

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1256/UM 1257/UM 1259

In the Matters of)	
)	
PACIFIC POWER & LIGHT COMPANY)	
(dba PacifiCorp) (UM 1256))	
)	
PORTLAND GENERAL ELECTRIC)	ORDER
COMPANY (UM 1257))	
)	
and)	
)	
IDAHO POWER COMPANY (UM 1259))	
)	
Applications for Deferred Accounting)	
Treatment of Grid West Loans.)	

DISPOSITION: APPLICATIONS GRANTED

Background

In late March and early April 2006, Portland General Electric Company (PGE), Pacific Power & Light Company (PacifiCorp), and Idaho Power Company (Idaho Power) (collectively, utilities) filed applications with the Public Utility Commission of Oregon (Commission) for an Order authorizing a deferral, pursuant to ORS 757.259, of certain expenses relating to the development of a regional transmission organization (RTO) known as Grid West.

In May 2000, each of the utilities entered into a Funding Agreement (Agreement) with Grid West wherein the utilities agreed to advance development funds to Grid West. The Agreement contemplated that the funds would be repaid from surcharges in rates, once Grid West became operational. In April 2006, however, Grid West voted to dissolve. In anticipation that funds advanced to Grid West would become unrecoverable, each utility filed a request for deferred accounting treatment for those amounts.

At the Commission's May 10, 2006 public meeting, the Commission Staff (Staff) recommended approval of the deferral applications. The Industrial Customers of Northwest Utilities (ICNU) opposed Staff's recommendation, and argued that the requests did not meet requirements set forth in ORS 757.259. The Commission delayed action on the applications, and requested the parties provide additional argument on the disputed issues.

A telephone conference was held on May 24, 2006, at which the parties agreed to a briefing schedule to address two issues. In accordance with this schedule, Staff provided an Initial Analysis of the issues on June 16, 2006; ICNU, PacifiCorp, and PGE submitted responses to Staff's Initial Analysis on July 10, 2006; and all utilities submitted replies to ICNU's response on July 28, 2006.

Discussion

The parties identified two issues to be resolved in this proceeding. The first is a threshold question as to when the costs at issue were actually incurred. ORS 757.259(4) provides that the Commission may authorize a deferral of expenses "beginning with the date of the application." Accordingly, in order to be eligible for deferral, expenses must be incurred after the applications for deferral are submitted. The parties disagree as to when the expenses at issue in this proceeding were actually incurred.

The second issue deals with whether or not the expenses meet the requirements of ORS 757.259(2)(e), which provides that deferrals are appropriate for:

Identifiable utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.

In the event that the expenses are statutorily eligible, we must also determine whether granting the deferral is an appropriate exercise of Commission discretion. As was discussed in depth in docket UM 1147, we consider both the nature of the event triggering the need for a deferral and the potential harm caused by denying deferred treatment in making this fact-specific determination. *See* Order No. 05-1070 at 7 (adopting general principles of deferred accounting). We discuss each issue in turn.

I. Do the utility requests seek to defer expenses incurred prior to the date of application?

In its Initial Analysis, Staff finds that expenses will not be incurred by the utilities until such time that the loans made to Grid West become unrecoverable. Staff explains that, according to Generally Accepted Accounting Principles (GAAP), an unpaid loan is held in the "receivables" column of a balance sheet in the form of a promise to pay (in this case, promissory notes) unless the loan becomes unrecoverable, at which point it must be "written-off" as a current expense. Therefore, Staff finds that the actual expenses associated with the Grid West loans will be incurred when the debt becomes unrecoverable, and therefore after the submission of the applications for deferral.

Staff contends that this interpretation is consistent with the language of the statute and the Commission's deferred accounting principles adopted in Docket

UM 1147. *See* Order No. 05-1070. Staff maintains that consistent with the Commission’s statutory discretion and a “flexible, fact-specific review approach,” the Commission should interpret “identifiable utility expense” as being broader than the act of spending. *Id.* at 1. The utilities generally agree with Staff’s Initial Analysis.

