

ORDER NO.

04 357 4

ENTERED

JUN 25 2004

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UM 1071

In the Matter of the Application of )  
 )  
 PORTLAND GENERAL ELECTRIC )  
 COMPANY )  
 )  
 For an Order Approving the Deferral of )  
 Hydro Replacement Power Costs. )

ORDER

**DISPOSITION: RECONSIDERATION DENIED**

Portland General Electric (PGE) filed an Application for Reconsideration and Rehearing of Order No. 04-108 (Application for Reconsideration), pursuant to ORS 756.561 and OAR 860-014-0095, on May 4, 2004, with the Public Utility Commission of Oregon (Commission). In that Order, the Commission denied PGE's application to defer certain hydroelectric replacement power costs. Commission Staff, the Industrial Customers of Northwest Utilities (ICNU), and the Citizens' Utility Board (CUB) filed response comments. PGE filed a subsequent reply. For the reasons set forth below, PGE's Application for Reconsideration is denied.

**Background**

On February 11, 2003, PGE filed an application to defer replacement power costs associated with below normal hydro conditions pursuant to ORS 757.259(2)(e), which allows for deferral of costs "in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs born by and the benefits received by ratepayers." PGE asserted that below normal hydro conditions caused power shortfalls, requiring the company to purchase replacement power from higher cost resources. PGE sought authority to begin recording deferral of the cost of replacement power purchased during the period of February 11, 2003 to December 31, 2003.

Representing that hydro conditions for 2003 were dramatically worse than the average conditions used to forecast power costs, PGE proposed deferring PGE's replacement power costs for most of 2003. Specifically, PGE sought to defer the difference between PGE's baseline net variable power costs (NVPC), as established in UE 139, the 2003 Resource Valuation Mechanism (RVM), and PGE's actual NVPC.<sup>1</sup> PGE stated it incurred

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<sup>1</sup> The RVM does not adjust for hydroelectric generation.

\$31.6 million in excess NVPC and proposed to apply a sharing mechanism that would defer approximately \$26 million. Without deferral of the requested costs, PGE represented that its return on equity for 2003 would be approximately 8%. With deferral and amortization of the requested costs, PGE estimated its return on equity for 2003 would be approximately 9.75%.

Following an initial prehearing conference held on October 23, 2003, the Administrative Law Judge (ALJ) issued a Prehearing Conference Memorandum on October 31, 2003. That Memorandum indicated the parties discussed and agreed to a procedural schedule allowing for discovery, and providing due dates for PGE to supplement information provided in its application and for all parties to simultaneously submit opening and response comments.<sup>2</sup> Prior to the submission of opening and response comments, PGE filed a motion to have the docket classified as a major proceeding pursuant to OAR 860-014-0023<sup>3</sup> and to schedule oral argument pursuant to ORS 756.518(2).<sup>4</sup> The ALJ granted the motion, thereby establishing that the full procedural process for the docket would include an opportunity for discovery, opening comments, response comments and oral argument.

PGE sought to justify its request for cost deferral on several grounds. First, PGE argued the application met the requirements of ORS 757.259, the statute governing cost deferrals, by minimizing the frequency of rate changes. PGE represented, absent the opportunity to defer the costs, it would have filed for interim and permanent rate relief in 2003. On this basis, PGE argued the Commission *could* grant its deferral application pursuant to statute. PGE also presented additional argument "why the Commission *should* grant the [a]pplication."<sup>5</sup> PGE asserted that Commission precedent supported the deferral, citing a number of Commission decisions.<sup>6</sup> PGE additionally argued that the deferral would reflect good regulatory policy by recognizing that PGE must have an opportunity to recover costs incurred due to weather or hydro conditions beyond its control in order to preserve PGE's access to lower cost of capital.

