

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1373

In the Matter of)
)
)
PORTLAND GENERAL ELECTRIC)
COMPANY)
)
Application for Reauthorization of Deferral)
of Investigation and Remediation Response)
Costs Associated with the Portland Harbor)
and Harbor Oil Superfund Sites Cleanup)
and Restoration)

REPLY TESTIMONY
OF THE
CITIZENS' UTILITY BOARD OF OREGON

REDACTED

November 4, 2009



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and Restoration)	

1 My name is Bob Jenks, and my qualifications are listed in CUB Exhibit 101.

2

3 **I. Introduction.**

4 The PUC recently established rates for Portland General Electric. As part of that
5 ratesetting exercise, parties forecasted costs, including costs associated with
6 Environmental Services. In this docket PGE is now asking for a deferral of costs which
7 are greater than what was forecasted for Environmental Services.

8 CUB does not believe that this request for deferral is justified. The fact that the
9 actual cost is greater than the previously projected cost used in the forecast is not a
10 sufficient basis to warrant deferred accounting. PGE has offered no evidence to suggest
11 that current rates are not just and reasonable or that such rates are insufficient to allow the

1 Company a reasonable opportunity to recover its costs -- including the costs of its
2 environmental services.

3

4 **II. PGE's Current Rates Are Just and Reasonable**

5 **A. PGE's recent rate case established just and reasonable rates and included a** 6 **forecast of environmental costs.**

7 PGE's most recent rate case, UE 197, completed at the beginning of this year,
8 with final revenue requirement orders in December 2008 and January 2009 set rates at a
9 level the Commission believed would be just and reasonable.¹ Those rates were based on
10 a forecast of PGE's 2009 revenue requirement. The rate making process is designed for
11 the Commission to set rates, it is not designed for approving individual costs. PGE seems
12 to believe that because costs for environmental services are higher than forecast, the
13 Company should be allowed to levy a surcharge on customers to recover the difference.
14 CUB disagrees. CUB assumes that nearly every cost that was forecast ended up higher or
15 lower than the forecast. The goal of a ratecase is not to precisely forecast individual cost
16 items, it is to set just and reasonable rates. The filing in this docket must be reviewed in
17 terms of whether the rates that were established by the Commission are just and
18 reasonable and whether those rates allow the Company a reasonable opportunity to
19 recover its costs and earn a reasonable rate of return. PGE has offered no evidence to
20 suggest that current overall rates are not just and reasonable.

¹ OPUC Order Nos. 08-601 and 09-006

1 In UE 197, PGE forecast the cost of Portland Harbor, Harbor Oil, and Oak
2 Grove.² PGE's filing states that the Company now believes that its 2009 environmental
3 services budget will be \$2 million more than was included in its forecast of 2009 costs.
4 PGE filing does not say whether there are other costs that are \$2 million less than PGE
5 forecast, offsetting this one cost item which is greater than forecast.³ PGE's filing fails to
6 discuss overall rates and overall costs and fails to demonstrate that current rates are not
7 just and reasonable.

8 **B. Historically, actual environmental costs vary from forecasts in both directions.**

9 CUB Exhibit 102 shows PGE's costs associated with Environmental Services and
10 its cost of legal work associated with environmental services. The exhibit lists three
11 figures: the test year cost which represent the costs that were used to establish rates, the
12 costs that are budgeted for the year, and the actual recorded costs. This exhibit shows
13 that actual costs for these budget items have been both higher and lower than was
14 forecast in the test years. In 2005 and 2006, the cost of both the Environmental Services
15 and Legal Projects associated with Environmental Services were below what was forecast
16 in the last rate case test year. In 2007, the cost of Environmental Services was higher
17 than the ratemaking forecast, but the cost of Legal Projects associated with
18 Environmental Services was less than the ratemaking forecast. In 2008, the cost of both
19 was higher than the ratemaking forecast.

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² UM 1373 / PGE / 100/Behbehani-Divers - Hager / 9

³ It is not PGE's practice to file applications for reduction of costs.

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In UE 197, the ratemaking forecast for Environmental Services was increased by

██████████ In this docket PGE claims that this forecasted increase should have been
██████████.

