

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 23, 2022

REGULAR CONSENT EFFECTIVE DATE _____ N/A _____

DATE: August 4, 2022

TO: Public Utility Commission

FROM: Kathy Zarate

THROUGH: Bryan Conway, Marc Hellman, and Matt Muldoon **SIGNED**

SUBJECT: PORTLAND GENERAL ELECTRIC:
(Docket No. UM 2217)
Application for deferral of revenues associated with the Change in Federal Energy Regulatory Commission Open Access Transmission Tariff.

STAFF RECOMMENDATION:

Approve Portland General Electric’s (PGE or Company) application for authorization to use deferred accounting for incremental revenue associated with the Open Access Transmission Tariff (OATT) for 12 months, beginning January 1, 2022.

DISCUSSION:

Issue

Whether the Public Utility Commission of Oregon (Commission) should approve PGE's application for the authorization of deferred accounting of revenues associated with the change in its Federal Energy Regulatory Commission Open Access Transmission Tariff.

Applicable Law

ORS 757.259 allows the Commission to authorize deferred accounting for later incorporation into rates. Specific amounts eligible for deferred accounting treatment with interest authorized by the Commission include, "[i]dentifiable utility expenses or revenues, the recovery or refund of which the Commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuations of rate levels or to match appropriately the costs borne by and benefits received by ratepayers."
ORS 757.259(2)(e).

OAR 860-027-0300(3) sets forth the requirements for the contents of deferred accounting applications. Applications for reauthorization must include a description and explanation of the entries in the deferred account, up to the date of the application for reauthorization, as well as the reason for continuation of deferred accounting. OAR 860-027-0300(4). Public Utilities must provide notice of the application to stakeholders pursuant to OAR 860-027-0300(6).

Analysis

Background

On December 27, 2021, Portland General Electric requested an accounting order authorizing PGE to defer revenues associated with the change in PGE's Federal Energy Regulatory Commission (FERC) Open Access Transmission Tariff (OATT). The PGE-proposed deferral beginning date request is the date that FERC effectively approves the transmission tariff change which, for convenience, Staff has set as January 1, 2022, which is also the interim FERC approval date.

PGE's application explains that the deferral will support an automatic adjustment clause rate schedule with an associated balancing account mechanism to track incremental revenues associated with increases to PGE's transmission rates under review by FERC that are not currently accounted for in retail rates.

The revenues at issue in the application are those PGE receives from providing wholesale transmission services to third parties using assets paid for by Oregon retail customers. These revenues are used to offset PGE's retail revenue requirement in general ratemaking proceedings. Specifically, PGE's forecast of these revenues for the test year in a general rate case are included in PGE's revenue requirement as "other revenues."

The current transmission sales revenue forecast assumed for PGE's current rates is based on PGE's transmission rates in effect prior to PGE requested transmission rate increase. The total amount of PGE's net revenues from wholesale transmission sales depends on more factors than just the transmission rates, but it is expected that PGE's net transmission sales revenue will increase as a result of PGE's request for a transmission rate increase. Accordingly, PGE has filed this request to defer actual wholesale transmission revenues that exceed those assumed in PGE's retail rates, for later amortization to retail customers.

This deferral request is preceded by a stipulation between PGE, Staff, the Oregon Citizens' Utility Board (CUB), and the Alliance of Western Energy Consumers (AWEC) regarding PGE's request to the Commission to reclassify distribution assets as

transmission assets. PGE made the request with an application filed on August 29, 2019, which was docketed as UM 2031. Ultimately, the parties to that docket agreed to support reclassification of certain assets, including 115 kV facilities, and PGE agreed to file a request to defer any incremental revenues associated with the reclassification and anticipated FERC rate case. The Commission adopted the stipulation in Commission Order No. 19-400, and noted the provisions of the agreement as follows:

Under the stipulation, PGE commits to propose a method to hold all customer classes harmless for the time between the rate effective date in FERC and Commission rate cases that include the reclassified assets to account for any mismatch in timing. We direct that PGE consult with Staff and other parties to establish a process to develop and obtain Commission approval of such a method prior to the effective date of any change in transmission rates that include the reclassified assets.¹

PGE filed a FERC rate case with a proposed rate increase on October 28, 2021. On January 1, 2022, FERC approved an interim rate increase that is subject to refund in the event the final rates ultimately adopted by the Commission are less than the interim increase. Intervenor in PGE's FERC rate case oppose the proposed rate increase and settlement negotiations are ongoing. PGE's application reflects that PGE currently estimates the deferral amount will total approximately \$10.2 million in 2022.

