

ORDER NO. 03-543

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1039

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC)	
COMPANY)	ORDER
)	
Application for an Order Approving)	
Deferral of Changes in Power Costs)	

DISPOSITION: ACTIONS PRIOR TO SEPTEMBER 12, 2001, INCLUDED; PROCEDURE ESTABLISHED

On June 16, 2003, Administrative Law Judge (ALJ) Thomas G. Barkin issued a memorandum reopening this docket to review the prudence of Portland General Electric's (PGE) Net Variable Power Costs (NVPC). At a telephone conference on June 30, 2003, the parties asked the Commission to address two preliminary issues that are necessary to establish the scope of the docket. Briefs were filed on July 18, 2003. Reply briefs were filed July 25, 2003. The first issue is how far back in time should the Commission go to review power costs. The second issue is which party has the burden of presenting evidence. The ALJ held a conference with the parties on September 3, 2003.

On August 13, 2003, PGE submitted its Power Cost Adjustment (PCA) Major Drivers Report, for the period October 2001 through December 2002.

Background

In Order No. 01-777, the Commission adopted a power cost stipulation between PGE, the Citizens' Utility Board (CUB), the Industrial Customers of Northwest Utilities (ICNU), Fred Meyer, and Commission Staff (Staff). The stipulation included Schedule 127, a power cost adjustment mechanism (PCA) for the period October 1, 2001 to December 31, 2002 (relevant period). The PCA was designed to establish how PGE accounted for variations between expected power costs and energy revenues and actual power costs and energy revenues. The PCA also includes a method for the company and its customers to share the benefits and burdens of the variations.

In Order No. 02-894 (UE 145), the Commission approved a stipulation regarding the PCA.¹ The stipulation states that the PCA would be subject to a prudence review and audit and provides a true-up provision for prudence adjustments.

PGE's current estimate of the balance in its PCA account at the end of the relevant period is \$38.3 million.

Operation Of The PCA

The purpose of the PCA is to provide a mechanism for changing customer rates between rate cases, based on deviations in power costs and energy revenues from those associated with base rates set in the rate order. The PCA is particularly useful during periods when it is difficult to predict the cost of acquiring power to serve customer loads.

PGE's Schedule 127 establishes a PCA account, in which PGE records collections of power costs and energy revenues that are above or below the base line set in the rate order.

In its Staff Report attached to Order No. 01-1108 (UM 1039), Staff described the operation of the PCA as follows:

Consistent with PGE Tariff Schedule 127, PGE will track variations between actual NVPC and actual Energy Revenues from Base NVPC and Base Energy Revenues (as those terms are defined in Schedule 127 and the Stipulation) over the 15 months from October 1, 2001 through December 31, 2002 (PCA Period). The difference ((actual NVPC-Base NVPC)-(actual Energy Revenues-Base Energy Revenues)) is referred to in this application and Schedule 127 as "Power Cost Variance." This application requests Commission approval to defer any differences between Schedule 127 refunds/collections, which are based on rolling forecasts of the Power Cost Variance, and the actual adjustment amount over the PCA period, as defined in Schedule 127.

PGE will update a forecast of the Power Cost Variance for the PCA period on a quarterly basis and will adjust Schedule 127 to charge or credit to customers on a prospective basis the Power Cost Adjustment rate described in Schedule 127 over the remaining period until December 31, 2002. The Power Cost Adjustment Rate is an automatic adjustment clause, as defined in ORS 757.210(1). Amortization of any amount deferred, pursuant

¹ On January 7, 2003, the Commission approved an amended stipulation. Order No. 03-004. The amendment does not affect this case.

to this application and remaining in the Power Cost Adjustment account described in Schedule 127 shall occur after the end of the PCA period. PGE seeks to defer the above-described amounts from October 1, 2001 until September 30, 2002, at which time PGE will seek reauthorization of this deferral.

DISCUSSION AND CONCLUSIONS

The parties identified two issues requiring resolution before this matter can proceed.

Should The Prudence Review Be Limited To Actions Taken By PGE After The Conclusion Of Docket UE 115?

Positions of the Parties

The first issue is whether the Commission should review the prudence of actual NVPC incurred as a result of decisions made and contracts entered into prior to September 12, 2001. The parties agree that NVPC from contracts entered into after September 12, 2001, and the management of power purchase contracts during the relevant period, are subject to this prudence review. The September 12, 2001, date is important because the rates approved in Order No. 01-777 (UE 115) were based, in part, on evidence of PGE wholesale power contracts and MONET computer runs as of September 12, 2001. The Base NVPC in the PCA was set based on the computer runs that concluded on September 12, 2001.

