Portland General Electric Company
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PortlandGeneral.com

December 8, 2009

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
550 Capitol Street NE, Ste. 215
Salem OR, 97308-2148

Re: UM 1373 – Environmental Investigation and Remedial Cost Deferral

Attention Filing Center:

Enclosed for filing in the above captioned docket are an original and five copies of Rebuttal Testimony and Exhibits of Portland General Electric Company in Docket UM 1373 (PGE/200-202/Behbehani - Hager).

Confidential Exhibit 201 is subject to Protective Order No. 08-240 and is provided in separately sealed envelope. Please do not post Confidential Exhibit 201 on the OPUC Website.

An extra copy of the cover letter is enclosed. Please date stamp the extra copy and return to PGE in the envelope provided. Thank you in advance for your assistance.

Sincerely,

Patrick G. Hager
Manager, Regulatory Affairs

s:\ratecase\opuc\dockets\um-1373 (portland harbor)\testimony\reply\admin\cvrltr_12.08.09.doc

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing **REBUTTAL TESTIMONY AND EXHIBITS OF PORTLAND GENERAL ELECTRIC COMPANY** to be served by electronic mail to those parties whose email addresses appear on the attached service list, and by First Class US Mail, postage prepaid and properly addressed, to those parties on the attached service list who have not waived paper service from OPUC Docket No. UM 1373.

Dated at Portland, Oregon, this 8th day of December, 2009

Patrick G. Hager,
Manager, Regulatory Affairs

Summary Report

UM 1373 PORTLAND GENERAL ELECTRIC

Category: Miscellaneous

In the Matter of
PORTLAND GENERAL ELECTRIC COMPANY
Application for Deferral of Investigation and Remediation Response Costs Associated with the Portland Harbor and Harbor Oil Superfund Sites Cleanup and Restoration (w/waiver of paper service). Filed...

Filing Date: 3/31/2008

Case	OWINGS, CARLA	(503) 378-6629
Law Judge(s):	KIRKPATRICK, TRACI	(503) 378-6683

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Environmental Investigation and Remediation Cost Deferral

Table of Contents

I. Introduction

Q. Please state your names and positions with Portland General Electric.

A. My name is Arya Behbehani. I am the Manager of Environmental Services at PGE. I am responsible for compliance with environmental regulations as it pertains to the generation and distribution of electricity.

My name is Patrick Hager. I am the Manager of Regulatory Affairs at PGE. I am responsible for analyzing PGE's cost of capital, including its Required Return on Equity.

Our qualifications appear in PGE Exhibit 100, Section V.

Q. What is the purpose of your testimony?

A. The purpose of our testimony is to rebut the positions of the OPUC Staff (Staff) and the Citizens' Utility Board of Oregon (CUB). Specifically, we correct the parties' application of the Commission's two deferral considerations and demonstrate that the costs in question should be subject to the lower materiality threshold. We explain that the other parties misunderstand the timing and function of an earnings test. We also demonstrate that reauthorization of this deferral request is consistent with the Commission's past actions in NW Natural's UM 1078 (Deferral of Unrecovered Environmental Costs).

Q. How is your testimony organized?

A. After this introductory section, we address Staff and CUB's interpretations of the deferred accounting standards. First, we discuss Staff and CUB's classification of the events in this docket as 'scenario' events, and then we discuss the required financial threshold. Next, we respond to Staff and CUB's concerns regarding alternative recovery mechanisms. We then explain why PGE's and NW Natural's deferral applications are comparable. We also respond to the remaining issues raised by Staff and CUB. Finally, we summarize our request for reauthorization of this deferral.

Q. What is the current amount of environmental costs subject to deferral in 2009?

A. Through September 30, 2009, the amount of environmental costs subject to deferral is approximately $2.4 million (see PGE Exhibit 201). However, PGE expects to incur additional costs during the remainder of the deferral reauthorization period and significant costs for several years thereafter.

II. Deferral Considerations

A. Events

Q. What does Staff believe are the appropriate considerations in this docket?

A. Staff states that there are two considerations the Commission must use when reviewing a deferral application: statutory and discretionary. First, by statute, the Commission must determine if the deferral will either minimize the frequency of rate changes or match the costs borne by, and the benefits received by, customers. Second, the Commission must also use their discretion when evaluating the event and the magnitude of the associated costs.

Q. Regarding the first consideration, does Staff conclude that the application satisfies the legal requirements?

A. Yes. Staff correctly finds that PGE's application satisfies all legal requirements.

Q. Does Staff correctly apply the second of these two considerations?

A. No. Staff has incorrectly characterized the "extraordinary nature" of the events related to Portland Harbor and Harbor Oil as being foreseeable and therefore requiring a "substantial" or heightened financial impact. Further, Staff applies a significantly higher financial threshold to these events than previously supported by Staff and other parties in other deferral dockets.

