

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 12, 2023**

REGULAR **CONSENT** **EFFECTIVE DATE** _____ **N/A** _____

DATE: December 4, 2023

TO: Public Utility Commission

FROM: JP Batmale **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 1631)
Portland General Electric Application for Partial Waiver of
OAR 860-038-0580 Prevention of Cross-subsidization Between
Competitive Operations and Regulated Operations.

STAFF RECOMMENDATION:

Grant the request of Portland General Electric (PGE or Company) for a partial waiver of OAR 860-038-0580(1) through January 1, 2025, on the condition that PGE report by February 29, 2025, the number of customers for which its competitive operations received a load forecast and the estimated value.

DISCUSSION:

Issue

Whether the Commission should approve PGE's request for a partial waiver of OAR 860-038-0580(1).

Applicable Law

Consistent with Senate Bill 1149, the Commission adopted the Code of Conduct rules in OAR 860-038-0500 through 0640 to 1) govern the interactions and transactions among the electric company, its Oregon affiliates, and its competitive operations, and 2) to protect against market abuses and anti-competitive practices in the Oregon retail electricity market. As relevant here, OAR 860-038-0580 limits the information an electric company may provide to its competitive operations without making available to other entities that provide electricity services to prevent cross-subsidization.

Per OAR 860-038-0001(4), upon a written request or its own motion, the Commission may waive any of the Division 38 rules upon a showing of good cause.

Analysis

Background

On August 7, 2023, PGE filed a request for a partial waiver of the direct access rule OAR 860-038-0580(1). This rule section is entitled, "Prevention of Cross-Subsidization between Competitive Operations and Regulated Operations" and section 1 states:

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.

Under this partial waiver PGE is requesting two things. First, the Company wants approval to provide limited, load forecasting information from PGE's regulated operations to the PGE competitive operation that manages the Green Future Enterprise (GFE) program. Second, PGE also wants approval to not make any resulting customer load forecast information from being made public or provided to electricity service suppliers (ESSs) and other entities per the rule. PGE requests this waiver for the period of time through January 1, 2025.

The GFE program allows large non-residential customers on Schedules 83, 85, and 89 to self-direct their renewable public purpose charge away from Energy Trust's renewable programs toward the purchase of renewable energy certificates (RECs). For customers large enough to self-direct, PGE offers programs under Schedule 54 to purchase Green-e® Energy certified RECs, subject to a minimum purchase, up to 100 percent of their load. Customers can also work with PGE to purchase RECs from a specified facility.

The GFE program provides a streamlined service to provide REC equivalent to up to 100 percent of a customer's load for a corporate sustainability pledge. The 100 percent option is based on a customer's previous year's usage. It utilizes a mix of the customer's self-directed public purpose funding and additional funds. In addition, PGE also provides publicity and advertising benefits. In 2022, 222 customers participated in Schedule 54's optional, supplemental services.¹

¹ See PGE response to docket UM 1631 Staff Information Request 25, October 10, 2023. Attached.

The purchasing of a correct amount of RECs, based on a customer's anticipated load, can be difficult for a variety of reasons. This is especially true for large customers seeking to "green" 100 percent of their usage. Over-purchases are costly to the customer and the process to resolve under-purchases at the end of a year has drawbacks for the customer and PGE.² The purpose of this partial waiver request is to allow the competitive operation managing GFE to receive from the regulated operation a load forecast based on a customer using 5 years' worth of load in an attempt to avoid over or under purchasing RECs.

PGE states four, overarching reasons in support of the Company's partial waiver request:

1. House Bill (HB) 2021 limited the Commission's oversight of the competitive market to between just two types of entities, electric utilities and ESSs. As the GFE program is administered by PGE's competitive operations, the PUC no longer has jurisdiction over sharing information between PGE's regulated and competitive operations.
2. The GFE program is administered by a PGE competitive operation, not a market affiliate. HB 2021's statutory changes limit preferential treatment between a utility and its generation or market affiliate. Because PGE narrowly defines the administrator of the GFE program as a competitive operation – and not a PGE generation or market affiliate – PGE claims the activities are outside the scope of the PUC's statutory direction regarding preferential treatment.
3. HB 2021 added language to ORS 757.646 to avoid limiting or delaying the offering of programs or services that aid in reducing emissions. As proposed, PGE sees the partial waiver assisting in the reduction of costs and complications for large, non-residential customers attempting to green some or all of their load, which as emission reduction benefits.
4. The nature of the information being provided by PGE's regulated operations – a load forecast based on historic data – is not of such a special nature that it would require release. PGE further claims that the load forecast information provides no specific competitive advantage to PGE's competitive operations.

Stakeholder Comments

The Northwest & Intermountain Power Producers Coalition (NIPPC) filed comments on PGE's partial waiver request. In it NIPPC recommended that the Commission:

- (a) Grant PGE's waiver request but without opining on PGE's reasoning.
- (b) Clarify that customers can request the five year load forecast information from

² See docket UM 1631, PGE initial filing for partial waiver, page 2, August 2, 2023.

PGE and share that information with an ESS.

In short, NIPPC disagrees with PGE's interpretation of HB 2021. Further, NIPPC asserts that PGE raised substantial legal arguments and that this waiver request is not the appropriate forum to determine substantive changes to the application of Oregon's direct access rules.

