ITEM NO. 4

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 11, 2015

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** N/A

DATE: July 30, 2015

TO: Public Utility Commission

FROM: Judy Johnson JJ

THROUGH: Jason Eisdorfer and Marc Hellman

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UP 324) Requests approval of the sale of 1.2 MW of solar electric systems to Banc of America Leasing & Capital LLC as part of a sale/leaseback transaction.

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission of Oregon (Commission) approve the application by Portland General Electric Company (PGE or Company) to sell approximately 1.2 MW of rooftop crystalline solar electric systems distributed over six schools in the Portland Public School (PPS) District No. 1J, Multnomah County, Oregon to Banc of America Leasing & Capital LLC (BALC) as part of a sale/leaseback transaction, subject to the following conditions.

1. PGE shall provide the Commission access to all books of accounts as well as all documents, data, and records that pertain to the transfer of properties.
2. PGE shall notify the Commission in advance of any substantive changes to the transfer of properties, including any material changes in price. Any material changes to the agreement terms that alter the intent or extent of activities under the agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate form) in this docket.
3. The Commission may review for reasonableness all financial aspects of this transaction in any rate proceeding or earnings review under an alternate form of regulation.
4. PGE shall submit the final journal entry recording the transaction to the Commission with the appropriate annual report.
5. PGE shall submit a report to the Commission, no more than 60 days subsequent to the date when PGE has completed its acquisition of Oregon-qualifying bundled RECs, providing details on the amount and a detailed description of the RECs acquired.

6. PGE shall submit to Staff three months prior to the lease buy-out option date the economic analysis used to determine whether the Company will exercise the buy-out option.

ISSUE

PGE asks for approval to sell a newly-constructed solar resource to a third-party to allow the third-party to take advantage of certain tax benefits associated with the resource. PGE intends to lease the facility from the third-party at a price that reflects the tax benefits the third-party will receive from owning the facility and after six years, PGE intends to purchase the facility back from the third-party.

APPLICABLE LAWS AND STANDARD OF REVIEW

ORS 757.480 provides, in relevant part, that a utility shall obtain the Commission's approval prior to selling property used to provide utility service when the value of the property exceeds $100,000. OAR 860-027-0025(1)(l) requires the applicant to show that the property sale will be consistent with the public interest. The Commission has interpreted the phrase "consistent with the public interest" to require a showing of "no harm to the public."[1]

Background

PGE intends to develop, operate, and eventually own PPS Solar, an up to 1.2 MW of rooftop crystalline solar electric systems distributed over six schools in the PPS District No. 1J, Multnomah County, Oregon.[2] PGE has contracted with EC Company to engineer, design, and construct PPS Solar which includes: solar panels manufactured by Unisolar, smart modules, inverters, racking systems, and related equipment.

PPS Solar will receive funding support from the Energy Trust of Oregon (Energy Trust) and the Clean Wind Development Fund (CWF) to buy-down the project to market costs. The Energy Trust grant is estimated to be approximately $1 million and the CWF funding will be approximately $2 million. For the first five years, the Renewable Energy Credits (RECs) will be retired on behalf of PPS. For years 6-20, they will be split between the Energy Trust (retired on behalf of PGE customers) and CWF (retired on

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[1] See, e.g. *In the Matter of the Application of PacifiCorp*, Order No. 00-112 at 6 (2000); *In the Matter of the Application of Portland General Electric*, Order No. 99-730 at 7 (1999).
[2] The six schools are: Arleta School, Bridlemile School, Hosford Middle School, James John Elementary School, Laurelhurst School, and Wilson High School.

behalf of CWF customers), at 44 percent and 56 percent respectively. Beyond 20 years the RECs will go to CWF.

Once it is built, PGE proposes to sell PPS Solar to BALC. After the sale, PGE will immediately lease PPS Solar back from BALC, with an early buy-out option for PGE after year six. This financial structure allows tax credits to be fully utilized by BALC and allows for the energy from the facility to be economic for both PPS and PGE. PGE will operate and maintain PPS Solar under the lease structure.

The sales price will be agreed on by BALC and PGE and is expected to be $4.574 million, but in any event not to exceed $4.6 million, based on the fair market value of PPS Solar. The fair market value for PPS Solar primarily reflects design and build costs, as well as other related costs, such as legal fees, administration costs, and development costs. Payment of the sale price will be made at the closing of the sale to BALC and lease to PGE.

For accounting purposes, there is no recognized gain on the sale of this property. Rather, PGE's gain will be deferred and incorporated as a reduction to the revenue requirement when PGE seeks recovery of costs in a Renewable Automatic Adjustment Clause filing pursuant to PGE's Schedule 122.