Q. Why did Staff conclude that Portland Harbor and Harbor Oil are subject to a higher financial standard?

A. Staff states that the costs for the EPA's investigation into the Portland Harbor and Harbor Oil sites were modeled in PGE's last rate case (Staff/100, Owings/5) and that the specific costs that are the subject of the deferral were reasonably foreseeable.

Q. Does PGE agree?

A. No. PGE included an extremely limited amount for the investigation into the Portland Harbor and Harbor Oil sites but these amounts are not sufficient to cover the full range of costs needed to respond to the EPA's investigation or participate in the other processes necessary to reach resolution at each of these sites.

Q. Is Staff correct that these events were reasonably foreseeable when PGE filed its last general rate case?

A. No. Staff's justification oversimplifies the nature of PGE's request and the events that cause PGE to incur costs. PGE's deferral request is for costs including the investigation, study, monitoring, oversight, legal expenses, remediation costs, and all costs related to pursuing any contribution. In our direct testimony, we provided an explanation of challenges associated with forecasting environmental costs such as those related to Portland Harbor and Harbor Oil (PGE/100, Behbehani-Divers - Hager/3-9) as well as a description of the events and next steps (PGE/100, Behbehani-Divers - Hager/18-24). The costs PGE seeks to defer were neither modeled in our retail rates nor reasonably foreseeable for each of the projects at issue in this docket.

Q. What other considerations does Staff believe the Commission should use when evaluating PGE's reauthorization request?

A. Staff believes that the costs should be analyzed from the perspective of the overall environmental budget, in addition to the costs of the individual projects.

Q. Is it appropriate to evaluate a deferral request based on the department's overall budget?

A. No. There is no statutory requirement for such a comparison. In fact, the appropriate consideration is PGE's <u>entire</u> budget as exhibited through its earnings. ORS 757.259(4) requires an earnings test and a prudency review at the time that amortization of deferred costs is considered. However, an earnings test is not necessary when the Commission is considering authorization of a deferred account.

Q. Does PGE agree with Staff that these costs should also be considered on a site-by-site basis (Staff/100, Owings/11)?

A. No. Similar to variances in power cost, these costs should be looked at in whole, not in part. Evaluating these costs on a site-by-site basis is an attempt to make the costs appear diminutive and is inconsistent with prior Commission practice, which we address in more detail in Section IV.

Q. What does CUB believe is the appropriate standard for this deferral?

A. While CUB believes the applicant must demonstrate that current rates are not just and reasonable or that such rates are insufficient to allow the applicant a reasonable opportunity to recover its costs. PGE believes this is a legal discussion better addressed in briefs, but responds below.

Q. CUB alleges that PGE has not offered any evidence to support either standard as applied to this docket. Must a utility demonstrate that current rates are not just and reasonable?

A. No. This is not a statutory requirement and should be disregarded for purposes of the Commission's determination in this proceeding.

Q. CUB asserts that PGE had an opportunity to include a reasonable estimate of environmental costs in UE 197 rates. Is this correct?

A. No. As we explained in our direct testimony (PGE/100, Behbehani-Divers - Hager/9-11), PGE included its best estimate for environmental costs, which at the time, did not foresee the range or depth of costs that have subsequently come to light.

Q. CUB and Staff conjecture that perhaps there are offsetting amounts elsewhere in PGE's accounts. Is this relevant?

A. Not really. First, this falsely suggests that PGE does not consider its overall financial position before filing for a deferral. We do. In fact, PGE's earnings for 2009 are likely to be significantly below what was authorized in UE 197. PGE's most recent 10-Q and earnings guidance[1] can be used to show that PGE's 2009 earnings are expected to be below 8%, or more than 200 basis points <u>below</u> its authorized ROE. Second, as we previously mentioned, ORS 757.259 provides for an earnings test to address whether a utility has deferred costs unnecessarily, given its financial results for the deferral period. CUB's arguments selectively consider specific accounts without considering the overall financial results of the company. In addition, as mentioned earlier, an earnings test is premature. The Commission reviews a utility's earnings only in the amortization phase, not the authorization phase.

Q. CUB claims that PGE misrepresents CUB's position in UM 1147 (CUB/100, Jenks/6). Is this true?

A. We do not believe so. CUB specifically referenced Staff's table, which describes the type of events and the associated financial thresholds (see PGE Exhibit 105). When looking at the original chart, environmental costs are a specific example of a Scenario Risk (see PGE Exhibit 103).