ICNU contends that the Grid West expenses are ineligible because they were incurred when the money was actually spent, and therefore prior to the utilities’ deferral applications. ICNU argues that the Commission should adopt the plain meaning of the word “expense,” which is the act of spending. In addition, ICNU argues that this interpretation is consistent with the Commission’s general policy against retroactive ratemaking. According to ICNU, Staff’s reliance on GAAP has no statutory authority and its application in this case simply labels what are actually past expenses as “loans” and allows deferrals of expenses that would not otherwise be eligible. In addition, ICNU argues that allowing deferral in this case will lead to further misuses of the statute.

The utilities generally disagree with ICNU’s assertions. Idaho Power and PGE argue that ICNU’s plain meaning of the term “expense” as the actual spending of money ignores other important meanings of that word. According to Idaho Power, an elaboration of the plain meaning of “expense” only includes outlays which are chargeable against revenue for a specific period. Under this definition, a loan is not “spent” in the traditional sense because it is not chargeable to any good or service consumed. Furthermore, the utilities contend that it is perfectly logical for the Commission to rely on GAAP when exercising its interpretive discretion.

Conclusion

We agree with Staff’s Initial Analysis. GAAP¹ notwithstanding, logic dictates that a loan is not an expense at the time it is made simply due to the expectation that it will be repaid. Were this not so, the utilities would be required to apply for a deferral prior to making any loan to protect itself from the possibility of default, despite reasonable expectations that those funds will later be repaid. We decline to interpret the statute so narrowly as to reach an absurd or unreasonable result. *See James v. Carnation Co.*, 278 Or 65, 72-73 (1977).

ICNU’s argument may be valid if the Grid West transactions were not, in fact, loans. We find no support for this, however. The Agreement submitted by the utilities specifically describes the transactions as loans, and include interest rates and repayment terms.

Similarly, we are not persuaded that adopting this interpretation will lead to a new loophole that would allow utilities to misuse deferred accounting. We have significant discretion and flexibility to grant or deny deferral applications, and we do not

¹ The Commission has previously relied on GAAP to inform accounting and statutory interpretation decisions. *See, e.g., In the Matter of MidAmerican Holdings Co. Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp*, Order No. 06-082 (Feb. 24, 2006); *In the Matter of a Rulemaking to Amend OAR Chapter 860, Divisions 021, 032, and 034 to Adopt Rules to Implement HB 2578*, Order No. 99-734 (Nov. 30, 1999).

believe it will be difficult to discern actual loans from past expenses masquerading as loans. *See* Orders No. 05-1070 and 04-108.

Having found that the utilities' loans to Grid West are eligible expenses for deferred accounting, we now turn to whether or not granting the deferral is appropriate.

II. Are the expenses appropriately subject to deferral under ORS 757.259(2)(e)?

A decision regarding a request to defer costs under ORS 757.259 involves two stages of review. The first stage is to determine whether or not the expenses qualify under the applicable statutory language. Staff contends that utility participation in developing regional transmission authorities such as Grid West is consistent with the Commission regulatory policy and will benefit customers. Therefore, Staff concludes that the statutory requirement that a deferral "match appropriately the costs borne by and benefits received by ratepayers" is met. ORS 757.259(2)(e). Staff maintains that this is consistent with the Commission's use of deferred accounting to "encourage utility or customer behavior consistent with regulatory policy." Order No. 05-1070 at 2. Staff also points out that the Commission has discretion to determine the types of benefits that it deems consistent with regulatory policy and that the statute does not require that an activity reach fruition in order for it to be beneficial to customers. The utilities generally agree with Staff's analysis.

ICNU disagrees with Staff and the utilities, contending that because Grid West is now dissolved, "there is no possible way in which these costs can be matched to a time in which ratepayers will receive any benefits." ICNU letter to Comm'n at 3 (May 8, 2006). ICNU urges that this is so even if utility participation in Grid West development activities eventually contributes to the creation of a Northwest RTO because Grid West development costs cannot be matched to any Grid West benefits. ICNU also contends that granting the deferrals here is not appropriate to minimize the frequency of rate changes or fluctuations because the utilities have not demonstrated with sufficient specificity the basis upon which rate changes or fluctuations would be reduced.

Staff and the utilities respond to ICNU's interpretation of the matching requirement by claiming that it inserts a temporal requirement into the equation that is unsupported by statutory language. PGE also points out that the statute requires that *either* the matching standard or the minimization of rate changes standard be met in order to justify deferral, and therefore the utilities are not required to show, in addition to the matching standard, that this deferral will minimize rate changes.

