



Portland General Electric Company

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Richard George

Assistant General Counsel

July 2, 2014

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission

Attention: Filing Center

P.O. Box 1088

Salem OR 97308-1088

Re: UM 1635

Attention Filing Center:

Enclosed for filing in the above-referenced docket are an original and five copies of Portland General Electric Company's **Pre-Hearing Brief**.

This filing is being made by electronic mail with the Filing Center and simultaneously served upon the Service List for UM 1635.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Richard George", is written over the typed name.

J. RICHARD GEORGE
Assistant General Counsel

JCG: qal

Enclosures

cc: UM 1635 Service Lists

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1635

In the Matter of

NORTHWEST NATURAL GAS COMPANY,
dba NW NATURAL

Mechanism for Recovery of Environmental
Remediation Costs.

**PORTLAND GENERAL ELECTRIC
COMPANY'S PRE-HEARING BRIEF**

Introduction

PGE, like Northwest Natural and PacifiCorp, has been formally notified by the Environmental Protection Agency that it is a Potential Responsible Party (“PRP”) for the Portland Harbor Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) site (the “Portland Harbor”). PGE has largely not yet incurred significant costs for Portland Harbor. For all PRPs, however, future liability has yet to be determined. The Draft Feasibility Study for the Portland Harbor¹ provides an estimated range of costs from \$169 million to \$1.8 billion, depending on the selected remedial action levels and the choice of remedy. Such costs ultimately will be allocated to PRPs based on estimations of historical activities that may have contributed to contamination in the Portland Harbor. How such costs allocated to PGE are treated by the Public Utility Commission of Oregon (“Commission”) is very important to PGE, and the reason that PGE has participated in this docket.

¹ Created for EPA by a group of parties known as the Lower Willamette Group (“LWG”) pursuant to an enforceable Administrative Order on Consent between EPA and the LWG.

The response testimony of the Citizens' Utility Board of Oregon ("CUB") raises significant, generally-applicable policy positions that PGE disagrees with and addresses in this brief.

1. Superfund liability cannot be forecasted like decommissioning costs.

CUB suggests that "ratemaking's primary function is setting rates based on a forecast of used and useful costs, not recovery of actual costs." CUB/200, Jenks/4. CUB suggests that Northwest Natural should have predicted remediation costs and collected them on a forecast basis rather than now seeking to recover their actually-incurred clean-up costs. CUB draws an analogy to PGE forecasting and recovering for decommissioning costs for its Boardman Coal facility. *Id.* at 5. This analogy does not work for several reasons. First, certain decommissioning costs may be reasonably predicted while a facility is in operation, but Portland Harbor and other environmental liabilities that arise due to changes in law and/or uncertain regulatory processes cannot. Boardman's decommissioning is based on known requirements from PGE's site certificate, the costs of which can be estimated through engineering studies that evaluate a volume of known materials and estimated disposal or restoration costs. For instance, decommissioning costs of the coal ash sites at Boardman can be estimated by determining the amount of ash material and costs for either capping in place or disposing of the ash in landfills.²

On the other hand, PGE's and Northwest Natural's potential liability for the Portland Harbor simply could not have been foreseen or determined during historical operations and will not be reasonably known until the cleanup process is complete. PGE and Northwest Natural have cleanup responsibility due to decades of historical operation in the vicinity of the Portland Harbor on multiple properties. The contaminants of concern potentially linking these utilities to

² We note that PGE's current recovery of decommissioning costs for Boardman is based on a study that expressly excluded remediation costs. See Advice 11-07, Attachment C, Page 15.

the Portland Harbor, such as PCBs, were lawfully used in operations to serve customers and due to a later change in law require cleanup when EPA initiated the CERCLA process for Portland Harbor. Also, many releases to the Portland Harbor attributed to PGE were unanticipated, due to such things as equipment failures, car accidents or other unforeseeable events.