All other parties in the case opposed PGE's application, taking the general position that replacement costs for hydroelectric generation are not a proper subject for deferred accounting, as PGE's RVM is already based on a NVPC that includes a 59-year average of hydro conditions. The consensus position was, since the 59-year average recognizes that alternating hydro shortfalls and surpluses average out over time, making an adjustment for a shortfall year falling within the parameters of the 59-year average would be inappropriate.

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<sup>2</sup> The procedural schedule was later modified by ALJ rulings to extend due dates for the submission of simultaneous initial comments and response comments.

<sup>3</sup> OAR 860-014-023 defines a "major proceeding" as a proceeding that "has, or is expected to have, a full procedural schedule with written testimony or written comments" and either a substantial impact on utility rates for energy utilities serving more than 50,000 customers or has a significant impact on utility customers or the operations of a regulated utility for energy utilities serving more than 50,000 customers.

<sup>4</sup> ORS 756.518(2) provides in pertinent part that "[u]pon request of any party in a major proceeding before the commission, the commission shall afford the parties an opportunity for oral argument before a final order is issued."

<sup>5</sup> *Opening Comments of Portland General Electric* at 7.

<sup>6</sup> See Order No. 79-830 (UF 3518), Order No. 91-1781 (UM 445), Order No. 93-309 (UM 529), Order No. 92-1130 (UM 480), Order No. 94-1111 (UM 673).

In opening comments, Staff articulated the view that hydro variability was not the type of risk that should be addressed with deferral accounting. Staff recognized that PGE can't control hydro conditions, but stated PGE can quantify average hydro variability. Staff asserted, "[d]eferred accounting is a regulatory tool that best addresses unknown or unquantifiable risks," but the "risks associated with PGE's hydro-based generation resources were both known and quantified at the time the Commission set PGE's base energy rates for 2003 in UE 139."<sup>7</sup> Staff's comments noted that at least one Oregon utility had previously classified hydro variability as a stochastic risk.<sup>8</sup> Staff defined stochastic risk as quantifiable risk that can be represented by a known statistical distribution. Staff argued that general rate proceedings should be used to address stochastic risks, saving deferred accounting to address scenario (or paradigm) risks that are not quantifiable, cannot be represented by a known statistical distribution, and often represent abrupt changes in business factors or business practices.

Staff also challenged PGE's contention that the proposed deferral satisfied the intent of ORS 757.259(2)(e) by minimizing the frequency of rate changes. Staff asserted that PGE failed to explain how rates would have changed more frequently without the proposed deferral of costs. Moreover, Staff disputed that the proposed deferral satisfied the intent of ORS 757.259(2)(e) by appropriately matching ratepayer costs and benefits. Staff denied that ratepayer costs and benefits related to hydro variation could be matched by a one-time deferral, and asserted that appropriate matching is done over time. Staff also indicated parties were considering a hydro-only power cost adjustment mechanism (PCA) for future implementation.

CUB argued that the 2003 hydro year was within the reasonable range of normal variation and explained, in detail, how allowing PGE's requested cost deferral would set a standard justifying regular cost deferrals that would lead, over time, to rates no longer reflecting average water conditions. CUB opined that granting the cost deferral would violate fair and reasonable ratemaking principles by allowing PGE to have a greater than average opportunity to recover its full revenue requirements.

ICNU quoted legislative history to make the point that the statutory purpose for deferral accounting is to compensate utilities in limited circumstances only for extraordinary and unforeseen costs. ICNU argued that PGE's request to defer certain year 2003 costs did not meet this standard. ICNU expressed concern that not all the costs subject to the proposed deferral may be attributable to hydro replacement costs. To the extent such costs were related solely to hydro conditions, ICNU argued a deferral was unwarranted because the hydro conditions in 2003 were within the range of normal hydro variation upon which PGE's rates are based.

PGE filed reply comments that identified and addressed nine objections raised by parties. PGE directly addressed "Staff's 'stochastic' theory of deferred accounting,"

<sup>7</sup> Staff's *Opening Comments Regarding Portland General Electric Company's Application for Deferral of Hydro Replacement Power Costs* at 1.

