

ITEM NO. CA3

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 21, 2015

REGULAR _____ CONSENT X EFFECTIVE DATE July 22, 2015

DATE: July 15, 2015

TO: Public Utility Commission

FROM: George R. Compton *ARC*

THROUGH: *J E* Jason Eisdorfer and *MAH* Marc Hellman

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. ADV 62/Advice No. 15-16) Updates Schedule 102, Change Regarding Cannabis Growers and the Residential Exchange Credit.

STAFF RECOMMENDATION:

Staff recommends that the Commission approve Portland General Electric's (PGE's or Company's) proposed eligibility revisions to its Schedule 102, Residential Exchange Credit, and grant a waiver of legal statutory notice.

DISCUSSION:

Background

On June 29, 2015, PGE filed Advice No. 15-16, relating to revising the eligibility language associated with the Residential Exchange Credit (Resx). This filing was made pursuant to ORS 757.205, ORS 757.210 and OAR 860-022-025. PGE also requested a waiver of legal statutory notice under ORS 757.220 and OAR 860-022-0020. The Resx provides PGE residential and small-farm customers benefits from the low-cost federal system resources. For residential customers, the Resx applies to the first 1000 kWh of monthly electricity use.

On July 9, 2015, PGE filed revised tariff language at Staff's request. In this July 9 filing, PGE proposed language that states the following: "Consistent with the requirements of the Bonneville Power Administration (BPA), if, in the course of doing business, a utility discovers that one of its Customers is growing Cannabis using power provided by the utility, such customer is not eligible for the Regional Power Act Exchange Credit under

this Schedule.” Therefore if PGE becomes aware that a residential customer is growing Cannabis plants, the customer will not receive the Resx and PGE will not include that customer’s load in its eligible load reported to BPA.

Analysis

Staff engaged in discussions with PGE and with the BPA staff responsible for administering the Residential Exchange Program (REP). The genesis of this PGE filing responds to BPA’s directive to the region’s investor-owned utilities that receive from BPA residential exchange benefits. It is BPA’s policy to comply with federal law, and as they interpret it, BPA is not able to provide any residential exchange benefits to retail customers that are using electricity to grow Cannabis. I have attached a copy of the Department of Energy memorandum providing direction to the federal power marketing agencies. PGE is making this filing to help communicate to customers BPA’s policy and the consequences of growing Cannabis with respect to eligibility to the Resx. It should be noted that PGE is not going to ask its customers whether they are growing Cannabis. For a residential customer, it should be a very rare event where a PGE employee would see any Cannabis plants in a residence because typically there is no reason why a PGE employee would be in a residence for work-related purposes.

Staff contacted PacifiCorp regarding this issue as PacifiCorp has not yet submitted a filing relating to this issue. PacifiCorp reports that it has had further internal discussions about its customer outreach in response to the issue of customers receiving adequate notice of ineligibility under the REP if the customer chooses to grow Cannabis on his or her property using electricity provided by the utility. Based on those discussions, PacifiCorp’s current outreach plan includes a bill message to customers pointing them to information on its website that directly addresses this issue, and information in the form of Q&As in its next quarterly customer outreach information (the next outreach is scheduled to occur in September). PacifiCorp is working now on the bill notification and updates to the website. PacifiCorp is also considering making the same language change as PGE in PacifiCorp’s Resx tariff and submitting the filing in August.

PROPOSED COMMISSION MOTION:

PGE’s proposed revisions to its Schedule 102, Regional Power Act Exchange Credit, be approved, effective July 22, 2015, and a waiver of legal statutory notice granted.



Department of Energy
Washington, DC 20585

November 12, 2014

**GUIDANCE TO THE POWER MARKETING ADMINISTRATIONS
REGARDING ACTIVITIES PROHIBITED BY THE CONTROLLED SUBSTANCES ACT**

The federal power marketing administrations (PMAs) market power from federal dams and other resources across 33 states. With few exceptions, the PMAs market federal power at the wholesale level. The PMAs' customers for federal power are generally state and municipal utilities, electric cooperatives, and tribes (collectively referred to here as "wholesale power customers"). The federal statutes that govern the PMAs address the relationship between the PMAs and their wholesale power customers. State law governs the relationship between the PMAs' wholesale power customers and their retail consumers.

The PMAs also collectively own and operate over 30,000 miles of transmission lines. The PMAs provide non-discriminatory transmission service to their wholesale power customers and a wide range of other entities. The provision of transmission service by the PMAs is governed by their organic statutes, by their transmission tariffs, and by the Federal Power Act as implemented by the Federal Energy Regulatory Commission. With few exceptions, the PMAs do not provide transmission or distribution service directly to retail consumers.

Presently, several states served by the PMAs allow the sale of marijuana for medicinal purposes and three allow the sale of marijuana for recreational purposes. The cultivation and distribution of marijuana remain prohibited by federal law, and federally owned, controlled or administered resources may not be purposely provided to facilitate the commission of a federal offense. In consideration of both the PMAs' legal obligation to provide service to their customers and the prohibition on purposeful use of federal resources for the commission of federal offenses, the Department of Energy provides the following guidance to the PMAs:

- A. Wholesale sales of electric power or transmission service by the PMAs undertaken in accordance with the applicable federal statutes do not purposely facilitate the commission of a federal offense.
- B. The PMAs have neither the responsibility nor the authority to actively enforce the Controlled Substances Act of 1970. Should PMA employees discover in the course of their official duties that a retail consumer served by a PMA's wholesale power or transmission customer is engaged in activity that violates federal law, the PMA employees shall (1) continue to perform all duties as instructed by their supervisors, and (2) report that activity, through their line management, to the PMA administrator, who will ensure the activity is reported to the Department of Justice. The PMAs need not report facilities the existence of which has otherwise been made public by the Federal or state government in the state in which they are located.
- C. In some circumstances, the PMAs provide financial assistance or otherwise enter direct contractual relationships with retail consumers. In such circumstances, the PMAs should not provide any federal resources to a retail consumer that would be used in a manner that violates federal law.