

May 18, 2004

*Via Facsimile and U.S. Mail*

Ms. Carol Hulse  
Oregon Public Utility Commission  
550 Capitol Street, N.E., Suite 215  
P.O. Box 2148  
Salem OR 97308-2148

Re: In the Matter of the Application of PORTLAND GENERAL ELECTRIC for an  
Order Approving the Deferral of Hydro Replacement Power Costs  
**Docket No. UM 1071**

Dear Ms. Hulse:

Enclosed please find an original and six (6) copies of the Reply of the Industrial Customers of Northwest Utilities to Portland General Electric Company's Application for Reconsideration and Rehearing of Order No. 04-108 in the above-captioned docket.

Please return one file-stamped copy of the document in the self addressed, stamped envelope provided. Thank you for your assistance.

Sincerely,

Ruth A. Miller

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply of the Industrial Customers of Northwest Utilities to Portland General Electric Company's Application for Reconsideration and Rehearing of Order No. 04-108 upon the parties on the official service list, shown below, by causing the same to be deposited, postage-prepaid, in the U.S. Mail.

DATED at Portland, Oregon, this 18<sup>th</sup> day of May, 2004.

DAVISON VAN CLEVE, P.C.

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1071**

In the Matter of	)
	) REPLY OF THE INDUSTRIAL
PORTLAND GENERAL ELECTRIC	) CUSTOMERS OF NORTHWEST UTILITIES
COMPANY	) TO PORTLAND GENERAL ELECTRIC
	) COMPANY'S APPLICATION FOR
Application for an Order Approving the	) RECONSIDERATION AND REHEARING
Deferral of Hydro Replacement Power Costs.	) OF ORDER NO. 04-108
_____	)

Pursuant to ORS § 756.561 and OAR § 860-014-0095(4), the Industrial Customers of Northwest Utilities (“ICNU”) submits this Reply to Portland General Electric Company’s (“PGE” or the “Company”) Application for Reconsideration and Rehearing (“Application”) of Order No. 04-108, issued in Docket No. UM 1071 (the “Order”). In Order No. 04-108, the Oregon Public Utility Commission (“OPUC” or the “Commission”) denied PGE’s application to defer, for later inclusion in rates, certain costs allegedly incurred in response to below-normal hydro conditions in 2003. The Commission should now deny PGE’s Application for Reconsideration, because the Company has not met the requirements for reconsideration specified in OAR § 860-014-0095 and has not otherwise demonstrated any legitimate basis to reconsider the issues in Docket No. UM 1071. Rather than asserting a valid basis for reconsideration, PGE re-argues in its Application issues that the Commission has already considered and properly rejected.

## BACKGROUND

On February 11, 2003, PGE filed an application requesting that the Commission authorize deferred accounting treatment for costs associated with below-normal hydro conditions. Re PGE, Docket No. UM 1071, Application for Deferral of Hydro Replacement Power Costs at 2-3 (Feb. 11, 2003). PGE sought authority to defer, for later inclusion in rates, between \$20 and \$60 million in costs beginning on the date of the application and ending on December 31, 2003. Id. at 5.

A prehearing conference was held on October 23, 2003. On October 31, 2003, the Administrative Law Judge (“ALJ”) issued a prehearing conference memorandum, adopting a schedule that was agreed to by PGE, ICNU, Citizens’ Utility Board (“CUB”) and Commission Staff. Docket No. UM 1071, Prehearing Conference Memorandum at 1 (Oct. 31, 2003). The schedule called for a supplemental filing by PGE to provide information in support of the application, and then for all parties to submit opening and reply comments regarding the application. Id.

PGE, ICNU, CUB and Staff filed Opening Comments on January 9, 2004. PGE stated in its Opening Comments that it would defer approximately \$26 million in excess power costs during the deferral period. PGE Opening Comments at 3. ICNU, CUB and Staff all submitted comments in opposition to PGE’s request. These parties objected to PGE’s application on a number of grounds, including that the Company’s deferral formula was not hydro-specific, that hydro variability experienced by PGE in 2003 was already accounted for in

rates, and that the annual adjustment to the Resource Valuation Mechanism in Schedule 125 sufficiently insulated the Company from power cost volatility.

