



Portland General Electric Company
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July 29, 2016

via email

puc.filingcenter@state.or.us

Public Utility Commission of Oregon
201 High Street, Ste. 100
P. O. Box 1088
Salem, OR 97308-1088

Attn: OPUC Filing Center

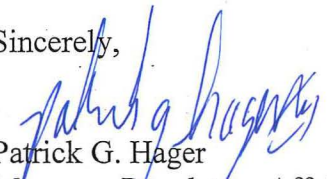
**Re: UM ____ PGE's Application for Deferral of Incremental Revenue Requirement
Associated with the Carty Generating Station and Delay of Commission Review of
PGE's Application until Legal Actions are Resolved**

Enclosed for filing is a signed Application of Portland General Electric Company for deferred accounting treatment of incremental revenue requirement associated with the Carty Generating Station. Additionally, in this Application, PGE seeks a delay of Commission review of this Application until all legal actions, including PGE's claims against Liberty Mutual Insurance Company and Zurich American Insurance Company, are resolved.

A Notice regarding the filing of this application has been provided to the parties on the UE 294 service list.

Parties who wish to receive a copy of this Application should review the Oregon Public Utility Commission (OPUC) website.

Thank you for your assistance in this matter. If you have any questions or require further information, please call me at (503) 464-7580 or Aaron Rodehorst at (503) 464-8804. Please direct all formal correspondence, questions, or requests to the following e-mail address pge.opuc.filings@pgn.com.

Sincerely,

Patrick G. Hager
Manager, Regulatory Affairs

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM _____

In the Matter of the Application of Portland General Electric Company for an Order Approving the Deferral of Incremental Revenue Requirement Associated with the Carty Generating Station

Application for Deferral of Incremental Revenue Requirement Associated with the Carty Generating Station and Delay of Commission Review of PGE's Application until Legal Actions are Resolved

Pursuant to 757.259 and OAR 860-027-0300, Portland General Electric Company (PGE) hereby requests authorization to defer for later rate-making treatment PGE's revenue requirement associated with Carty Generating Station (Carty) capital costs greater than those approved by Public Utility Commission of Oregon (Commission) Order No. 15-356 in PGE's 2016 General Rate Case (i.e., OPUC Docket No. UE 294). These costs are associated with extraordinary events that took place after the Commission issued Order No. 15-356 on November 3, 2015. These extraordinary events resulted in PGE taking control of construction on the Carty site after PGE terminated the construction agreement with Abeinsa, the original engineering, procurement, and construction (EPC) contractor.¹ PGE has also filed a breach of contract action against Liberty Mutual Insurance Company and Zurich American Insurance Company (Sureties) in the U.S. District Court of Oregon. The Sureties provided a performance bond of \$145.6 million under the terminated construction agreement. PGE's claim against the Sureties could take considerable time to be fully resolved (i.e., years). Therefore, PGE also seeks a delay of Commission review of this Application until all legal actions, including PGE's

¹ In 2013, PGE entered into a construction agreement with Abeinsa Abener Teyma General Partnership, an affiliate of Abengoa S.A., and affiliates of Abeinsa Abener Teyma General Partnership for the construction of the Carty Generating Station. PGE commonly refers to the EPC contractor as Abeinsa. On December 18, 2015, PGE declared Abeinsa in default under the construction agreement and terminated the construction agreement, effective immediately.

claims against the Sureties, are resolved and PGE can identify an updated net revenue requirement (i.e., inclusive of any amounts received from the Sureties). PGE requests a July 29, 2016 effective begin date of the deferral. PGE expects the deferral will continue for several years and will file for re-authorization as necessary.

PGE currently estimates the capital costs relevant to this Application to be between \$126 million and \$146 million (prior to any amounts received from the Sureties).² This estimate includes approximately \$15 million of lien claims filed against PGE for goods and services provided by several suppliers under contracts with Abeinsa while it was still the EPC contractor. PGE believes these liens are invalid and is contesting the claims in the Courts. For the purpose of providing a revenue requirement estimate in this Application, PGE assumed that capital costs slightly higher than the mid-point of the \$126 million to \$146 million range would close to plant by the fourth quarter of 2016. Using this assumption, PGE estimates the revenue requirement associated with the capital costs in this Application to be approximately \$18 million from August 2016 through July 2017.³ Amortization of the deferred amount would occur only after a future Commission rate-making proceeding. In support of this Application, PGE states:

1. PGE is a public utility in the state of Oregon and its rates, services and accounting practices are subject to the regulation of the Commission.
2. This application is filed pursuant to ORS 757.259, which allows the Commission, upon application, to authorize deferral of certain items for later incorporation in rates.
3. Communications regarding this Application should be addressed to:

² PGE estimates total Carty capital costs to be between \$640 million and \$660 million. The range of \$126 million and \$146 million is the result of the \$640 million to \$660 million range less \$514 million (i.e., the capital cost approved in Commission Order No. 15-356).

³ Revenue requirement associated with these costs consists of depreciation expense, a return on the associated capital costs, utility income taxes, and increases in revenue sensitive costs.

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In addition to the names and addresses above, the following are to receive notices and communications via the e-mail service list:

Aaron Rodehorst, Senior Analyst, Regulatory Affairs
E-mail: Aaron.Rodehorst@pgn.com

I. OAR 860-027-0300 (3) Requirements.

The following is provided pursuant to OAR 860-027-0300 (3).

