

ORDER NO. 04-001

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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: APPLICATION FOR RECONSIDERATION DENIED;
ORDER DECLARED INTERLOCUTORY**

On November 10, 2003, Portland General Electric (PGE) filed an application requesting that the Commission reconsider or rehear Order No. 03-543 (September 10, 2003). The order set forth the scope of the Commission's review into the prudence of the company's Net Variable Power Costs (NVPC). Pursuant to Order No. 01-777, the Commission had previously determined that the NVPC would be used to set the amounts that PGE could recover in its power cost adjustment (PCA). Commission Staff (Staff) and the Industrial Customers of Northwest Utilities (ICNU) filed replies objecting to the application.

Background

In Order No. 01-777 (UE 115), the Commission adopted a power cost stipulation between PGE, the Citizens' Utility Board (CUB), ICNU, Fred Meyer, and 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 (baseline) 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 is to be subject to a prudence review and audit. It also provides a true-up provision for prudence adjustments.

PGE estimates the balance in its PCA account at the end of the relevant period to be \$38.3 million.

In Order No. 03-543, the Commission interpreted the terms of the stipulation. Staff and ICNU had argued that the stipulation allows them to inquire into the prudence of obligations entered into prior to September 12, 2001. PGE insisted that the stipulation only allows challenges to actual costs incurred during the period that the PCA was in effect—October 1, 2001 through December 31, 2002.

In Order No. 03-543, we concluded that the language of the stipulation is ambiguous and the most reasonable interpretation of the language supports Staff's and ICNU's interpretation. We also concluded that PGE's concerns that our decision might violate the rule against retroactive ratemaking were premature.

Parties' Positions

PGE contends that Order No. 03-543 contains errors of fact and law. To remedy the alleged defects, PGE requests that the Commission adopt one of three options. First, PGE asks the Commission to grant reconsideration and modify the order to adopt a prudence review that does not include contracts that the Commission authorized in UE 115 rates.² In the alternative, PGE requests the Commission vacate the order and decide in the final order if there should be a disallowance. Finally, PGE states, that if the Commission does not adopt either of the first two options, the Commission should confirm that the order is interlocutory and not subject to judicial review under ORS 756.580.

PGE asserts that the Commission's interpretation of the stipulation is inconsistent with the language and history of the stipulation. PGE raises a new argument that was not raised previously. It contends our reading of the stipulation renders the rates set in UE 115 as temporary rates and that Order No. 03-543 is inconsistent with our final order in UE 115 (Order No. 01-777). PGE asserts that there is nothing in the UE 115 order to indicate that the Commission would revisit the contracts signed before September 12, 2001.

Staff argues that the order properly interprets the stipulation. It disagrees with PGE's claim that Order No. 03-543 renders the UE 115 temporary. Staff argues that UE 115 rates are final and does not question amounts collected under the UE 115 rates.

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

² PGE is referring to obligations entered into prior to September 12, 2001.

It states that it is only exploring whether the amounts included in the deferral calculation are prudent. Finally, Staff asserts that PGE's reference to extrinsic documents, such as Order No. 01-777, in interpreting the language of the stipulation violates fundamental contract negotiation principles.

Staff concludes that the order is sound and should not be modified or withdrawn. Staff notes that all of the parties requested that the Commission resolve the scope issue as a preliminary matter to promote the efficient handling of the case. Staff does not oppose PGE's third option, that the Commission confirm that Order No. 03-543 is interlocutory.

ICNU asserts that the Commission should deny the application, including the request that the Commission confirm the order is interlocutory. ICNU argues that PGE is reiterating arguments made previously. Further, ICNU disagrees with PGE's claim that Order No. 03-543 revisits issues that were resolved in UE 115 (Order No. 01-777). ICNU points out that no one is arguing to reset the baseline for the PCA. According to ICNU, the issue in this docket is to determine whether all the costs in the PCA were prudently incurred. PGE is merely reiterating arguments it made previously. ICNU also contends that Order No. 03-543 is a final order, subject to judicial review.

Commission Decision

All the parties agreed with our conclusion in Order No. 03-543 that it was premature to consider the legal effect on rates from our conclusions in the order. The order states:

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.

We still subscribe to that view. This point is especially important when we consider whether to entertain PGE's application for reconsideration. The order establishes the scope of our review. It orders no rate relief or any other action other than to define the scope of the inquiry. The order specifically disavows prejudgment of PGE's actions or any response that we might take should we find imprudence. As a result, the order is merely procedural with no practical consequences for any party other than to define the scope of work.

Furthermore, we find that no purpose would be served by reconsidering our order. PGE has agreed that, should we withdraw the order, it would respond to data

requests and provide testimony consistent with the scope of the order. In effect, PGE is asserting that it would be satisfied if we are willing to keep an open mind on the meaning of the stipulation. We are also mindful of the potential waste of resources should PGE assert its right to judicial review of our order at this point in the proceeding. So, for administrative convenience and to avoid unnecessary litigation, we will declare our order interlocutory.³

ORDER

IT IS ORDERED that:

1. The application of PORTLAND GENERAL ELECTRIC COMPANY for reconsideration is denied.
2. The request of PORTLAND GENERAL ELECTRIC COMPANY that Order No. 03-543 be confirmed as interlocutory is granted.

Made, entered, and effective _____.

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 to a court pursuant to applicable law.

³ *Dlouhy v. Simpson Timber Co.*, 247 Or 571, 573, 431 P2d 846 (1967).