Staff, in its Opening Comments, addressed PGE's application according to whether the hydro variability that PGE sought to address represented a "stochastic" risk or a "scenario" risk. Staff Opening Comments at 5. According to Staff, stochastic risks are quantifiable risks that can be represented by a known statistical distribution and the impacts of which can be simulated in advance. Id. Scenario risks, according to Staff, are those that represent abrupt changes in business or risk factors and "cannot be modeled in the same manner as stochastic risks." Id.; cf. Re PacifiCorp, OPUC Docket No. LC 31, Order No. 03-508 at 6-7 (Aug. 25, 2003). Staff concluded that the hydro variability at issue in PGE's application was a stochastic risk and that "it is better to use general rate proceedings, not deferred accounting, to address stochastic risks." Id.

All parties submitted Reply Comments on January 21, 2004. PGE responded in its Reply Comments to the arguments made by Staff and intervenors, and discussed at length why Staff's distinction between stochastic and scenario risks was inapplicable to the Company's request. PGE Reply Comments at 3-7. PGE argued then, as it does now, that: 1) Staff's theory is inconsistent with Commission precedent; 2) hydro variability is not a stochastic risk; and 3) the Commission should not adopt a new "policy" in a contested case proceeding. Id. Following the filing of Reply Comments, the Commission held oral argument on January 27, 2004.

On March 2, 2004, the Commission issued Order No. 04-108, finding that PGE's costs were not extraordinary enough to justify deferral and denying the application. Order at 11.

In denying PGE's request, the Commission established that the "deferral" stage of a deferred accounting application involves two considerations: 1) whether the Commission will exercise the discretion granted to approve deferrals; and 2) whether the proposed deferral fits within the criteria in the deferred accounting statute. Order at 8. The Commission stated that it was denying PGE's application as an exercise of its discretion and did not discuss whether the Company's application fit within ORS § 757.259. Id. at 11. In exercising its discretion, however, the Commission examined PGE's costs according to the risk framework suggested by Staff. Id. at 8-10. The Commission adopted Staff's conclusion that the level of hydro variability at issue was a stochastic risk and did not justify deferred accounting. Id. at 9. The Commission also found that the overall financial impact on PGE was not "significant enough . . . to warrant a deferral." Id. The Commission noted that even though the terminology it was using was new, the test itself was consistent with past Commission precedent. Id. n.6.

In its Application for Reconsideration, PGE urges the Commission to reconsider both the order adopted and the process by which it was adopted. Application at 1. 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 the Idaho Power deferral orders; and 4) addressing PCA proposals discussed by Staff. Id. at 4, 7, 10, 11. PGE's allegations do not provide a basis for reconsideration of the Order. In fact, PGE's Application only superficially addresses the requirements for seeking reconsideration. See id. at 11-12. It is unclear from PGE's Application exactly what error the Company seeks to correct

through reconsideration or rehearing, other than what it perceives as an undesirable result.<sup>1/</sup> It is clear, however, that the Commission has already considered and properly rejected PGE's arguments. As such, reconsideration should be denied.

### **ARGUMENT**

PGE has not asserted a valid basis for reconsideration. PGE asserts two reasons for reconsideration of the Order and the process by which it was issued: 1) the Order contains errors of law and fact; and 2) good cause otherwise exists for further examination. Application at 12 citing OAR § 860-014-0095(3)(c)-(d). Although PGE recites the standards from the rule governing reconsideration, the fundamental basis for the Company's request is that "PGE believes that if the Order is reheard, the Commission will conclude that PGE's Deferral Application should be granted." Id. Such argument reveals that the Company merely disagrees with the conclusions in the Order and that there is no legitimate cause for reconsideration.