Over the course of 4 years -- 2005, 2006, 2007, and 2008 -- the annual average
cost of Environmental Services and the associated legal support has been about ██████████
more than was forecast in rates. While this may seem like a material amount, it is only a
small percentage (██████%) of PGE's \$1.7 billion revenue requirement.⁴

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This variation is small enough that it does not impact whether the Company's
overall rates are just and reasonable. Even the larger amount that PGE is forecasting this
year, \$2 million, represents a very small portion of the Company's revenue requirement.

**C. Environmental cleanup expenses are a cost of business for electric utilities and
should not be subject to deferred accounting under normal circumstances.**

According to PGE, environmental costs are special:

⁴ OPUC Order No. 08-601, Appedix B, page 1.

1 There are several characteristics that make environmental cost recovery
2 challenging, including:

- 3 1. Environmental costs are difficult to forecast
- 4 2. Environmental costs usually result from one-time events; seldom
5 recurring
- 6 3. Environmental costs are limited in their capacity to be managed
- 7 4. The expenses may be accrued in a year in which the associated
8 activities do not take place⁵

9 All electric utilities face environmental cleanup issues. The widespread use of
10 PCBs in electric transformers means that this is a cost that is common to the industry.
11 Rather than being a cost component that is new to PGE, environmental cleanup is a cost
12 that has been, and will continue to be, in PGE's budget for many years. Some years, the
13 forecast cost is too high and PGE benefits from the difference between forecast and
14 actual. Last year and this year, however, the forecast was too low, and PGE now expects
15 customers to pick up the tab. This is the kind of "*heads we win, tails you lose*" approach
16 to regulation, that makes customers skeptical of deferred accounting. Customer advocates
17 like CUB do not know when costs are lower than forecast, so we do not have the
18 opportunity to file for, and request implementation of, deferred accounting.

19 As an electric utility, PGE will incur cost for environmental cleanup every year.
20 Regardless of whether each individual project is a one-time event or not, there is a
21 predictable amount of activity every year that is included in forecasts that are used to set
22 rates. PGE claims that these costs cannot be managed, but CUB suspects that a company
23 likely has some discretion on the timing of some of these costs. CUB remembers in UE

⁵ UM 1373/PGE/100/3.

1 197, PGE claimed that there were no capital costs in their budget that were discretionary⁶.
2 CUB continues to believe that PGE's management has more control over PGE's costs,
3 than PGE believes or will admit. In addition, PGE should have an incentive to manage
4 environmental risks and avoid unnecessary environmental cleanup costs.

5 **D. Northwest Natural's circumstances are different.**

6 PGE cites to Northwest Natural's Superfund deferral to support its request for this
7 deferral. NW Natural was in a very different circumstance, primarily due to the scale of
8 the cost. NW Natural has spent \$28 million on its Superfund cleanup and has an
9 additional liability of \$68 million.⁷ This is a significant amount for a utility that is
10 significantly smaller than PGE.

11 PGE's Superfund cleanup liabilities may eventually rise to the level of costs that
12 NW Natural has incurred. If they do, CUB is willing to consider a deferral or some other
13 ratemaking mechanism. However, granting PGE a deferral because a smaller utility got a
14 deferral for a bigger cost creates a slippery slope that will likely lead to abuse of the
15 deferral process.

16

17 **III. PGE's Misrepresents CUB's Position.**

18 **A. PGE claims that CUB's testimony in UM 1147 supports PGE's position in this**
19 **docket.**

20 In its filing PGE appears to misrepresent CUB's position on deferrals. According
21 to PGE:

⁶ UE 197/CUB/200/31

⁷ OPUC Order No. 08-427,

1 In CUB's Opening Comments in UM 1147, which also reference Staff's
2 table, they state (see PGE Exhibit 105):

3 A scenario event is an abrupt shift in a variable such that its financial
4 impact cannot reasonably be expected to balance out through the normal
5 course of business cycles.

6 CUB goes on to say:

7 The costs associated with scenario or paradigm events are not considered
8 when setting rates. As every business and every person is subject to the
9 risks of such events, a deferral application should also be subject to a
10 materiality test, but the threshold may be lower than that established for a
11 stochastic event.