On January 27, 2022, Steve Knudsen submitted comments to the OPUC recommending the Commission hold a hearing regarding PGE's application to defer incremental transmission revenues and asking for additional opportunity to file comments. Mr. Knudsen urged the Commission to not approve PGE's application because:

- PGE seeks to defer revenues that are exclusively subject to FERC's jurisdiction.
- PGE's application does not reflect that PGE provided notice of the proposed deferral to FERC or the parties to the FERC proceeding.
- PGE's application erroneously relies on OPUC Order No. 19-400 regarding the reclassification of certain assets as authority for the deferral.
- PGE has not sufficiently identified the revenues to be deferred under the application and has already started to defer revenues.

The comments reflect that they were not submitted to the Filing Center but were submitted to the following e-mail address puc.publiccomments@puc.oregon.gov. The comments included a request to post them to the docket summary for UM 2217. These

¹ Order No. 19-400, p. 7.

comments were not immediately posted on the Commission's docket summary webpage. It was only after Mr. Knudsen notified OPUC Staff that he had submitted comments that the comments were posted to the docket summary on June 3, 2022.

At the public meeting on June 9, 2022, Staff presented a public meeting memorandum recommending approval of PGE's request to defer. Mr. Knudsen appeared at the public meeting and withdrew the request for hearing included in his January 27, 2022, comments. However, Mr. Knudsen continued to recommend the Commission not approve the application, rearticulating some of the objections in his written comments and identifying additional concerns with the notice and comment process used by the Commission. Mr. Knudsen also asserted PGE appeared to not be in compliance with the stipulation approved in PGE's jurisdictional re-allocation docket because PGE had not obtained Commission approval of a mechanism to hold customers harmless prior to the effective date of the interim rate increase.

In large part due to the delay in posting Mr. Knudsen's comments to the docket and to allow Staff additional time to address the concerns Mr. Knudsen raised in his written and oral comments, the Commission took no action on Staff's recommendation regarding PGE's application to defer, noting they would consider PGE's application at a future public meeting.

Procedural objections

Notice

At the Public Meeting on June 9, 2022, Mr. Knudsen explained his objection regarding the notice and comment process for PGE's deferral application:

This is not the way it is supposed to work. Had the Commission followed its own procedures in this docket as defined and codified in OAR [sic] 757.259, PGE's filing would have been noticed by this Commission shortly after it was filed containing instructions for interested parties on how to file comments and the comment deadline. The comment deadline of January 27th would have been confirmed by the Commission instead of PGE and my comments that I submitted would have been posted to the docket when I submitted them last January 27th and PGE would have been obligated to file reply comments within ten days if they disagreed with any of my comments.²

With respect to Mr. Knudsen's other procedural objections related to notice, Mr. Knudsen commented that PGE's application contains no proof that PGE properly

² June 9, 2022, Public Meeting, Video Recording at 55:56-56.36.

noticed FERC and parties to FERC's transmission rate case of the deferral application that PGE's notice did not include a statement that approval of the application would not authorize a change in rates but will permit the Commission to consider allowing such deferred amounts in rates in a subsequent proceeding.

Response to procedural objections regarding notice

Mr. Knudsen's assertions the Commission, not PGE, should have provided notice to interested persons and that PGE was obligated to respond to Mr. Knudsen's objection, are incorrect. OAR 860-027-0300(6) provides that it is the applicant for an order authorizing deferral, not the Commission, that provides notice of the application by sending a notice to all persons who were parties in the utility's last rate case. Further, OAR 860-027-0300(8) makes clear that a utility requesting a deferral is authorized to file a reply to any comments received from stakeholders but is not obligated to do so.

The application shows PGE properly served notice of the deferral application. PGE states in the application that it served the notice on the UE 394 service list and appends a copy of the service list to its application. For the reasons discussed in response to Mr. Knudsen's substantive objection to jurisdiction, Mr. Knudsen is incorrect that this matter is subject to FERC's jurisdiction and that PGE was obligated to serve notice of this deferral request on FERC and intervenors to PGE's FERC transmission rate case.

Mr. Knudsen is correct that the notice PGE sent to stakeholders was supposed to include a statement that approval of the deferral request would not result in a rate change and that PGE's notice did not include this statement.³ However, it does not appear to Staff that this deficiency was prejudicial. Mr. Knudsen is aware that approving the deferral request would not result in a rate change. Staff has been made aware of no stakeholder that has been prejudiced by the omission in the notice.