PGE alleges four "errors" in the Order: 1) the Commission introduced a new deferral policy in Docket UM 1071 without adequate notice; 2) the Commission made factual findings on disputed issues without the benefit of a hearing; 3) the Commission misapplied the Idaho Power Orders; and 4) the Order should not have addressed alternative PCA proposals. Id. at 4, 7, 10, 11. In support of these claims, PGE primarily puts forth arguments that the Commission already rejected in response to the Company's opening and reply comments. These claims do not establish grounds for reconsideration.

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<sup>1/</sup> Indeed, PGE's primary suggestion is that the Commission address the alleged errors in the Order in other dockets. Application at 6-7.

**A. The Legal Standard for Reconsideration**

A party may file for reconsideration of a Commission order within 60 days of service of that order. OAR § 860-014-0095(1); ORS § 756.561. The Commission may grant an application for reconsideration “if sufficient reason therefor is made to appear.” ORS § 756.561. Under the Commission’s rules, the OPUC may grant reconsideration if the applicant shows that there is: a) new evidence that 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; c) an error of law or fact in the order; or d) good cause for further examination. OAR § 860-014-0095(3). In order for any of these grounds to be sufficient for reconsideration, they must have been essential to the Commission’s decision. Re PacifiCorp, Docket No. UE 121/UE 127, Order No. 03-187 at 3 (Mar. 27, 2003). The Applicant also is required to specify “the change in the order which the Commission is requested to make [and] how the applicant’s requested changes in the order will alter the outcome[.]” OAR § 860-014-0095(2)(c), (d).

**B. The Commission Did not Err by Adopting Staff’s Analysis of the Risk Posed by Hydro Variability**

PGE claims that the Commission committed error in the Order adopting a new deferral policy without adequate notice. Application at 4. PGE is mistaken. First, PGE has not demonstrated that it was beyond the Commission’s discretion to consider the Company’s application in the manner set forth in the Order. PGE’s Application essentially is devoid of any legal authority to support the Company’s claim that the decisions in the Order were somehow beyond the Commission’s discretion. Second, the distinction between stochastic and scenario risks in the Order is not a new deferral policy. In fact, the Commission noted in the Order it had



applied the reasoning and methodology behind this distinction in the past. Order at 9 n.6. PGE's claim that it had no notice that the Commission would consider the nature of the risk and the magnitude of the financial impact is particularly unfounded given that Staff specifically recommended its use in Opening Comments and PGE responded to Staff's recommendation. Staff Opening Comments at 5-6; PGE Reply Comments at 2-7.

### **1. The Order is Consistent with Commission Precedent**

Although the Company asserts that the Commission articulated a new deferral policy in the Order, the Commission's decision is entirely consistent with its consideration of deferred accounting applications in the past. In Docket Nos. UM 445 and UM 529, for example, the Commission allowed PGE to defer costs associated with the outage of the Trojan Nuclear Plant. Re PGE, Docket No. UM 529, Order No. 93-309 (Mar. 11, 1993); Re PGE, Docket Nos. UE 81/UE 82/UM 445/UE 47, Order No. 91-1781 (Dec. 20, 1991). In authorizing PGE to recover 90 percent of the Company's Trojan outage costs, the Commission adopted a Staff recommendation that was based on the idea that "PGE's investors would assume the customary risk of 'normal' variations in Trojan operation," but that deferred accounting was appropriate for "extraordinary" variations caused by the steam generator problems. Docket No. UE 81/UE 82/UM 445/UE 47, Order No. 91-1781 at Appendix A at 6. This is consistent with the findings in the Order: costs associated with extraordinary events (scenario risks) may be appropriate for deferral, but costs associated with normal variations (stochastic risks) generally are not. Order at 9. Indeed, at the heart of the Commission's decision in the Order is the finding "that the cause of PGE's request is not extraordinary enough to justify deferred accounting." Id. at 11.