12 **Q. Does PGE agree with Staff, ICNU, and CUB that environmental**
13 **costs are hard to predict and quantify?**

14 A. Yes. As explained above, the environmental costs in this deferral
15 request were not predictable or readily quantifiable and therefore were not
16 able to be modeled in rates. Further, the costs PGE seeks to defer are
17 substantial enough to satisfy the lower materiality threshold CUB
18 suggests.⁸

19

20 PGE did not read its Exhibit 105 very closely, because the exhibit does not say what
21 PGE is implying. CUB never said that environmental costs are hard to predict and
22 quantify. While other parties may have cited environmental costs as an example of a
23 scenario risk, CUB did not. CUB stated that a scenario event is an "abrupt shift in a
24 variable such that its financial impact cannot reasonably be expected to balance out
25 through the normal course of business cycles." As we have shown here, Environmental
26 Services is a cost that is sometimes forecast too low and sometime forecast too high. At
27 this point there has been no "abrupt shift" that can be defined as a scenario event. CUB
28 also said that the "costs associated with scenario or paradigm events are not considered

⁸ UM 1373/PGE/100/14-15.

1 when setting rates.” In this case, PGE agrees that environmental cleanup costs associated
2 with Portland Harbor, Harbor Oil, and Oak Grove were considered when setting rates.⁹

3 CUB did say that a scenario risk has a lower financial threshold than a stochastic
4 risk, but we did not say anything that suggested \$2 million crossed that lower threshold.

5 A closer reading of PGE’s Exhibit 105 shows that CUB’s position has been quite
6 consistent from that proceeding to this one:

7 In Oregon, we use forward-looking test years to establish rates. Cost and
8 revenue estimates are based upon forecasts, from which actual numbers
9 will invariably differ. The regulatory compact places this risk on both the
10 utility and on customers, as random variation goes in both directions.
11 Deviation of actual numbers from those forecast, cannot, by itself, be
12 enough to qualify for deferred accounting. Such deviation falls squarely
13 under the umbrella of the normal risk and reward balance of forward-
14 looking ratemaking.

15

16 **IV. Conclusion.**

17 CUB recommends that the Commission not grant PGE’s request for deferral.

18 PGE has not shown that the rates set in UE 197 are not just and are not reasonable. As
19 stated above:

20 Deviation of actual numbers from those forecast, cannot, by itself, be
21 enough to qualify for deferred accounting. Such deviation falls squarely
22 under the umbrella of the normal risk and reward balance of forward
23 looking ratemaking.

⁹ UM 1373/PGE/100/Behbehani-Divers-Hager/9.

WITNESS QUALIFICATION STATEMENT

NAME: Bob Jenks

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TITLE: Executive Director

ADDRESS: 610 SW Broadway, Suite 308
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EDUCATION: Bachelor of Science, Economics
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EXPERIENCE: Provided testimony or comments in a variety of OPUC dockets, including UE 88, UE 92, UM 903, UM 918, UE 102, UP 168, UT 125, UT 141, UE 115, UE 116, UE 137, UE 139, UE 161, UE 165, UE 167, UE 170, UE 172, UE 173, UE 207, UE 208, UE 210, UG 152, UM 995, UM 1050, UM 1071, UM 1147, UM 1121, UM 1206, UM 1209, and UM 1355. Participated in the development of a variety of Least Cost Plans and PUC Settlement Conferences. Provided testimony to Oregon Legislative Committees on consumer issues relating to energy and telecommunications. Lobbied the Oregon Congressional delegation on behalf of CUB and the National Association of State Utility Consumer Advocates.

Between 1982 and 1991, worked for the Oregon State Public Interest Research Group, the Massachusetts Public Interest Research Group, and the Fund for Public Interest Research on a variety of public policy issues.

MEMBERSHIP: National Association of State Utility Consumer Advocates
Board of Directors, OSPIRG Citizen Lobby
Telecommunications Policy Committee, Consumer Federation of America
Electricity Policy Committee, Consumer Federation of America

CUB Exhibit 102 is Confidential and Subject to OPUC
Protective Order No. 08-240

UM 1373 – CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of November, 2009, I served the **REPLY TESTIMONY OF THE CITIZENS' UTILITY BOARD** in docket UM 1373 upon each party listed in the UM 1373 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending the ORIGINAL and FIVE COPIES by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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UM 1373- REPLY TESTIMONY OF THE CITIZENS' UTILITY BOARD OF OREGON

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Dated this 4th day of November, 2009.

Respectfully submitted,



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