[1] PGE's latest 10-Q and earnings release are available on PGE's website at http://investors.portlandgeneral.com.

Q. Are the unexpected costs of Portland Harbor, Harbor Oil, and Oak Grove a part of PGE's "normal risk" (CUB / 100, Jenks/8) or "business risk" (Staff/100, Owings/14)?

A. No. Outside forces beyond PGE's control drive the costs associated with these projects. They are not predictable, are not included in PGE's normal risk, and were not included in the UE 197 test year.

B. Financial Threshold

Q. Please comment on CUB's discussion regarding environmental costs varying from forecasts.

A. For the 2005 through 2007 period, the variances in overall Environmental Services Department costs and environmental costs in the Legal Department net to a detriment to PGE of approximately $50,000. During this period, PGE did not request a deferral for environmental costs. However, PGE has requested to defer costs beginning in March 2008. During 2008, environmental costs were more than $2.1 million greater than what was forecast during UE 180.

Q. Is comparing these higher costs to PGE's overall revenue requirement a useful comparison?

A. No. CUB averages environmental costs for the period of 2005 through 2008, arriving at a figure of $500,000, which is compared to PGE's approximate $1.7 billion revenue requirement. As previously mentioned, 2005 through 2007 are not years during which PGE sought to defer environmental costs. The amount for 2008 is $2 million. Even so, total revenue requirements are not a good comparator since they mask the impact to the company of higher costs. A more appropriate comparison is return on equity, which for 2008 translates into approximately 15 basis points of ROE.

Q. Does PGE agree that there is an expected amount of environmental costs every year?

A. Somewhat. Certain environmental costs such as the cleanup of insulating fluids from transformers are predictable and are included in PGE's budgets for ratemaking purposes. However, environmental costs for projects such as Portland Harbor, Harbor Oil and Oak Grove, tend to be large, non-recurring, spread over many years, annually uncertain, and are typically excluded from base rates as a result (PGE/100, Behbehani-Divers - Hager/6-7). At the time the budgets for the UE 197 test year were prepared, PGE developed its best estimate given the information available. We have explained at length the uncertainty associated with environmental cleanup projects as well as the specific projects in question (PGE/100, Behbehani-Divers - Hager/3-11). The events that led to the processes involving Portland Harbor, Harbor Oil, and Oak Grove were extraordinary, and were not predictable.

Q. Can you provide any examples where PGE has been granted a deferral for costs that were extraordinary relative to what was forecasted in rates?

A. Yes, the 2005-2006 extended Boardman outage is such an example. While PGE includes a forecast of forced outages for its thermal plants, the extraordinary nature of the extended Boardman outage led PGE to file for a deferral for a portion of the costs (OPUC Order No. 07-049).

Q. Does Staff propose a definition of materiality?

A. Yes. Staff states in reference to PGE's estimated costs for 2009 that "[s]taff does not believe that non-recovery…would represent a severe financial impact for PGE" (Staff/100, Owings/4). Staff further states that "[f]or isolated costs between rate cases that the utility identifies as unpredictable and difficult to quantify, the materiality threshold should be held to a standard that the effect non-recovery of the costs would cause severe financial consequences for the utility" (Staff/100, Owings/13).

Q. Does Staff provide any quantification of what a "severe financial impact" is?

A. No.

Q. Is PGE aware of any final orders or other documentation where the Commission has defined "materiality"?

A. PGE is not aware of any and when asked, Staff did not provide any. PGE Exhibit 202 contains Staff's response.

Q. Should the Commission hold PGE to Staff's definition of materiality?

A. Absolutely not. "Severe" financial harm is seemingly, by definition, worse than either material or substantial financial harm and is not an appropriate standard when considering the magnitude of costs in a deferral.

Q. Does PGE believe that the magnitude of the financial impact associated with the environmental costs deferred meets the lower materiality threshold?

A. Yes. The materiality threshold is a lower financial test. It is intended to avoid deferral applications for de minimis amounts. The deferred amount in this docket is currently $2.4 million and expected to increase. This is a material amount and sufficient to warrant deferred accounting treatment.

Q. Does Staff comment on PGE's participation in environmental matters?

A. Yes. Despite their lack of support for cost recovery and contrary to the majority of their testimony, Staff supports PGE's participation because those actions potentially benefit customers (Staff/100, Owings/4). These statements corroborate our explanation in direct testimony that customers will benefit from PGE’s participation (PGE/100, Behbehani-Divers - Hager/11-12).