The Commission also has considered previous requests for deferred accounting in light of the financial impact on the company. Re Idaho Power Co., Docket No. UM 480, Order No. 92-1130 at 2 (Aug. 5, 1992); Re Idaho Power Co., Docket No. UM 673, Order No. 94-1111 at 3 (Jul. 14, 1994). In Order Nos. 92-1130 and 94-1111, the Commission authorized Idaho Power to defer excess power costs related to poor hydro conditions in part because of the financial impact on that utility. As discussed below, the Commission addressed the Idaho Power deferrals in the Order, and concluded that PGE's request was distinguishable. In other words, the Commission's decision in this case was entirely consistent with the reasoning in past decisions.

**2. PGE had Notice of the Need to Address the Nature of the Risk Involved and the Financial Impact on the Company**

PGE asserts that the reasoning applied by the Commission in the Order "was never on PGE's radar screen." Application at 4. PGE was aware prior to submitting its application for deferred accounting treatment that the Commission would consider the nature of the risk associated with the costs that the Company sought to defer and the financial impact of those costs on the Company. As discussed above, these concepts are evident in the past Commission orders regarding deferred accounting. Docket No. UE 81/UE 82/UM 445/UE 47, Order No. 91-1781 at Appendix A at 6; Docket No. UM 480, Order No. 92-1130 at 3.

Furthermore, regardless of past Commission precedent, PGE had ample notice that the Commission may use the stochastic test in making its determination following opening comments. Commission Staff first advocated use of the distinction between stochastic and scenarios risks in Opening Comments. Staff Opening Comments at 5-6. PGE responded to

Staff's recommendation in Reply Comments.<sup>2/</sup> PGE Reply Comments at 2-7. PGE argued then, as it does now, that the Commission has not applied this test to previous deferred accounting requests. Id.; Application at 4-5. The Company had ample opportunity to respond to Staff's recommendation and ample notice that the Commission may adopt the Staff analysis. In other words, PGE's current claims have already been considered and rejected by the Commission.

**C. The Commission did not Err by Making Factual Findings on Disputed Issues**

PGE also requests reconsideration "because the Commission resolved disputed issues of fact in a proceeding that included no testimony, no hearing, and no cross-examination regarding disputed issues of fact" and the Company "had no reason to expect the Commission would resolve disputed issues of fact" in this proceeding. Application at 7, 9. According to PGE, the Commission had not resolved issues of fact in the deferral phase of previous applications. Id. PGE made essentially the same arguments in its Reply Comments, which the Commission rejected. PGE Reply Comments at 16. Reasserting these arguments does not establish a basis for reconsideration. Moreover, the Company had an opportunity to request a hearing to discuss factual issues surrounding its deferral application and failed to do so. For all of these reasons, PGE's Application should be denied.

The Company asserts that, in UM 995, the Commission established that factual disputes are resolved only in the amortization phase of deferred accounting proceedings. Application at 7-9 citing Re PacifiCorp, Docket No. UM 995, Order No. 01-420 (May 11, 2001). The Commission already has considered this argument by PGE and did not adopt it. See PGE

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<sup>2/</sup> PGE also had an opportunity to respond to Staff's recommendation during oral argument on January 27, 2004.

Reply Comments at 15-16. In UM 995, parties opposing PacifiCorp’s request to defer excess net power costs argued that the Commission lacked an adequate record upon which to authorize such a deferral. Docket No. UM 995, Order No. 01-420 at 15, 22. The Commission disagreed, finding that it did “not consider the factual record inadequate to grant an application for deferral” and that it would develop a factual record before resolving the issue that it felt the parties were truly concerned about, the prudence of PacifiCorp’s actions. Id. at 27. The Commission found that PacifiCorp’s excess net power costs, unlike PGE’s, were the result of an “extraordinary situation.” Id. at 29. Furthermore, the Commission concluded that the record was not adequate to establish a baseline for PacifiCorp’s deferral, and ordered the parties to develop the record on this issue before the amortization phase began. Id. Thus, the only case that PGE cites for this proposition demonstrates that PGE is wrong.