<sup>8</sup> Staff cited the "Risk Versus Uncertainty," PacifiCorp White Paper, March 22, 2002 and also referred to the PacifiCorp 2003 Integrated Resource Plan at 37-40.

declaring it contradictory to Commission precedent and unworkable. PGE raised the concern that applying the stochastic theory would create new Commission policy in an inappropriate forum, asserting that such issues should be saved for a general investigation of deferred accounting policy. PGE also disputed Staff's characterization of hydro risk as stochastic. Rather than request a hearing, PGE averred that the Commission did not need to conduct one. PGE argued that the Commission had received sufficient evidence to approve the deferral application and that it was too late at the comment stage for ICNU to claim the Commission did not have an adequate record to make a decision:

The Commission generally does not conduct an evidentiary hearing on deferred accounting applications. However, at the request of customer groups, the 2001 legislature added language in the deferral statute that requires a hearing if a party requests one. No party has requested a hearing. PGE served a notice of the Application on all parties in UE 115, informing them that comments were due on March 10, 2003. None of the parties in this docket filed comments objecting to the deferral or the deferral mechanism, or requesting a hearing, which is within their rights. At the prehearing conference on October 23, 2003, the parties agreed to a schedule according to which PGE would provide information regarding plant availability and the projected deferral amount, the parties would file two rounds of comments, and the Commission would issue an order in early to mid February. *See* Prehearing Conference Memo, dated October 31, 2003. PGE provided this supplemental information on October 31, 2003. After having failed to file any comments within the time provided by Commission rule, after having declined to request a hearing, and after having agreed to the current procedural schedule, none of the parties can now credibly claim that a hearing is needed before the Commission can grant PGE's Application.<sup>9</sup>

PGE additionally noted that ICNU had not identified "an evidentiary gap that requires filling" by holding a hearing.<sup>10</sup>

On March 2, 2004, the Commission issued Order No. 04-108 denying PGE's application to defer certain costs. In so doing, the Commission explained that a decision regarding authorization to defer certain costs encompasses two stages of analyses, pursuant to ORS 757.259, and that the Commission may deny authorization to defer costs in either stage. The first analysis involves the exercise of Commission discretion, while the second involves a determination of the legality of a proposed deferral pursuant to subsections (a) to (e) of ORS 757.259(2). If an application to defer costs does not meet the Commission's discretionary standards, it may be denied on that basis alone.

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<sup>9</sup> *Reply Comments of Portland General Electric Company* at 16-17.

<sup>10</sup> *Id.* at 17.

Exercising its discretion in Order No. 04-108, the Commission denied PGE's application to defer costs. Acknowledging that prior deferred accounting rested on the legal rather than the discretionary analysis, the Commission explained, in detail, its exercise of discretion in denying PGE's application. The Commission stated that in making its initial determination about whether to exercise discretion to authorize a deferral, it looks at two interrelated considerations: the type of event that caused the deferral and the magnitude of the event's effect. The Commission denied PGE's application because it found that the 2003 hydro year, the cause underlying the Company's request, was not extraordinary enough, nor its financial impact significant enough, to justify deferred accounting.

Drawing a distinction between stochastic risks that can be predicted to occur as part of the normal course of events and scenario risks that are not susceptible to prediction and quantification, the Commission recognized that hydro variability is included and modeled in PGE's base rates. Further, the Commission found that the 2003 hydro year was within the predicted range of hydro variability. The Commission concluded that a causal event that exists within the range of predicted risk represents a stochastic risk not extraordinary enough to justify deferred accounting unless the financial impact is demonstrated to be substantial. The Commission deemed the impact on PGE's return on equity to not be great enough to warrant a deferral. In so doing, the Commission distinguished prior deferral orders. The Commission acknowledged PGE's concern that the 59-year average does not necessarily predict future hydro variability and encouraged parties to present alternative regulatory mechanisms to address hydro variability, such as Staff's PCA proposal.