Q. Is PGE currently recovering its costs to participate in these potentially customer-beneficial activities?

A. PGE is recovering only a minimal portion of its costs, which it is using to offset deferred amounts.

III. Alternative Mechanisms

Q. Does PGE agree with Staff that cost trackers can potentially create perverse incentives for a utility?

A. Not necessarily. A well-constructed tracking mechanism would enable PGE to recover prudently incurred costs associated with projects such as Portland Harbor, Harbor Oil, and Oak Grove, and would provide appropriate incentives.

Q. What are some of the advantages of having such a mechanism?

A. As discussed in our direct testimony (PGE/100, Behbehani-Divers - Hager/17), an adjustment mechanism would limit volatility and ensure that customers benefit from insurance proceeds. Such a mechanism would also provide an incentive for PGE's continued participation in these cost-reducing activities and would assure that PGE does not under-collect or over-collect environmental costs.

Q. Are adjustment mechanisms limited to recovery of substantial costs such as resource costs as Staff implies (Staff/100, Owings/16)?

A. No. For example, parties in UE-115 agreed to establish a mechanism whereby certain IT-related costs would be tracked over time and the variance, if any, would be refunded to customers. The annual refund amount was approximately $4.2 million in years 2004 through 2007.

Q. Please respond to Staff's implication that PGE "shifts" costs to make them undetectable during a Staff audit (Staff/100, Owings/14-15).

A. This is patently false. The example given in Staff's testimony is not on point. PGE moved the costs to the Environmental Services Department because they are primarily responsible for the oversight of the activities in question. The movement of a particular cost from one

RC to another is not relevant. The inappropriate movement of a cost to an account eligible for the deferral would be relevant. This example is not such an occurrence. It also highlights Staff's incorrect thinking on earnings tests. The statute is clear. An earnings test is to be done on the utility's overall earnings, which would pick up the cost.

IV. NW Natural

Q. Staff and CUB claim that PGE's deferral request is different from NW Natural's deferral. Is this correct?

A. Well, no one would deny that the deferrals are different, but these deferrals are more similar than Staff or CUB assert.

Q. Why does Staff believe NW Natural's deferral differs from PGE's deferral?

A. For three reasons:

1) The Commission's decisions on NW Natural's deferral predate Order No. 05-1070;

2) The costs at issue since 2005 have a much more significant impact on NW Natural than the costs at issue in PGE's application; and

3) NW Natural has incurred more costs.

Q. Are these reasons justification for treating PGE's deferral differently?

A. No. We respond to Staff's reasons in the same order as above:

1) Although NW Natural did file their initial deferral before Order 05-1070, they must request reauthorization annually, including in the years subsequent to Order No. 05-1070. Thus, the methodologies advocated for in this order should then be applied to NW Natural's reauthorization requests, but have not been. Further, Order No. 05-1070 did not establish a new Commission policy, but articulated the policies the Commission had applied to deferred accounting applications.

2) Initially, project costs did have a significant impact on NW Natural, but their annual reauthorization requests indicate that four projects have been added since 2007 that have very small incurred costs or expected liabilities. At the time those projects were added, the average incurred amount was less than $10,000 and the average liability was $50,000.

These projects' costs are significantly lower than the dollar amount in PGE's original deferral and the amount in question in this reauthorization request.

3) NW Natural and PGE are acting in a manner they believe prudent, which for NW Natural yields front-loaded costs and for PGE yield back-loaded costs. The regulatory treatment should be the same for each, as we discuss more below.

Q. Should the timing of costs dictate whether PGE should be granted a deferral for prudently incurred environmental costs?

A. No. Consideration must be given to the potential overall costs for the sites in question and whether the utility is acting prudently to minimize those costs.

Q. Please address CUB's claims that the circumstances are different for NW Natural, primarily due to the magnitude of the costs.

A. It appears that NW Natural has chosen in a number of cases to participate in remediation activities upfront and have therefore incurred higher costs to date. PGE's approach has been to participate in the process <u>prior</u> to remediation because it can potentially reduce overall costs. NW Natural's actions are likely prudent given their circumstances. PGE's actions are prudent given its set of circumstances. However, these different sets of prudent actions yield different expense patterns – one front-loaded and one back-loaded. The regulatory treatment should be the same.

V. Miscellaneous Issues

Q. CUB states that PGE should have an incentive to manage environmental risks and avoid unnecessary costs. Does PGE agree?

A. Yes. However, granting reauthorization does not remove PGE's incentive. As previously discussed, the deferral will be subject to an earnings test and a prudence review.

