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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

LC 33

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC)	ORDER
COMPANY)	
)	
OAR 860-038-0080, Resource Policies.)	

DISPOSITION: OAR 860-038-0080(1)(b) WAIVER GRANTED,
IN PART

In August 2002, Portland General Electric Company (PGE) filed its 2002 Integrated Resource Plan (IRP). On February 6, 2004, PGE filed an application for waiver of OAR 860-038-0080(1)(b) as that rule would apply to the acquisition of new generating resources described in the IRP. Specifically, PGE asked that the rule be waived so it would not prohibit PGE from including: 1) the Port Westward (Pt WW) capital costs in PGE's rate base; 2) the operation and maintenance costs of Pt WW in its revenue requirement; and 3) the costs of acknowledged contracts with third parties in PGE's revenue requirement.

The Northwest Independent Power Producers Coalition (NIPPC), Industrial Customers of Northwest Utilities (ICNU), Renewable Northwest Project (RNP) and Staff of the Public Utility Commission of Oregon (Staff) responded to PGE's application on March 8 and 9, 2004. PGE filed a reply to the responses on March 29, 2004.

The matter was held in abeyance pending resolution of a related docket, UM 1066.¹ In light of our order this date acknowledging PGE's IRP, and due to the complexity of outstanding issues in the UM 1066 docket (such as an opt-out plan for new resources), we determined to resolve PGE's motion in this separate order.

¹ Among other matters, we are considering whether OAR 860-038-0080(1)(b) should be amended in UM 1066.

Applicable Administrative Rules

OAR 860-038-0080(1)(b) states, in pertinent part:

Electric companies must include new generating resources in revenue requirement at market prices, and not at cost, and such new generating resources will not be added to an electric company's rate base even if owned by the electric company;

OAR 860-038-0001(4) provides, in pertinent part:

Upon application by an entity subject to these rules and for good cause shown, the Commission may relieve [the entity] of any obligations under these rules.

PGE's Request for Waiver

PGE claims that a waiver of OAR 860-038-0080(1)(b) will be in its customers' best interests. According to PGE, its Action Plan (Plan) establishes that the generating resource portfolio, which includes the Pt WW project, provides customers with the best combination of price and rate stability. Further, because the rule does not define "market prices," a waiver will remove the uncertainty of valuing contracts with third parties, and allow such contracts to be valued at cost.

PGE argues that OAR 860 038-0080(1)(b) should be waived because the environment for which the rules were originally drafted does not exist. Under the administrative rules, utilities would not acquire new generating resources except to serve residential and small non-residential consumers. The rules intended for larger consumers to be served by the market. In 2001, however, direct access was fundamentally changed by HB 3633, which required an electric utility to provide a cost of service rate option to all customers. Although some tweaking of the rules has occurred since HB 3633 was adopted, the premises under which the rules were developed have not been revisited. According to PGE, a waiver is now necessary to allow PGE to meet its cost of service requirements with a resource portfolio that provides stable costs and rates for customers.

Finally, PGE states that it will not build the Pt WW plant unless the Commission either waives the administrative rule, or modifies the rule through the related UM 1066 proceeding. Taking all of its arguments together, PGE argues it has established good cause for a rule waiver.

Participants' Positions

NIPPC, ICNU, RNP and Staff raise various objections, arguing that the application should be denied. NIPPC asserts that the Commission is being asked to make an important policy decision without the benefit of the UM 1066 discussions. Further, PGE has not demonstrated that waiver is in the best interests of its customers. Finally, for the Commission to acknowledge Pt WW and grant the waiver fails to advance the statutory directives of direct access.

ICNU argues that granting a waiver could harm the competitive market by increasing the vertical and horizontal market power of PGE. ICNU also claims that a waiver could result in new stranded costs, which would harm the development of a competitive retail market. Finally, ICNU is concerned that a viable opt-out option does not exist if the Commission should decide to approve the waiver.

RNP believes that the matter should be resolved in UM 1066, and not handled piecemeal in the LC 33 docket.

Staff raises both procedural and substantive objections to the application. First, Staff argues that determining the revenue requirement treatment of a generating resource is ratemaking, which is not lawful to do in an IRP docket. Second, PGE has failed to establish "good cause" for waiving the rule. Based on both reasons, Staff asserts that the Commission should deny the application.

PGE's Reply

PGE states that its application for a waiver is not unlawful, as it is not asking for a ratemaking decision regarding the inclusion of Pt WW costs and contracts with third parties in rates. Rather, PGE asserts it is solely asking the Commission to waive the rule in future ratemaking proceedings.