Concerns related to Order No. 19-400

Mr. Knudsen stated in written comments that PGE improperly relies on Order No. 19-400 as authority for the deferral request. At the Public Meeting, Mr. Knudsen seemed to suggest the Commission should reject, or at least not rule on, the request to defer because of PGE's alleged failure to comply with the Commission's order directing PGE to obtain approval of a mechanism to address the timing mismatch between retail rates and transmission before the effective date of PGE's transmission rate increase.⁴

Response to concerns regarding Order No. 19-400

PGE's reliance on Order No. 19-400 is appropriate. Order No. 19-400 supports approval of the deferral. A deferral is a necessary element of a mechanism to hold customers

³ See PGE Application to Defer, App. (December 27, 2021).

⁴ June 9, 2022, Public Meeting Video Recording 1:03:57-1:04:50.

harmless. In this case, Staff does not believe that it is necessary that the Commission determine the particulars of any automatic adjustment clause implemented under Order No. 19-400 before approving deferral of incremental revenues associated with the interim rate increase authorized by FERC.

Further, Staff does not believe that PGE has failed to meet the Commission's deadline in Order No. 19-400 for establishing a mechanism to hold customers harmless. The rate increase FERC authorized for PGE in January 2022 is subject to refund in the event FERC approves a smaller rate increase. At this point, Staff does not believe it would be efficient to begin amortizing the deferred revenues associated with PGE's rate increase until FERC has finalized the rate increase. FERC has not yet issued a final order approving PGE's transmission rate increase. Accordingly, Staff does not think PGE has acted contrarily to Order No. 19-400.

Identification of revenues at issue

Mr. Knudsen comments that the application to defer is deficient because it does not properly identify the amounts that will be deferred. Mr. Knudsen explains this position in his written comments:

PGE represents [in its FERC filing] that the newly effective transmission rates are expected to collect \$31,437,000 in incremental revenues from all rate classes in calendar year 2022 compared to the transmission rates in effect on December 20[2]1. PGE further represents that these newly effective transmission rates are expected to collect \$19,078,000 in incremental revenues from PGE's native load customers (i.e., residential/commercial/industrial customers under rate class NITS-PGEM. PGE's filing in this docket UM 2217 is deficient in that PGE has not specifically identified the revenues that it wants to defer (i.e. 31,437,000) in 20[2]2.⁵

Staff response to comments regarding identification of revenues at issue

PGE's application states that PGE anticipates that approval of the application would result in a deferral of approximately \$10.2 million of incremental revenue in 2022. PGE's application on this point is not ambiguous and it is sufficient.

Mr. Knudsen's suggestion there is a lack of clarity on the amount to be deferred is not based on the application itself but is based on his own assumptions about what the deferral balance should be. Mr. Knudsen notes that PGE's FERC rate filing indicates PGE anticipated at the time it filed that FERC case to earn a combined total of \$31.4 million incremental revenues from all rate classes. Mr. Knudsen is concerned that

⁵ Knudsen Comments, pp. 2-3.

PGE's application is deficient because PGE did not identify \$31.4 million as the amount subject to deferral.

However, PGE is not asking to defer all incremental revenues associated with its proposed transmission rate increase. PGE is seeking deferral of incremental revenues associated with services provided to third-party wholesale customers. A review of the documents on which Mr. Knudsen relies reflects that \$10.2 million is a reasonable estimate of these revenues.

As noted above, the portion of PGE's FERC filing relied on by Mr. Knudsen reflects PGE expects to earn approximately \$31.4 million of incremental revenue from all rate classes. The documents reflect PGE expects to earn \$19 million from its native load customers. Also of note is that the cost of retail customers using PGE transmission also increases by \$19 million due to the higher transmission rates being charged. This leaves \$12.4 million to be earned from charges to other customers to make up the total anticipated incremental revenue of \$31.4 million. A review of Mr. Knudsen's comments and his excerpts of PGE's FERC filing shows that of that remaining \$12.4 million, \$10.5 million is expected from PGE's sales to wholesale customers.⁶

If Mr. Knudsen means there is a lack of clarity in PGE's application, Staff does not agree. PGE's application does not say that PGE is seeking deferral of *all* incremental revenues from with the proposed rate transmission rate increase. In all but one instance, PGE's application states that PGE is seeking authority to "defer incremental revenues," and specifically identifies the amount at issue as \$10.2 million in incremental revenues. These combined statements create no ambiguity.

In the one instance, the application states PGE "filed this application to track *all* revenues resulting from the change in the OATT rate as authorized by Order No. 19-400."⁷ However, the use of the word "all" does not create ambiguity because "all revenues" is qualified by "as authorized by Order No. 19-400." The revenues at issue in Order No. 19-400 are the incremental revenues associated with wholesale sales to third parties.