#### **Legal Standard for Reconsideration**

ORS 756.561(1) authorizes a party to request reconsideration by the Commission of any order within sixty (60) days of service of that order. The Commission may grant reconsideration "if sufficient reason therefore is made to appear." OAR 860-014-0095(3) provides that the Commission may grant an application for rehearing or reconsideration if the applicant establishes one or more of the following grounds:

- (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
- (c) An error of law or fact in the order which is essential to the decision; or
- (d) Good cause for further examination of a matter essential to the decision.

OAR 860-014-0095(2) also requires the Applicant to specify what changes in the order the Commission is requested to make and to indicate how such changes will alter the outcome.

### PGE's Application for Reconsideration

PGE requests reconsideration and rehearing of Order No. 04-108 on four grounds. PGE does not clearly specify how the four grounds relate to the requirements of OAR 860-014-095, but all appear to rest on an allegation of good cause for further examination due to errors in process or an allegation of an error of law or fact. In summary, PGE asserts that the Commission erred by: 1) adopting a new deferral policy without adequate notice; 2) making factual findings on disputed issues without the benefit of a hearing; 3) misapplying orders in prior deferral application cases; and 4) suggesting prejudgment of an alternative Power Cost Adjustment (PCA) proposal.

Rather than seeking to have the Commission reopen UM 1071 independently, PGE requests that the Commission reexamine issues raised in UM 1071 in two new, separate dockets. PGE recommends the Commission develop a general deferral policy in UM 1147, a newly opened general investigation regarding deferred accounting. PGE recommends the Commission reexamine hydro issues specific to PGE in a docket addressing PGE's filing of a tariff addressing hydro variability. PGE asserts the new dockets will provide an opportunity for further discovery and enable the presentation of testimony with cross-examination that may lead to outcomes different than those in UM 1071.

PGE interprets Order No. 04-108 as introducing and applying a new framework for the exercise of Commission discretion in approving deferred accounting applications. PGE claims this new policy is based on an inadequate record that results from insufficient process. PGE alleges it lacked proper notice that the "stochastic test" would be a central issue in the proceeding. PGE asserts that this lack of notice prejudiced PGE, and potentially other parties, who did not anticipate the need for a more complete procedural schedule including testimony and cross-examination during a hearing that addresses the new framework and its application.

PGE contends that the terminology, as well as the practice of, distinguishing between two types of risks—i.e., stochastic risk that can be predicted in the normal course of action and scenario risk that falls outside of what may be normally predicted or quantified—is new and untried. PGE argues the Commission requires a more developed factual record to classify risks facing utilities and to assign discrete risks, such as hydro variability, to a classification. PGE would conduct additional discovery and introduce evidence demonstrating hydro risk is not stochastic. PGE also asserts that greater development of a factual record is needed with regard to assessing when a class of risk poses a sufficient level of financial harm to justify deferral. PGE complains that the Commission has previously addressed the financial impact of a deferral in a different context than it did in Order No. 04-108—i.e., in the amortization (secondary) phase of a deferral application as opposed to the authorization (primary) phase undertaken in UM 1071. PGE argues it had no reason to expect the Commission would resolve disputed issues of fact in this phase of its deferred application. PGE claims it relied on the Commission's deferral of factual issues raised in the authorization phase of UM 995 to the amortization stage.

PGE also alleges that the Commission erred by misapplying the deferral analysis undertaken in UM 480 and UM 673, the Idaho Power deferral cases, in Order No.

04-108. PGE claims it is inappropriate to compare information and analysis contained in the amortization phase of the Idaho Power deferral cases to the authorization phase of UM 1071, because it amounts to comparing "apples and oranges." PGE also criticizes the Commission for not comparing "apples and apples," by considering and contrasting information available and decisions made at the authorization phase of the Idaho Power deferral cases, with information at issue in this docket. PGE contends that when the Commission authorized Idaho Power's deferral, it estimated the deferred amount at \$420,000, which, based on the Order No. 04-108 estimation of basis points, reflects 84 basis points of earnings.