PGE also contends that it has established good cause as required by OAR 860-038-0001(4). The Plan PGE submitted on March 26, 2004, shows that the generating resource portfolio, which provides customers with the best combination of low cost and risk, includes Pt WW using "G" class technology at cost. With this showing, PGE argues that it has met the good cause requirement.

Commission Discussion

On this same date, we are issuing Order No. 04-375, which acknowledges PGE's Integrated Resource Final Action Plan (IRP). In that order, we do not address the issue of whether OAR 860-038-0080(1)(b) should be waived, or whether PGE's new generating resources should come into its revenue requirement at cost or market. Notwithstanding PGE's arguments about the legality of resolving such issues in an IRP docket, we believe that our IRP acknowledgement should be separate from our decisions about waiver.

Even though we have separated these matters into two different orders, we are clearly cognizant of the relationship between these orders, along with the relationship of this order to Docket UM 1066. It was our initial preference to issue an order in Docket UM 1066 simultaneously with the PGE IRP acknowledgment. However, UM 1066 is not yet ripe for an order, due in part to the lack of a viable opt-out option for industrial customers. Therefore, we decided to resolve the limited issue of PGE's waiver application by issuance of this order.

We address the Pt WW project first. Pt WW was presented in PGE's IRP as a self-built cost based resource. In reviewing the IRP, we examined various scenarios and

variables surrounding Pt WW. Based on our review, we concluded that the construction or acquisition of 350 MWa of a high efficiency gas-fired resource should be acknowledged, which we did in Order No. 04-375. We further stated that, based upon our acknowledgement, PGE intended to build Pt WW using G-class turbine technology.

PGE asks us to waive the application of OAR 860-038-0080(1)(b) so that the rule will not prohibit PGE from including the capital, operation and maintenance costs of the Pt WW project in PGE's rates. It argues that when the Pt WW project was compared to third party bids submitted in response to PGE's Request for Proposal (RFP), PGE found the construction and operation of Pt WW would benefit customers as compared to other resource alternatives. The Pt WW project was scored and analyzed by PGE as a cost based, and not market priced, resource. There is no market price for Pt WW, and to review Pt WW at a market rate would take another RFP, according to PGE. Under the process done and analysis presented by PGE, we find that Pt WW at cost serves the interests of the customers.

We are charged with representing the customers of the public utilities. ORS 756.040. As we stated in Order No. 89-507 at 2:

The goal of utility planning is to assure an adequate and reliable supply of energy at the least cost to the utility and its customers consistent with the long-run public interest.

We must also abide by the statutory electric restructuring requirements. In this instance, we grant the waiver as requested by PGE for the Pt WW project.

Our determination is not ratemaking. Prior to the passage of SB 1149 and the aforementioned rule, all costs that were prudently incurred were placed in a utility company's rates. We did not discuss, in prior IRP orders, whether we were engaged in ratemaking by acknowledging a utility company's resource action plan, as it was assumed that prudently incurred costs would be included in a company's rates. Our assumptions changed with the enactment of SB 1149, in that we now assumed that everything would be valued at "market." As discussed by several parties in this docket and in UM 1066, the phrase "market" has never been defined in the statute or rules. The valuation process applied to the resource, while vital to the ratemaking process, is not in and of itself, ratemaking.

Having said that, however, we do find ourselves teetering on a narrow line between acknowledging a resource, and making a ratemaking decision. We can say that the rule will be waived. However, we cannot make any decisions about whether to include the costs associated with Pt WW in rates, as those can only be made in a rate filing under ORS 757.205, *et seq.* In a future ratemaking docket regarding Pt WW, we will be looking carefully at PGE's assumptions and costs. We may also place a "cap" on PGE's costs by using the lowest comparable bid, or such other mechanism that PGE may bring to us.² Those decisions are, however, left for the future ratemaking proceedings.

² On June 22, 2004, PGE sent a letter to the LC 33 participants stating that PGE would hold workshops to develop mechanisms "for qualifying large customers to exempt themselves from costs and benefits of the Port Westward plant . . . and . . . to share with all its non-exempted customers the rewards and risk of potential PGE

PGE also requested a rule waiver for third party contracts. It appears to us that the cost and market price of those contracts is essentially the same. However, we will address the issue of contracts in the UM 1066 docket, so PGE's waiver request as to third party contracts is denied.

ORDER

IT IS ORDERED that:

1. Portland General Electric Company has shown good cause for waiver of OAR 860-038-0080(1)(b) as to the Port Westward project.
2. OAR 860-038-0080(1)(b) is not waived for the costs of any contracts with third parties.
3. PGE is to provide a status report regarding the discussions involving large customer opt-out and sharing construction cost risks and benefits within 90 days of the date this order is entered.

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.

construction cost under-runs and over-runs." We welcome such discussion and ask that PGE report the status and content of those discussions within 90 days of the issuance of this order.