PGE. PGE argues that this docket should focus on the excess power costs that it deferred. It asserts that the docket should not examine PGE's decision to commit to wholesale power contracts or to make other financial commitments prior to the final run on September 12, 2001. PGE contends that the prudence of those earlier commitments was established in Order No. 01-777 and cannot be addressed here.

PGE asserts that Schedule 127, the deferral order, and the stipulation on the scope of the prudence review support its position. PGE points to the stipulation attached to Order No. 02-894. Paragraph 7 of the stipulation states, "All amounts included in the Power Cost Variance (PCV) shall be subject to a prudence review and audit." PGE notes that Schedule 127 defines Power Cost Variance as the "difference between actual and Base NVPC less the difference between actual and Base Energy Revenues for the period October 2001 through December 2002."

PGE observes that Paragraph 16 of the same stipulation provides, "All amounts included in the PCA account shall be subject to a prudence review and audit." PGE asserts that the phrase "PCA account" refers to the account established pursuant to Schedule 127 to record variations captured by the PCV. According to PGE, the amount included in the account is based on the PCV after adjustments specified in Schedule 127.

PGE contends the references to the 2002 PCA account and the PCV in different places in the stipulation are immaterial to the issue in this proceeding.

Further, PGE asserts that Order No. 01-1108 (UM 1039) authorizing PGE to defer amounts for the PCA, referred to NVPC, as defined in Schedule 127, *i.e.*, NVPC incurred between October 2001 and December 2002. In contrast, Base NVPC, as defined in Schedule 127, is the NVPC used to set UE 115 base rates, *i.e.*, NVPC incurred prior to September 12, 2001.

In addition, PGE contends that the prudence of power purchase contracts signed prior to September 12, 2001, was an issue in UE 115. PGE argues that the issue was closed when the Commission issued Order No. 01-777. PGE claims that when it made the contracts available in the course of the docket, none of the parties raised objections. PGE argues that it would be inequitable and unfair for the parties to get a second chance to challenge contracts that were the subject of a stipulation and were authorized for inclusion in the base rates by the Commission in UE 115.

Furthermore, PGE offers practical reasons why the docket should not include contracts entered into prior to September 12, 2001. PGE argues that even if one of those contracts were shown to be imprudent, it would not affect PGE's ability to collect the balance in its PCA account. PGE states that the contract would be excluded from both the Base and actual NVPC. The balance of the PCA account would remain unchanged.

Finally, PGE argues that challenges to the contracts at this stage would violate the rule against retroactive ratemaking. PGE argues that the UE 115 rates were final and that a disallowance would constitute an after-the-fact adjustment. PGE contends that such an adjustment would be a refund from the UE 115 rates to offset against the balance in the PCA account.

Staff. Staff argues that any actions taken by PGE that contributed to actual NVPC and Energy Revenues for the period October 1, 2001, through December 31, 2002, should be subject to the prudence review. It notes that adoption of PGE's position limiting review to the amount of the PCV would remove from Commission consideration \$673.1 million or 81 percent of the total NVPC incurred during the period the PCA was in effect. Staff claims that while the Commission did find that the \$673.1 million was part of an overall NVPC resulting in just and reasonable rates, it did not make findings on the prudence of those power contracts.

Staff also urges the Commission to reject PGE's argument that the prudence of power costs prior to September 12, 2001, is irrelevant because an adjustment to a contract would reduce both Base and actual power costs. Staff argues that the amount of the PCV is not at issue. It notes that even if the PCV were zero, the NVPC could still be too high due to imprudent actions. In such a case, customers would be entitled to an adjustment in rates.

Staff also contests PGE's assertion that a prudence review would constitute an after-the-fact adjustment to PGE's overall base rates. Staff contends that the prudence review would look at the PCA balance and possibly require adjustment to Schedule 127 rates. Staff also states that it is not seeking a refund. Rather, it is only looking to see if there should be a change to the amortization of the PCA balance.

ICNU. ICNU points to the stipulation to support its position that all NVPC, even those expenditures committed to prior to September 12, 2001, should be considered in this prudence review. The stipulation provides, "All amounts included in the 2002 PCA account shall be subject to a prudence review and audit." ICNU notes that the stipulation refers to *all amounts* in the 2002 PCA account, not just the amounts committed to within a particular time period.

ICNU asserts that PGE's position undercuts the purpose of the prudence review. It claims the parties to the stipulation agreed to a method and date for calculating the baseline. ICNU contends that the amended stipulation did not specify which contracts were included in baseline power costs or resolve any prudence issues. ICNU asserts that, while the UE 115 order approved the overall rates as just and reasonable, it did not make any decisions on any particular contracts.

ICNU claims that, regardless of the impact of the final decision in UE 115, the stipulation creates independent authority to review all the costs that contributed to the PCA balance.