PGE requests, regardless of whether the Commission determines to reconsider and rehear Order No. 04-108 in its entirety, the Commission clarify that it did not intend "to suggest prejudgment" of Staff's proposed alternative PCA. PGE requests that the Commission remove the statement that "parties might present a PCA proposal similar to the one Staff outlined here" from Order No. 04-108 at pages ten to eleven. PGE notes that Staff intended the proposed alternative PCA mechanism as a "general outline" and claims parties did not have an opportunity to respond.

### Parties' Replies

Staff, CUB and ICNU unanimously oppose PGE's Application for Reconsideration. All argue that the docket's process was agreed to by PGE and that, despite having the opportunity, PGE did not seek to supplement it further. Staff strongly disputes PGE's contention that it did not have sufficient notice of certain issues in the case, such as the distinction between stochastic and scenario risk, and the opportunity to develop a record on such issues. Staff states:

Contrary to PGE's contention, it had the right to present evidence, conduct discovery, request and participate in a hearing, cross-examine witnesses, offer evidence to rebut the evidence of the other parties, and present argument to the Commission. If there is a limited record in this case, it is because PGE failed to exercise its rights. PGE's failure to exercise its rights as a party in this proceeding does not support a motion for reconsideration.<sup>11</sup>

Staff notes it presented evidence that hydro variability is a stochastic risk in opening comments, referring PGE at the time to its own white paper addressing the issue, as well as to PacifiCorp's 2003 Integrated Resource Plan which classified hydro variability as a stochastic risk. Staff asserts, although PGE responded to Staff's evidence regarding stochastic risk in response comments, it failed to pursue any other opportunity available to it to develop the record.

PGE's assertion that, based on precedent in UM 995, the Company did not expect resolution of disputed issues of fact in the authorization phase of a deferral case is also

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<sup>11</sup> Staff's Response to Application of Portland General Electric Company for Reconsideration or Rehearing of Commission Order No. 04-108 at 1.

challenged. Staff, CUB and ICNU explain the Commission did not take the position in UM 995 that all disputed issues should be deferred to the amortization phase. Rather, the Commission found a sufficient factual record to grant an application for deferral, but recognized the need to further address other disputed issues in the amortization phase. Staff asserts this ruling does not preclude the Commission finding, in another case, that the factual record does not support granting the deferral application.

Pursuant to OAR 860-014-0005, Staff argues that the Commission was only required to hold a hearing to resolve disputed factual issues in the proceeding if PGE (or another party) requested a hearing. As PGE did not make such a request, Staff states the Commission did not err in resolving factual issues regarding stochastic risk based on the record presented. CUB avers that PGE was the primary author of the schedule in UM 1071, and ICNU notes that PGE took the position in reply comments that the Commission did not need additional evidence to review and grant PGE's application. Staff argues there is sufficient evidence on the record to support the Commission holding that hydro variability is a stochastic risk.

Contrary to PGE's position that Order No. 04-108 announces new Commission policy, Staff, CUB and ICNU discern consistency between the Order and Commission precedent. All three parties observe that the Commission has long reviewed the causes leading to deferred accounting applications and has granted deferrals in recognition of unexpected or extraordinary costs.<sup>12</sup> Staff argues that the Commission's analysis regarding the predictability of the events underlying PGE's deferral application, and the magnitude of the financial effect of the costs at issue, while employing new terminology and articulating detailed reasoning, did not constitute development of a new analytical framework. Indeed, CUB comments that the Commission has done nothing more than act upon a fundamental ratemaking principle by distinguishing between risks normalized in base rates and extraordinary risks.