Finally, as a practical matter, PGE had the ability to request a hearing and present evidence to justify its request, but did not do so. ORS § 757.259(2). In fact, PGE argued in Reply Comments that “[n]o [f]urther [e]vidence is [n]eeded for the Commission to [r]eview and [g]rant PGE’s Application.” PGE Reply Comments at 15. Now that the Commission has denied PGE’s application, however, the Company argues that additional evidence was necessary.

**C. The Commission did not Misapply the Idaho Power Deferral Orders**

PGE asserts that the Commission misconstrued Idaho Power Deferral orders. Application at 10. According to PGE: 1) the Commission used amortization information from the Idaho Power orders to justify treatment at the authorization phase; 2) the Commission determined the effect on Idaho’s Power’s earnings using the entire amount of excess power costs;

and 3) the Commission ignored information that was available and relevant when the Commission approved the Idaho Power deferral. Id. The Commission, however, properly used the Idaho Power orders both to support the conclusions that PGE's hydro risk was a stochastic risk and that the financial impact on PGE was not "substantial." Moreover, the Commission merely used the Idaho Power orders as examples of significant financial impact, which was not "essential" to the Commission's ultimate decision that PGE's request was not extraordinary enough to justify deferred accounting.

It is curious that PGE questions the Commission's use of the Idaho Power orders, because PGE first put these orders at issue. PGE Opening Comments at 8; PGE Reply Comments at 3, 18. The Commission merely addressed PGE's argument and distinguished the Company's reliance on the Idaho Power orders.

PGE's criticism of the Commission's interpretation of the financial information from the Idaho Power cases also is unfounded. Application at 10. PGE complains that the Commission's discussion "mixes apples and oranges" but the Company's entire argument is based on the inaccurate claim that the financial impact on PGE was 175 basis points. Id. Staff and ICNU disputed the financial impact alleged by PGE in UM 1071 because the Company refused to acknowledge that that not all of its deferral balance was related to below-normal hydro conditions. Staff Opening Comments at 2, 5-6; ICNU Opening Comments at 11-12; Staff Reply Comments at 5-6; ICNU Reply Comments at 11. Furthermore, PGE takes issue with the Commission's calculation of the financial impact on Idaho Power but the Company does not explain its calculation of the impact or why its calculation differs. Indeed, PGE's assertion that

the impact on Idaho Power was 84 basis points is completely unsupported by any details of its calculation. Application at 11. Furthermore, PGE's assertion is based only on Idaho Power's 1994 request to defer \$420,000 in costs related to below-normal hydro conditions, which Idaho Power submitted after the company had endured eight years of drought. Docket No. UM 673, Order No. 94-1111 at 1. In other words, regardless of the manner in which PGE performed its calculation, the Company has not accurately depicted the true financial impact on Idaho Power. Such unsupported and misleading allegations provide no basis for the Commission to reconsider its decision.

Finally, PGE has not shown how the alleged errors in applying the Idaho Power deferral orders were essential to the Commission's decision. This is a threshold requirement for reconsideration. Docket No. UE 121/UE 127, Order No. 03-187 at 3. The Commission merely used the Idaho Power orders as examples of when a power cost deferral may be warranted and distinguished PGE's request. Even if the Commission had not discussed the Idaho Power orders, it clearly stated other grounds for denying PGE's application.

### **CONCLUSION**

PGE has not established any legitimate basis for reconsideration of the Order. The Company's Application merely complains about the result in the Order and reasserts arguments that the Commission has already rejected. Although PGE's dissatisfaction with the Commission's decision is evident, that is not a valid reason to grant reconsideration.

WHEREFORE, ICNU respectfully requests that the Commission deny PGE's  
Application for Reconsideration of Order No 04-108.

DATED this 18th day of May, 2004.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

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