



Portland General Electric Company

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Brendan McCarthy

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August 7, 2023

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301

Dear Filing Center:

Pursuant to OAR 860-038-0001 (4), Portland General Electric Company (PGE) hereby submits to the Commission this request for a partial waiver of OAR 860-038-0580 on the terms specified in this Application.

Should you have any questions or comments regarding this filing, please contact Brendan McCarthy at Brendan.mccarthy@pgn.com. Please direct all formal correspondence and requests to the following email address pge.opuc.filings@pgn.com

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Brendan McCarthy".

Brendan McCarthy
Assistant General Counsel III

BJM:mb

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1631**

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Application for Partial Waiver of OAR 860-
038-0580 Prevention of Cross-subsidization
Between Competitive Operations and
Regulated Operations

**APPLICATION OF PORTLAND
GENERAL ELECTRIC COMPANY**

Pursuant to OAR 860-038-0001 (4), Portland General Electric Company (PGE) hereby submits to the Commission this request for a partial waiver of OAR 860-038-0580 on the terms specified in this Application. PGE seeks a partial waiver through the earlier of: (1) January 1, 2025, or (2) until such time as new rules are adopted, consistent with changes made to ORS 757.646 by House Bill 2021 (HB 2021), superseding the current OAR 860-038-0580 (1) that obviate the need for a waiver.

OAR 860-038-0580 (1) provides:

(1) Other than information that is routinely made public by an electric company, or for which a tariff has been approved subject to OAR 860-086-0020, an electric company must not provide electric company operational or marketing information to its competitive operations unless it makes such information available to ESSs and other entities that provide electricity services or directly related products on identical terms and conditions.

PGE requests a partial waiver of this rule to allow PGE to provide limited, load forecasting information generated by its regulated operations to the competitive operation that manages the Green Future Enterprise program without making that information public or providing it to electricity service suppliers (ESSs) and other entities.

Discussion

The Green Future Enterprise (GFE) program provides renewable energy certificates (RECs) to large non-residential customers through an optional supplemental service provided by Schedule 54. Schedule 54 allows a customer to purchase RECs, subject to a minimum purchase, that are Green-e® Energy certified or to purchase RECs from a specified facility, subject to a minimum purchase. Today, the GFE 100% option is based on a customer's previous years usage. Customers that self-direct funding through ORS 757.612 can enroll in Schedule 54.

In conversations with some large non-residential customers, employees of the Green Future Enterprise program have learned that those customers would prefer to have an option that better assesses year-over-year usage changes for volumetric purchases and enhances the probability that RECs purchased will equal the annual kilowatts used by the customer. In other words, customers would like a "100% usage option" without having to over-purchase RECs to ensure that outcome. Over-purchasing RECs (more RECs than usage would demand) is costly to the customer, and fundamentally unnecessary. There is a manual process for "truing up" under-purchases of RECs (where the load is greater than the RECs purchased) at the end of each year, but the GFE program has found that process to be cumbersome, time consuming and potentially error prone.

The GFE program would like to obtain 5-year load forecast information to reduce the volumetric risks associated with offering a 100% product (over-purchase) and to reduce the chance that the customer will not receive enough RECs to cover 100% of usage at the end of the year (under-purchase). An initial evaluation of historical participant usage found that there is minimal variability in the usage of most Schedule 54 participants, but there are some customers, especially data centers, that have variable usage for which the differences could be ameliorated or minimized by obtaining the 5-year load forecast information.

PGE submits that the load forecast information could be considered “operational or marketing information” within the context of OAR 860-038-0580 (1), however it believes that for the following reasons, the information is not required to be shared with ESSs or other parties.

In 2021, the Oregon Legislature adopted HB 2021. Part of that legislation contained changes to ORS 757.646, the statute on which the provisions of Division 38 Code of Conduct and, specifically provisions in OAR 860-038-0580, are based. Section 23 of that bill made a number of changes relevant to the scope of the current rule:

One, the legislature clarified that the policies that the Commission may adopt to “eliminate barriers to the development of a competitive retail market” apply only to that market vis-à-vis ESSs and electric companies. That would suggest that the provision of OAR 860-038-0580 regarding “other entities” is no longer supported by the statute and that any sharing, if it must occur, must only be with ESSs.

