also share Staff's concerns that the messaging and marketing to these customers be transparent and fair. Further, Staff agrees with CUB about the need for a bulk discount.⁴¹

PGE has made a compelling case that the sale of Wheatridge RECs to its portfolio options customers provides significant near-term value. CUB supports PGE's proposal with a pricing modification and respectfully urges the Commission to adopt its proposal.

III. CONCLUSION

Based on the foregoing, CUB respectfully urges the Commission to:

- Accept CUB's proposal to forecast the non-PPA portion of Wheatridge output using a 50% blend of the five-year rolling average of actuals and the P50 forecast for the first ten years.⁴²
- Accept CUB's proposal to require PGE to sell Wheatridge RECs to portfolio options customers at a reduced price for the first five years of Wheatridge operations.⁴³

⁴⁰ UE 370 – CUB/200/Gehrke/12.

⁴¹ UE 370 – Staff/500/Moore/11, lines 2-3.

⁴² UE 370 – CUB/200/Gehrke/9.

⁴³ UE 370 – CUB/200/Gehrke/13, line 14.

Dated this 15th day of July, 2020.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael P. Goetz". The signature is stylized and cursive.

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