Second, the Portland Harbor involves an extremely complex and dynamic river, with sediment transport through scouring and depositional characteristics. In addition, historical dredging, flooding and landfilling complicate determination of liability amongst over a hundred PRPs. The scope of the liability to be divided by this large number of parties will be dramatically affected by “orphan” or bankrupt entities that have significant shares of liability. Finally, total remediation costs and risks cannot be determined until the EPA determines assumptions about health risks and chooses the remedy. Even assuming the range set forth above from the draft Feasibility Study remains unchanged, it ranges more than a billion and a half dollars from least to most expensive cleanup options.

Because of the high uncertainty of predicting future environmental remediation costs compared to the relatively greater certainty of predicting the costs of decommissioning of a power plant, CUB’s analogy is not a good one. Actual costs of remediation related to lawful operations that benefit customers should be recovered in prices. In its current general rate case (Docket No. UE 283), PGE has proposed to reclassify certain environmental remediation efforts to a regulatory asset to be amortized over 20 years, thereby reducing the impact to customers.

2. CUB's argument that a competitive market would require shareholders to bear environmental remediation costs is unsupported.

CUB suggests that because Northwest Natural (and by implication PGE) is a monopoly, it has the opportunity to impose past liabilities on customers that would otherwise be borne by shareholders in the competitive marketplace. CUB/200, Jenks/6. This testimony is simply unsupported and there is no evidence in the record submitted by CUB or any other party that it is true. PGE offers that the opposite is likely true. Where an industry as a whole faces costs related to cleanup of a universally used material such as PCBs or a business practice that is later linked to environmental remediation, the costs will most certainly be reflected in goods and services across the industry regardless of competition. In a competitive marketplace, rather than potentially filing for bankruptcy, an entity facing significant environmental costs would need to pass such costs to customers.

3. Intergenerational Equity applied to unanticipated environmental liability is an inappropriate ratemaking principle.

Another principle raised by CUB without any evidentiary record support is the notion that intergenerational equity should apply. CUB laments that "NW Natural is now requesting to recover the costs associated with manufactured gas from current and future customers, not the customers who benefited from manufactured gas." CUB/200 Jenks/9. Applying intergenerational equity concepts to ratemaking is not appropriate when dealing with unanticipated environmental liability arising from a later change in law. As discussed above, environmental liability related to Portland Harbor could not have been predicted during the time when operations or practices were lawful and industry standard. Clearly, historical customers benefitted from such operations without paying future costs. Likewise, customers today could be benefitting by not paying costs related to unknown future liabilities.

4. The Commission should allow for recovery of all prudently incurred costs and preserve the opportunity for utilities to earn their authorized return on equity (ROE).

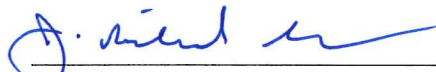
PGE concurs with Northwest Natural that sharing is not an incentive to control remediation expenses. Consider a prudence review that finds a utility acted prudently; a sharing mechanism in this circumstance would disallow prudently incurred costs. This is simply punitive. Additionally, and as Northwest Natural also points out, use of authorized or lower ROE for purposes of an earnings evaluation is punitive. The regulatory construct should allow the utility the opportunity to earn its authorized ROE. Using the authorized or lower ROE caps the utility's earnings and as a practical matter this will result in the utility under-earning on average.

Conclusion

Like Northwest Natural, PGE has significant concerns with positions raised by some other parties. PGE requests that the Commission consider the issues and arguments raised above as it makes its determination in this matter.

DATED this 2 day of July, 2014.

Respectfully submitted,

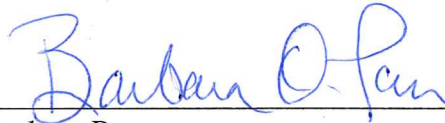


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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused **Portland General Electric Company's**
SIGNATORY PAGE to be served by electronic mail to those parties whose email addresses
appear on the attached service list for OPUC Docket No. UM 1635.

DATED this 2nd day of July, 2014.



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