Finally, Mr. Knudsen's statement that PGE is already deferring the incremental transmission revenues is not accurate. Under ORS 757.259(4), the Commission is authorized to allow deferrals to begin from the date of application even though the Commission may act on the deferrals at any time. Currently, PGE is tracking the costs at issue in the deferral but has not yet received the authority to actually "defer" them for later recovery in rates under ORS 757.259.

⁶ Knudsen Comments, p. 2.

⁷ PGE Application, p. 2.

Substantive objections

Mr. Knudsen explained his primary concern with PGE's application as follows:

For the record, my overarching concern in my comments is that regulation of wholesale transmission rates and revenues are under the jurisdiction of FERC. All the accounts that PGE describes for recording deferrals, balancing accounts, etcetera, are FERC accounts. And, PGE states that the deferral will earn interest at the FERC interest rate, the melded Treasury rate, and not at the interest rate authorized by this Commission.

I encourage you as Commissioners to seek a legal opinion that this Commission has the unilaterally authority to defer revenues and direct the reallocation of and/or refund of revenues the allocation and collection of which are authorized by FERC and not this Commission.⁸

Response to substantive objections

Staff understands Mr. Knudsen to mean the Commission will violate the Filed Rate Doctrine if it includes revenues from the Company's wholesale transmission rates increase as an offset to the revenue requirement for retail customers' rates for electricity. Under the Filed Rate Doctrine, a State may not conclude in setting retail rates that a FERC-approved wholesale rate is unreasonable and not give effect to it.⁹ Mr. Knudsen apparently believes, or is concerned, that the OPUC would not be giving effect to the increase to PGE's wholesale rate increase if the OPUC required PGE to use revenues from the increased rates as an offset to PGE's retail rates.

Granting PGE's application would not violate the Filed Rate Doctrine. Offsetting retail rates with revenues from services provided to PGE's wholesale customers is not new rate treatment. Transmission assets are included in PGE's rate base for purposes of setting retail rates, and in the rate base used to establish PGE's wholesale transmission rates. PGE's retail customers are overwhelmingly the largest users of the transmission system and pay the entire revenue requirement of retail rates and the majority of the revenue requirement for transmission rates. Revenue obtained from the sale of wholesale transmission service to third parties offsets the costs of providing transmission services to other non-retail users—the third parties. This offset is just and reasonable. Wholesale transmission customers benefit from the use of assets used to provide service to retail customers because the bulk of the costs of these assets is paid for by retail customers.

⁸ June 9, 2022, Public Meeting, Video Recording 59:05-59:47.

⁹ See e.g., *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953, 966 106 S.Ct. 2349, 2356 (1986).

Further, the Commission is giving full effect to the interim rate increase authorized by FERC. PGE's current rates are based on increased transmission costs to take into account the increase to PGE's transmission rates for its own load.

In support of its concern regarding the OPUC's jurisdiction, Mr. Knudsen points out that PGE will use FERC's Uniform System of Accounts to record the revenues at issue and will accrue interest at the modified blended U.S. Treasury Rate once amortization is authority to support his argument FERC has exclusive jurisdiction over the revenues at issue. The Commission requires PGE to use FERC's Uniform System of Accounts for Oregon regulatory purposes under OAR 860-027-0045(1). Similarly, PGE is required by the Commission to accrue interest on deferred amounts approved for amortization at blend of three Treasury Rates plus 100 basis points.¹⁰ These facts do not divest the Commission of its authority over the accounting for costs of assets used in the provision of utility service and revenues from services provided with those assets.

Conclusion

Staff concludes this application complies with the requirements of ORS 757.259 and OAR 860-027-0300 and is consistent with OPUC Order No. 19-400 requiring PGE to hold customers harmless for any mismatch between costs charged to retail customers for PGE's transmission rate increase and benefits from recovery of incremental revenues for sales to third parties that arise because of the timing of PGE's transmission rate case and most recent retail rate case.

PROPOSED COMMISSION MOTION:

Approve PGE's application for to defer the Oregon-allocated share of the Company's incremental revenue from PGE's increase to transmission rates for wholesale sales to third parties under the OATT for 12 months beginning January 1, 2022.

PGE UM 2217

¹⁰ *In the Matter of the Public Utility Commission of Oregon Staff Request to Open an Investigation into Deferred Accounting* (Docket No. UM 1147), Order No. 08-263 (May 22, 2008).