ICNU also challenges PGE's assertion that a Commission decision to disallow contracts entered into prior to September 12, 2001, would violate the rule against retroactive ratemaking. ICNU claims that, under Schedule 127, any changes in rates would be effected by a change to a future rate adjusting the amount of amortization. ICNU also claims the language in the amended stipulation authorizes the Commission to recalculate the PCV to account for findings of imprudence. ICNU contends that this language specifically allows a change in Schedule 127 to account for findings of imprudence.

Finally, ICNU argues that the language in the amended stipulation specifying that all amounts included in the 2002 PCA account shall be subject to a prudence review and audit is unambiguous. ICNU argues that this language allows a broad review of all factors that contributed to the 2002 PCA account balance.

Commission Disposition. We find that the language of the stipulation regarding the limits of the prudence review is ambiguous. In the first place, the prudence review is mentioned at two places in the stipulation. Paragraph 7 refers to a prudence review of the PCV. Paragraph 16 refers to a prudence review of the "2002 PCA account."

Second, the parties focus on different portions of the passages specifying the prudence review. PGE relies on the phrase “Power Cost Variance” and the definition of the term in Schedule 127, which refers to the “difference” between actual and baseline power costs and energy revenues. ICNU and Staff direct our attention to the phrase “all amounts.”

We find PGE's explanation of the stipulation unpersuasive. Paragraph 7 of the stipulation states, “All amounts included in the Power Cost Variance shall be subject to a prudence review and audit.” If we insert the Schedule 127 definition of Power Cost Variance into the language of the stipulation, as PGE suggests, the sentence would refer to *all amounts included in the difference between actual and baseline power costs and energy revenues*. PGE offers us no explanation of what amounts in the difference could possibly be ignored had the parties chosen not to include the word “all” in the stipulation. In effect, PGE reads the word “all” out of the stipulation.

ICNU's and Staff's interpretation results in a more complete reading of the stipulation. The terms actual and Base NVPC and Energy Revenues in Schedule 127 refer to dollar amounts for the cost of power and revenues from energy. Hence, the term “all amounts in the Power Cost Variance” would include all amounts that are components of the calculation of the “difference.”

Accordingly, we conclude that Staff and ICNU should be free to explore the prudence of all the NVPC and Energy revenues that make up the PCV. That includes contracts and commitments entered into prior to September 12, 2001. To succeed on any claim related to these earlier actions, however, Staff and ICNU must present competent evidence to challenge PGE's evidence that the rates are just and reasonable.

In reaching this decision, we disagree with PGE that we must limit our review because of the rule against retroactive ratemaking. In this order, we conclude that the proper interpretation of the stipulation authorizes review of power costs resulting from contracts entered into prior to September 12, 2001. It follows that PGE agreed to this review. Second, we always reserve our right to review utility actions for prudence. As all the parties are aware, remedies for imprudent actions must be forward looking. Should we conclude that remedies are required in this proceeding, we will take care to insure that the rule against retroactive ratemaking is observed.

Finally, concluding that adopting the Staff and ICNU position could result in retroactive ratemaking is premature at this point. Staff and ICNU have not had an opportunity to review the contracts. We do not know whether they will claim, or if we will find, imprudent actions. Even if there are imprudent actions, we do not know what remedies, or adjustments to the PCA account balance, should be implemented. For these reasons, it is unnecessary to address PGE's practical argument about how an adjustment for imprudence would be implemented.

Should The Prudence Review In Docket UM 1039 Be Limited To Specific Claims Of Imprudence Identified By Staff And Intervening Parties?

At the September 3, 2003, conference, the parties resolved this issue by developing a process to help identify and develop the issues in this proceeding. All parties agreed that PGE has the burden to demonstrate that the proposed rates are just and reasonable. The parties further agreed that Staff and ICNU would submit advisory issues lists following the issuance of this order. PGE would prepare its direct testimony responding to those issues and include additional information about its overall net variable power costs and energy revenues. Staff and ICNU retained the right to raise additional issues in their reply testimonies. PGE noted it might need additional time to prepare its rebuttal testimony, if new issues are raised. At the conclusion of the conference, the parties were satisfied with this procedure.

We also note that the parties also agreed to a hearing date in early February 2004. It is apparent that the parties have agreed that this docket may extend beyond the December 31, 2003, completion date specified in Order No. 02-894, Appendix A at 14.

ORDER

IT IS ORDERED that:

1. This proceeding will address the prudence of all PGE actual net variable power costs and energy revenues for the relevant period.
2. The procedure agreed upon by the parties is adopted.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

*Commissioner Baum, not participating.

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 to a court pursuant to applicable law.