The second stage of the analysis under ORS 759.259 is to determine whether the Commission should exercise its discretion to grant the deferral. The utilities generally maintain that granting a deferral here is consistent with the Commission's general policies regarding its discretion in making deferred accounting decisions as described in Docket UM 1147. The utilities claim that due to the unforeseeability of Grid West's dissolution, the risk was not "reasonably predictable and quantifiable" and

therefore the harm resulting from the inability to recover the Grid West loans need only be material in order to justify deferred accounting. *See* Order No. 05-1070 at 7.

ICNU responds that Grid West's failure was predictable and was easily quantifiable. It points out that there have already been two failed attempts to establish a Northwest RTO and that Grid West's formation was controversial. In addition, ICNU points out that the amounts contemplated in the Funding Agreement were established at the outset, were quantifiable, and are not large enough in any case to cause significant injury. Therefore, ICNU also urges that the magnitude of harm is not substantial enough to warrant deferred accounting.

Conclusion

We find that utility efforts to assist in the development of a Northwest RTO are consistent with our regulatory policy and will benefit ratepayers. The purpose of an RTO is to promote efficiency in wholesale electricity markets and ensure that electricity consumers pay the lowest possible prices for reliable service. *See* FERC Order No. 2000 at 1. Pursuant to this, and to Federal Energy Regulatory Commission (FERC) mandates, we have allowed utilities to include RTO development costs in rates, and we consider doing so good public policy. *See, e.g.,* Order No. 00-702 (Oct. 30, 2000); FERC Order No. 2000 (Feb. 25, 2000).

We are not persuaded by ICNU's contention that the benefits of a particular utility activity must be matched in time to the costs associated with that activity. ICNU raised the same argument in Docket UM 1147. *See* Order No. 05-1070 at 4. In that docket, we declined to adopt a "benefit over time" requirement, finding that whether or not the matching standard is satisfied requires flexibility and "an examination of the facts presented on a case-by-case basis." *Id.* at 5.

Therefore, we find that the expenses are eligible under the statutory language. We decline to address whether the utilities have sufficiently established that granting the deferral will minimize the frequency or fluctuations of rate changes because, as we determined in UM 1147, it is necessary that only one of the prongs in the statute be satisfied.

We also find that granting a deferral here is an appropriate exercise of our discretion. The default by Grid West of its obligation to repay the loan amounts was not recognized in rates. Moreover, given FERC's issuance of Order 2000 mandating the formation of RTOs, as well as FERC's approval of Grid West's preliminary formation filings, we agree with the utilities that the risk of Grid West's dissolution was not "reasonably predictable and quantifiable." The previous failures cited by ICNU that occurred prior to FERC's Order 2000 carry little weight in establishing the foreseeability of failure by Grid West. Though Grid West may have been controversial from the outset, we think it incongruous to encourage utilities to actively participate in the development of an RTO while simultaneously predicting its demise. Therefore, the utilities' applications for the deferral of the costs of unrecoverable Grid West loans are granted,

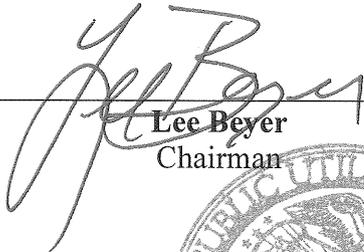
and costs will be amortized consistent with Staff's recommendations set forth in its May 3, 2006 Public Meeting Report.

ORDER

IT IS ORDERED that:

1. PacifiCorp, Portland General Electric Company, and Idaho Power Company requests to defer costs associated with loans provided to Grid West at the Federal Energy Regulatory Commission mandated rate of interest, pursuant to ORS 757.259(2)(e), are granted, effective the date that the loans are written-off and become an expense, but not before the date that the deferral application was submitted and no later than 12 months after the date of the application.
2. PacifiCorp, Portland General Electric Company, and Idaho Power Company may apply interest at their respective authorized cost of capital as of the date of the asset write-off to the amortization phase of the deferred amount.
3. Ratemaking treatment to amortize these costs is reserved for a ratemaking proceeding.

Made, entered, and effective AUG 22 2006.

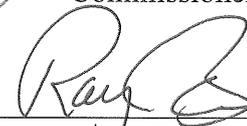


Lee Beyer
Chairman





John Savage
Commissioner



Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.