Two, the statutory changes instructed that the policies designed to mitigate the utility market power need to prohibit preferential treatment as between the utility and its generation or market *affiliates*. The GFE program is not operated by a PGE generation or market affiliate and is therefore outside the scope of the statutory direction regarding preferential treatment. Further, the legislature also repealed language that directed that the policies be designed to mitigate the market power in mere competitive operations.¹ The GFE program is operated only as a competitive operation.

¹ Section 23, House Bill 2021 (2021) amended ORS 757.646 and provided in part that: “The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies[,] **and** prohibit preferential treatment, or the appearance of such treatment, [of] **by the incumbent electric companies toward** generation or market affiliates [*and determine the electricity services likely to be competitive*].”

Three, the legislature, in adopting the greenhouse gas emissions reduction focus of HB 2021 added a new subsection (4) to ORS 757.646 further limiting the scope of policies developed to mitigate utility power.² The legislature directed that these policies should not limit or delay the utility from offering programs or services that largely aid in reducing emissions. PGE suggests that trying to provide customers with a 100% option that minimizes costs and complications would be within the ambit of the exception that the legislature provided in ORS 757.646 (4).

Finally, PGE asserts that the load forecast information, while proprietary, is only a forecast. If an ESS were to provide a program similar to Schedule 54 to direct access customers and wanted to provide a 100% option to the same large, nonresidential customer currently enrolled in Schedule 54 under direct access, the ESS is fully capable of generating its own load forecasts based on discussions with the customer and anticipated usage. That is, while it is information that could be considered marketing information under the rule, it is not of such a special nature that it would require release – PGE’s information from its regulatory operations to its competitive operation does not provide any specific advantage to the competitive operation. To the extent that it does, that advantage is also ameliorated by a further change made in HB 2021. That change provided that benefits provided, or cross-subsidization, to competitive operations from regulated operations, including through use of staff and “other resources,” must only be “minimized” and are no longer “prohibited.” In this case, the sharing of limited information between the two operations regarding 5-year load forecasts is a minimal transfer of “other resources” between the regulated and

² ORS 757.6464 provides: “(4) Notwithstanding subsection (1) of this section, the commission shall ensure that policies developed to mitigate the vertical and horizontal market power of incumbent electric companies do not limit or delay electric companies from offering programs or services or making prudent investments in furtherance of the clean energy targets established by section 3 of this 2021 Act or a program established under ORS 757.603 (5), or that otherwise aid in reducing statewide emissions of greenhouse gases consistent with state policies, including ORS 283.398 and 468A.205.”

competitive operations. On that basis, it should fall under the limited exception made by the legislature.

Request

For the reasons stated above, PGE respectfully seeks a partial waiver of the requirements of OAR 860-038-0580. It is a partial waiver because PGE does not request a waiver of the entire rule and the waiver would apply only to this particular instance of providing limited load forecast data for a specific purpose.

PGE appreciates the time-consuming work that Staff and the Commission are doing to implement the many far-reaching provisions of HB 2021. A future rulemaking docket would likely eliminate the need for this partial waiver in the future.

Communications

Communications regarding this application should be addressed to:

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Conclusion

OAR 860-038-0001 (4) allows the Commission to grant waivers of Division 38 rules for good cause shown. PGE respectfully seeks this partial waiver of OAR 860-038-0580. Good cause exists for the waiver due to changes made by HB 2021 to ORS 757.646, among them changes that encourage utilities to offer programs or services in furtherance of clean energy targets or that otherwise aid in reducing greenhouse gas emissions consistent with state policies without being limited by policies developed to mitigate the vertical and horizontal market power of the utility.

PGE requests this partial waiver to allow PGE to provide limited load forecast information for certain large, non-residential customers without having to also provide that load forecast information to ESSs.

For all the reasons described above, PGE requests that the Commission approve this request for a partial waiver.

DATED this 7th day of August, 2023.

Respectfully submitted,



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