The three parties also contest PGE's assertion that the Commission misapplied the Idaho Deferral orders. In the first place, the parties note that it was PGE who put the Idaho Power deferral cases at issue. They contend the Commission merely addressed the cases in order to distinguish from PGE's reliance on those cases. On a substantive basis, ICNU charges that PGE's arguments regarding the comparability of the Idaho Power deferral cases are futile due to the failure of PGE to acknowledge that not all of its deferral balance is hydro related, and the resulting inaccuracies in PGE's calculations of financial impact. Staff also challenges PGE's concerns about the Commission's comparative analysis by pointing out that the Commission primarily referred to the deadband of 250 basis points of return on equity that was established in the authorization phase of UM 995, although it may have been applied in the amortization phase of that case and others. Finally, ICNU asserts the

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<sup>12</sup> Staff cites the following cases as examples of approved deferrals of unexpected or extraordinary costs: "UM 445, Order No. 91-1781 and UM 673, Order No. 93-309 (Commission authorized deferral for replacement power costs as a result of the unexpected shutdowns of the Trojan Facility); *Idaho Power Company*, UM 480, Order No. 92-1130 at 1-3 (six consecutive years of drought conditions resulting in 'extraordinary purchases and other action by Idaho Power to assure continued service.');

*Idaho Power Company*, UM 673, Order No. 94-1111 at 1-3 (eight consecutive drought year conditions and one of the worst water years on record in the Snake River resulting in 'extraordinary purchases and other action by Idaho Power.')

Commission's discussion of the Idaho Power cases was, in any case, not essential to the Commission's decision.

Staff asserts that PGE's fourth claim of error, regarding the Commission's alleged prejudgment of Staff's proposed alternative-PCA, demonstrate the alleged error of law is essential to the decision. In any case, Staff notes "[i]t is not unusual for Staff or the Commission to suggest alternative regulatory tools and doing so does not amount to a prejudgment of an application not yet filed."<sup>13</sup>

Finally, ICNU generally challenges the validity of PGE's Application for Reconsideration, asserting that it "only superficially addresses the requirements for seeking reconsideration" and is unclear about specific errors needing correction. ICNU contends the purpose of the Application for Reconsideration is to obtain a different result via consideration of the issues in new, separate proceedings.

PGE responded to the opposition with concern that rehearing and reconsideration of the Order was required due to the "confusion and disagreement reflected in the reply briefs over what the Order meant and what framework the Commission adopted."<sup>14</sup> PGE expressed surprise that no other party discerned the formation of new Commission policy regarding deferrals. Although Staff acknowledged the Commission used new terms, it questioned whether there had been a significant shift in policy, while CUB and ICNU both interpreted the Order not to create a new framework. PGE argued the confusion as to the effect of Order No. 04-108 warranted rehearing and reconsideration.

### **Analysis and Resolution**

We conclude that PGE has not demonstrated grounds justifying reconsideration of Order No. 04-108. Each claim of error made by PGE lacks merit under OAR 860-014-095. Consequently, PGE's application for reconsideration should be denied.

#### PGE's First and Second Claims

PGE's first and second claims of error are closely related with the primary contention appearing to be that good cause exists to reconsider Order No. 04-108 due to procedural flaws in the proceeding, including lack of sufficient notice of the issues and the lack of a hearing. Although not clearly stated, PGE also appears to suggest the Commission made an error of fact by classifying hydro variability as a stochastic risk.

PGE actively participated in establishing the process implemented in UM 1071. In addition to agreeing to the initial schedule of events, PGE later requested and received the opportunity for oral argument. Discussion of the terms "stochastic" and "scenario" risk did not take PGE by surprise at a date too late to pursue additional discovery or request a hearing. PGE was well aware that the deferral statute requires a hearing *if a*

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<sup>13</sup> *Staff's Response to Application of Portland General Electric Company for Reconsideration or Rehearing of Commission Order No. 04-108* at 8.

<sup>14</sup> *Portland General Electric Company's Reply in Support of Its Application for Reconsideration and Rehearing of Order No. 04-108* at 1.