DISCUSSION

Issues
Staff investigated the following issues:

1. Applicability of ORS 757.480
2. Scope and Terms of the Asset Purchase Agreement
3. Allocation of Gain
4. Public Interest Compliance
5. Records Availability, Audit Provisions, and Reporting Requirements

Applicability of ORS 757.480
PGE states in its application that it does not know whether it is necessary to obtain Commission approval for the sale of PPS because the property at issue is not used to or necessary to provide utility service.[3] Staff believes approval is necessary. PGE is using ratepayer funds to construct a facility to generate energy that will be used to serve its retail customers. In order to obtain the economic benefit of tax credits that PGE itself cannot use, PGE plans to sell the resource before its commercial on-line date. The fact that the sale takes place prior to the resource's commercial on-line date should not

[3] Application for Sale of Property 1.

divest the Commission of jurisdiction over PGE's sale of a ratepayer-funded resource built to generate energy to serve PGE's retail customers.

Scope and Terms of the Asset Purchase Agreement
Staff reviewed the property Purchase Agreement and did not identify any unusual or restrictive terms or conditions. PGE has no capacity for the tax credits generated by this project while BALC does. The sale-leaseback structure allows tax credits to be fully utilized by BALC and for the power costs from the facility to become economic for PGE customers. PGE reports that the amount of the tax credits and other tax benefits will be taken into account in determining the amount of the rental payments that PGE will pay to BALC under the lease.[4]

PGE states that the term length before the buy-out option (six years) was determined as a result of negotiation between the two companies.[5] PGE states that a 6-year lease term before the buy-out allows BALC to capture the benefits of depreciation and income tax credits.[6] From PGE's perspective, a 6-year lease term before the buy-out provides the benefits that make the project economically viable for PGE and its customers.[7]

The buy-out is part of an overall agreement, and as such, there would be no fees charged to PGE directly attributable to the buy-out option.

Allocation of Gain
PGE's filing states that for accounting purposes there is no recognized gain on the sale of this property. PGE's gain will be deferred and incorporated as a reduction to the revenue requirement when PGE seeks recovery of costs in a Renewable Resource Automatic Adjustment Clause filing pursuant to PGE's Schedule 122.

Public Interest Compliance
PGE customers will benefit from the ownership of a renewable power resource in years 6–20 of the project. During this period, 44 percent of the RECs generated by the facility will be retired on behalf of PGE customers and 56 percent of the RECs will be retired on behalf of CWF customers. Prior to year six, 100 percent of the RECs will be retired on behalf of PPS. After year 20, 100 percent of the RECs will be retired on behalf of CWF customers.

The allocation of the RECs between the parties (Energy Trust, PPS, and PGE) was mutually agreed upon as representing a fair and reasonable disposition of the RECs.

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[4] PGE Response to Staff Data Request 1.
[5] PGE Response to Staff Data Request 6.
[6] PGE Response to Staff Data Request 6.
[7] PGE Response to Staff Data Request 6.

The Energy Trust and CWDF contributed $1 million and $2 million, respectively, to the project in order to "buy-down" the project's $4.5 million cost to PGE's avoided cost for purchased power. Energy Trust policy enables the site host to have the first 5 years of RECs be retired on its behalf, which Parties accepted. As a result, the Energy Trust, CWDF, and PPS agreed to have the RECs be retired on their behalf 26 percent, 54 percent, and 20 percent, respectively.

On July 1, 2015, representatives from OPUC Staff, CUB, the Energy Trust, and PPS participated in a workshop. The participants of the workshop agreed that in an effort to recognize PGE customers for their financial contribution to the project, over and above what was agreed upon by the Parties, PGE will acquire, with shareholder dollars, 1,946 Oregon certified, bundled RECs as part of its REC portfolio. The bundled RECs will be retired on behalf of PGE customers. This effectively establishes a REC allocation between the Energy Trust, CWDF, and PPS of 33 percent, 54 percent, and 20 percent, respectively, in order to settle UP 324 – recognizing this is a project-specific agreement and does not establish precedent for the allocation of RECs of future PGE solar projects. The revised REC allocation is consistent with the life-cycle generation of the facility. The RECs retired on behalf of PGE customers will be used to meet PGE's renewable portfolio standard obligation under ORS 469A.052. PGE customers will receive benefits of the renewable power at a cost that is expected to be approximately equal to the blended avoided cost.

As noted above, the Commission customarily applies a "no harm" standard with regard to the public interest criterion relating to property sales. Staff has concluded that the sale-lease back arrangement allows PGE to use this resource to generate renewable energy at blended avoided costs and obtain RECs to comply with Oregon's RPS. Staff concludes that Oregon customers are not harmed by this transaction and that the sale is in the public interest.

Records Availability, Audit Provisions, and Reporting Requirements

Order Conditions Numbers 1, 4, and 5, listed in Staff's recommendations, afford the Commission necessary examination of PGE's books and records concerning the sale.

PGE has reviewed this memorandum and has voiced no concerns.

PROPOSED COMMISSION MOTION:

Approve the application by PGE to sell approximately 1.2 MW of rooftop crystalline solar electric systems distributed over six schools in the PPS District No. 1J, Multnomah

County, Oregon to Banc of America Leasing & Capital LLC as part of a sale/leaseback transaction, subject to the following conditions.

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