Q. Would denying deferrals such as this one create disincentives for prudent actions?

A. It could. PGE is acting prudently in an effort to reduce costs for customers and should be given the opportunity to recover these costs. Not granting the deferral could act as a disincentive to take these actions, and instead provide an incentive for the utility to either 1) incur large costs upfront in order to pass the applicable financial threshold or 2) budget for costs that are inherently unpredictable and would normally be deemed too speculative for a general rate proceeding.

Q. Please respond to Staff's comment that they would not have supported the first deferral application if they had known what the costs would be.

A. Consistent with the unforeseeable nature of the costs in question, PGE was not able to reasonably estimate the costs associated with Portland Harbor and Harbor Oil at the time of its initial deferral filing. We provided our best estimate given the information available at the time. Nevertheless, the timing (and the costs) of these environmental costs are generally outside of PGE's control. Staff did recommend that the Commission authorize PGE's deferral request, which is further support that these costs were unknown and therefore should be subject to the lower materiality threshold.

Q. Does Staff provide guidance as to whether they would support updates to forecasted costs in a general rate case?

A. No. When asked, Staff will not commit to whether they will allow for an update. Further, Staff indicates that inclusion of updated costs is subject to the particular Staff member conducting the analysis (see PGE Exhibit 202).

Q. Please address other issues put forth by Staff (Staff/100, Owings/18).

A. Staff points out that a large portion of PGE's deferral request is comprised of accrued expenses. PGE understands Staff's desire to focus on amounts actually expended, but the deferral process allows that to happen as, over time, accruals are replaced with actual expenditures. Since we expect to seek future reauthorizations until the remediation is complete, there will be a true-up to actuals.

VI. Conclusion

Q. Should the Commission reauthorize PGE's deferral?

A. Yes. PGE's request meets the statutory requirements and the costs PGE seeks to defer were neither modeled in rates nor reasonably foreseeable for each of the projects at issue in this docket. As such, the projects should be subject to the lower materiality threshold, which PGE meets and is supported by the Commission's continued reauthorization of NW Natural's deferral in UM 1078.

Additionally, PGE has taken a conservative, customer-focused approach to control the costs of these environmental projects. In attempting to limit costs to PGE and its customers, PGE should have an opportunity to recover these prudently incurred costs.

Q. If the Commission does not grant reauthorization, should it authorize PGE to recover environmental costs through an alternative mechanism?

A. Yes. The Commission should allow PGE recovery through an alternative mechanism such as those discussed in our direct testimony (PGE/100, Behbehani-Divers - Hager/17). Either mechanism would enable PGE to include environmental costs and insurance proceeds, while also granting PGE the opportunity to recover prudently incurred costs. Should an alternative mechanism be adopted, PGE should be granted the opportunity to recover its costs between March 2009 (the beginning of the reauthorization period) and implementation of the alternative method through deferral of such costs.

Q. Does this conclude your testimony?

A. Yes.

List of Exhibits

PGE Exhibit	**Description**
201	Summary of Environmental Costs
202	Copy of OPUC Staff's Response to PGE Data Request Nos. 001 and 002

Oregon Public Utility Commission Staff Response

UM 1373

Portland General Electric's First Set of Data Requests to OPUC

Dated November 18, 2009 – Due December 4, 2009

Data Request No. 001

Staff Responder: Owings

Request No. 001:

Please provide copies of all final orders or other documents in which the Oregon Public Utility Commission has defined, or Staff has taken a position with respect to the definition of, "materiality" for the purposes of deferred accounting.

Response:

Staff objects to PGE's request for final orders of the Commission and other documents that are publicly available, such as published staff testimony, as overly burdensome. All final orders are public documents and readily available to the Company to search. Similarly, testimony in which staff may have taken a position on the definition of materiality for purposes of deferred accounting would have been published after 2001, and is available on the OPUC website. To the extent that the request encompasses documents that are not publicly available, Staff has no knowledge of any such documents in Staff's possession where the Commission or Staff has defined (or specified in dollars) "materiality" for the purposes of deferred accounting.

Oregon Public Utility Commission Staff Response

UM 1373

Portland General Electric's First Set of Data Requests to OPUC

Dated November 18, 2009 – Due December 4, 2009

Data Request No. 002

Staff Responder: Owings

Request No. 002:

What is Staff's position, during a rate proceeding such as a general rate case, on a utility's ability to increase its forecasts of costs because of new information? Please provide copies of any documents that reflect Staff's position.

Response:

Staff's position regarding a utility's request to increase its forecasts of costs because of new information can vary during a rate proceeding based upon the basis of the Company's new information and the Staff that is analyzing the information. There is no set policy related to whether or not new information can be introduced by the utility into a rate proceeding after the initial filing.