*party requests one.* PGE did not request a hearing until filing its Application for Reconsideration. Not only did PGE *not* request a hearing, it argued that evidentiary gaps in the record had not been identified and that a hearing was not needed “before the Commission can grant PGE’s Application.” PGE cannot credibly take the position that the Commission may grant PGE’s application without a hearing, but that the Commission *may not* grant PGE’s application without a hearing.

PGE previously argued, in reply comments supporting its deferral application, that the Commission would inappropriately introduce new policy in UM 1071 by recognizing the distinction between stochastic and scenario risk, and exercising its discretion to deny PGE’s deferral application. Although we did not explicitly address PGE’s argument, our findings in Order No. 04-108 indicate our disagreement with this position. As we acknowledged in Order No. 04-108, we had not previously explained, in any prior deferred accounting orders, how we exercise statutory discretion under ORS 757.259. We did not, however, break new ground in exercising that discretion. Indeed, PGE recognized our discretion to authorize a deferral application when, in opening comments supporting its deferral application, PGE presented policy reasons why we *should* grant the application, in addition to arguments why we *could* grant the application because it met the legal requirements of ORS 757.259(2)(e). As we had not previously denied a deferral application on the basis of a discretionary analysis alone, however, we did not previously have cause to fully explain how we exercise the discretion afforded by the deferral statute. It is to be expected that we would articulate our reasoning, in detail, when first applying the statute to deny a deferral in the authorization stage. Both parties and reviewing courts demand such.

We had sufficient evidence to draw the factual conclusion that hydro variability in 2003 may be classified as a stochastic risk. Again, PGE was not limited in developing the factual record on this issue. We note that PGE does not allege, pursuant to OAR 860-014-0095(3)(a), that new evidence, which is essential to the decision, is now available to be discovered and presented at hearing. Rather, PGE seeks to present evidence now that it could have discovered and presented in comments and at a hearing, if it had only requested one at the appropriate time.

#### PGE’s Third Claim

PGE did not state the basis for its third claim of error, but the claim appears to be based on allegation of an error of the law. In Order No. 04-108, we explained that the magnitude of financial effect underlying a deferred accounting application is a factor for our consideration in the discretionary stage of the decision process. Accordingly, in Order No. 04-108, we considered the financial effect of the claimed excess NVPC at issue in UM 1071, as estimated by PGE, in terms of basis points and percentage of return on equity and found the projected impact not significant enough to warrant a deferral. We did not establish a numerical criterion and referred to other cases, such as the Idaho Power deferral cases, for illustrative purposes. We also referred to the deadband of 250 basis points of return on equity, which was established in the authorization phase, as Staff points out, of UM 995. Discussion of these cases was not essential to our decision, and PGE is incorrect that we “misapplied” the Idaho Power deferral orders in rendering Order No. 04-108.

PGE's Fourth Claim

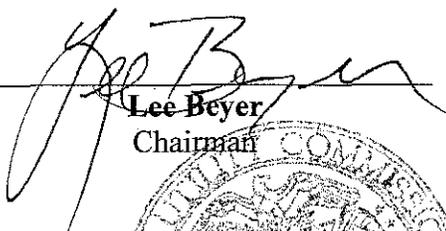
We reject PGE's claim that we have suggested prejudgment of a hydro PCA. Indicating we would welcome the presentation of alternative ideas for dealing with hydro variability, we referred to Staff's proposed outline of a PCA only to provide an example of such an alternative. Nothing in Order No. 04-108 interferes with the further investigation and consideration of any alternative proposal not yet filed.

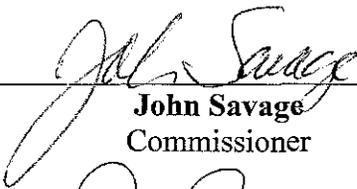
**ORDER**

IT IS ORDERED that Portland General Electric's Application for Reconsideration of Order No. 04-108 is denied.

Made, entered, and effective \_\_\_\_\_

**JUN 25 2004**

  
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**Lee Beyer**  
Chairman  


  
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**John Savage**  
Commissioner  
  
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**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.