Good Cause Exists for the Partial Waiver

There are two valuable services being sought by PGE's competitive operation under this waiver. First, seamlessly acquiring five years of customer data for analysis. And second, the services from the regulated operations to develop the load forecast information using this customer data. Previously, if PGE's competitive operation or any large, non-residential customer had wanted to develop a more accurate load forecast they would have had to pay for the necessary interval meter data and hire a firm to develop such a forecast.

With regards to the data, as part of the fourth stipulation in PGE's last general rate case, docket UE 416, at least 12 months of interval data in Schedule 300 is now available to non-residential customers for free.³ This removes the cost to access the underlying data for any forecast on a going forward basis. Staff would also note that Schedule 300 does not preclude customers asking for or PGE from providing more than 12 months of interval meter history data.

With regards to the load forecast information, PGE confirmed that customers will not receive the customer interval meter data history or the resulting load forecast information.⁴ Both will only be used by PGE's competitive operations to refine its REC purchases for select Schedule 54 customers. While this could be seen as an advantage to PGE's competitive operation, such an assumption is based on two things. First, PGE's regulated operations has load forecasters superior to the broader market. And second, these large customers are unaware that they can request their underlying usage data and provide it to a different firm to develop a competing load forecast. Staff believes neither assumption is correct.

Finally, Staff appreciates attempting to keep any programmatic costs for customers as low as possible.

Thus, Staff finds there is good cause to grant PGE's waiver request. The list below summarizes Staff's reasons:

- The request is time-limited to the end of 2025 or until new rules are adopted.
- Due to the fourth stipulation in docket UE 416, the same underlying data is now

³ See docket UE 416, 4th Stipulation, October 6, 2023, Stipulation #14, page 4.

⁴ See PGE response to docket UM 1631 Staff Information Request 26, October 10, 2023. Attached.

available to customers to request and use as they see fit.

- It attempts to avoid expensive over and under purchasing of RECs in supporting customers sustainability goals.
- NIPPC comments support granting the waiver request.

Conditions on Request: Monitoring and Reporting on Cross-Subsidization

While Staff finds good cause to grant PGE's partial waiver request, Staff remains concerned about the extent of potential cross-subsidization. The service PGE's competitive operation seeks to access is valuable. Staff cannot discern at this time how much will be expended by the regulated operations in providing these services to the competitive operations. To this end, PGE did not provide any clear guidance.

In response to Information Request 22, when Staff asked how many GFE customers PGE planned to provide this load forecasting service for, PGE opted not to provide a comprehensive list in its response. As PGE noted, there were 222 GFE customers in 2022. This lack of clarity raises concern about potential costs to ratepayers.

Staff does not find this ambiguity grounds to deny PGE's request, especially as there has been no discussion since the passage of HB 2021 as to what the bill means for the direct access code of conduct. Rather, this ambiguity provides an opportunity to monitor how PGE approaches minimizing cross-subsidization following passage of HB 2021 and in times of increasing rate pressure. To this end, Staff asks that PGE update the Commission by February 28, 2025, by filing a simple report detailing the number of customers for which its competitive operations received a load forecast, the number of months of data utilized, and the estimated value. Staff is flexible as to the format and methodology and is willing to meet with PGE to develop a final format for the report. Staff offers a template in the Attachment to this memo as just an example of what such simplified report could contain.

Resolving the Impact of HB 2021 on Direct Access Regulation in the Future

Finally, several of PGE's justifications for this waiver emanate from the Company's interpretation of HB 2021's impact upon on direct access. Per NIPCC's suggestion, Staff does not make any findings on the merits of PGE's arguments on that issue. Further, Staff would note that much like our January 2023 memo approving PGE's waiver to the Code of Conduct reporting requirement, two comprehensive dockets, UM 2024 and AR 651, dealing with a multitude of direct access issues are already underway. In addition, docket UM 2273, is currently trying to establish how to approach several REC issues since the passage of HB 2021. Staff defers to these dockets in the meantime and upon their respective conclusions, will be open to discussing with PGE and all other stakeholders what other work needs to be done, if any, to update OAR 860-038-0580.

Conclusion

Staff finds good cause in PGE's request and recommends granting a partial waiver to the Company. Staff does recommend that the condition be added of monitoring and reporting by February 29, 2025, the number of customers for which its competitive operations received a load forecast and the estimated value. Staff is flexible on the format and methodology to this reporting. Finally, Staff agrees with NIPPC and does not take a position on the direct access implications of HB 2021. Rather, we suggest the Commission wait until the conclusion of dockets UM 2024, AR 651, and UM 2273 to determine if a rulemaking process is necessary to update OAR 860-038-0580.

PROPOSED COMMISSION MOTION:

Grant PGE's request for a partial waiver of OAR 860-038-0580(1) through January 1, 2025, on the condition that PGE report by February 29, 2025, the number of customers for which its competitive operations received a load forecast and the estimated value.

Attachment – Sample Cross-Subsidization Report Elements

Report Element	Data	
GFE Customer		
Name or Address of Participating GFE Site		
Number of months of meter data utilized to create the forecast		
Average Annual MWH for Participating GFE Site		
GFE Customer at Time of Load Forecast	Y/N	
Regulated PGE Staff Involved in Creating and supporting Load Forecast and Estimated Hours Worked	Name(s)	Hours