A. Background

On November 3, 2015, the Commission issued Order No. 15-356 approving settlements reached in PGE's 2016 General Rate Case filing (OPUC Docket No. UE 294). With respect to Carty, the approved settlements stipulate that PGE's decision to construct Carty was prudent. The approved settlements also identify the conditions for which Carty's prudently incurred costs and benefits would be included in customer prices when Carty begins providing service to customers.

The conditions include:

- i. For determining rates in this docket only, the gross plant for Carty, including the Grassland Switchyard, will be \$514 million... If Carty capital costs are higher than the designated amount, PGE may not recover those costs through the Carty tariff rider. However, PGE will not be bound to the original \$514 million estimate in subsequent rate proceedings. If PGE seeks to recover any additional amounts in a subsequent general rate filing, PGE must demonstrate the prudence of such additional costs.⁴
- ii. PGE will file an attestation by an officer when the Carty plant is placed in service.
- iii. If the Carty Generating Station is not completed and in service by July 31, 2016, PGE will need to file a new ratemaking request seeking the inclusion of the Carty costs in rates, inclusive of Grassland Switchyard.

⁴ See OPUC Order No. 15-356 at Appendix A, pages 4 and 5 of 12.

Since PGE's capital cost estimate for Carty is now higher than the \$514 million approved in OPUC Order No. 15-356, absent this Application PGE's revenue requirement associated with the capital cost greater than \$514 million will not be recovered until a future general rate proceeding when PGE would seek to recover any incremental capital costs. The revenue requirement associated with the higher capital costs consists of depreciation expense, a return on the associated capital costs, utility income taxes, and increases in revenue sensitive costs. As described in more detail in subsequent sections of this filing, PGE is seeking to defer the revenue requirement associated with these costs pursuant to ORS 757.259(2)(e).

Events since the Issuance of Order No. 15-356 in PGE's 2016 General Rate Case

Since the OPUC's issuance of Order No. 15-356 on November 3, 2015, PGE has declared Abeinsa, the EPC contractor for Carty, in default under its construction agreement, terminated the construction agreement, and taken control of construction on the Carty site in order to place it into service.⁵ As part of its efforts to bring Carty into service, PGE also initiated discussions with the Sureties who provided a performance bond⁶ under the terminated construction agreement. On March 9, 2016, the Sureties delivered a letter to PGE denying liability in whole under the performance bond. As described in PGE's report on Form 8-K filed with the Securities and Exchange Commission (SEC) on March 24, 2016, the Sureties make the following assertions in support of their determination:

1. That, because the contractor and its parent company, Abengoa S.A., have alleged that PGE

⁵ See reports on Form 8-K filed by PGE on December 7, 2015, December 21, 2015, January 7, 2016, March 24, 2016, and June 23, 2016, report on Form 10-K filed on February 12, 2016, and report on Form 10-Q filed on April 29, 2016 for additional information on certain developments concerning construction at Carty. PGE placed Carty into service on July 29, 2016.

⁶ Liberty Mutual Surety and Zurich North America provided a performance bond of \$145.6 million under the terminated construction agreement. In general, a performance bond is a bond issued by a financial institution, guaranteeing the fulfillment of a particular contract.

wrongfully terminated the Construction Agreement and have requested arbitration of the claim, PGE must disprove such claim as a condition precedent to recovery under the Performance Bond; and

2. That, irrespective of the outcome of the foregoing wrongful termination claim, the Sureties have various contractual and equitable defenses to payment and are not liable to PGE for any amount under the Performance Bond.

PGE disagrees with the Sureties' assertions and on March 23, 2016, filed a breach of contract action against the Sureties in the U.S. District Court for the District of Oregon. In its claim, PGE disputes the Sureties' assertion that PGE wrongfully terminated the construction agreement and asserts that the Sureties are responsible for the payment of all damages sustained by PGE as a result of the Sureties' breach of contract, including damages in excess of the \$145.6 million stated amount of the performance bond.⁷ On April 15, 2016 the Sureties filed a motion to stay the U.S. District Court proceeding, alleging that PGE's claims should be addressed in the arbitration proceeding initiated by Abengoa S.A. in January, 2016.⁸

PGE's current estimate of Carty's capital costs (i.e., higher than the original estimate of \$514 million) is largely a result of PGE's discovery through the construction process of latent defects in work performed by Abeinsa and the corresponding labor and materials required to correct the work. Other items contributing to the increase include costs relating to the removal of liens filed on the property related to amounts owed to various parties by Abeinsa, and costs to repair equipment damage resulting from poor storage and maintenance on the part of Abeinsa.

⁷ Such damages include additional costs incurred by PGE to complete Carty through the warranty period for the project.

⁸ On January 28, 2016, PGE received notice from the International Chamber of Commerce International Court of Arbitration that Abengoa S.A. had submitted a Request for Arbitration. PGE disagrees with the assertions in the Request for Arbitration and on February 29, 2016 filed a Complaint and Motion for Preliminary Injunction in the U.S. District Court for the District of Oregon seeking to have the arbitration claim dismissed on the grounds that PGE has not made a demand under the Abengoa S.A. guaranty, and therefore the matter is not ripe for arbitration.

B. Reasons for Deferral.

PGE's Costs are a Necessary Cost-of-Service

PGE's capital costs greater than the \$514 million approved in Commission Order 15-356 are necessary costs to place Carty into service. Therefore, it is appropriate for the OPUC to authorize a deferral of the revenue requirement associated with these costs until a future rate proceeding where PGE can demonstrate their prudence and appropriately match costs with the benefits customers are receiving from Carty. Approving the Application will not authorize a change in rates. Additionally, delaying the Commission's review of this Application will recognize PGE's ongoing efforts to seek damages from the Sureties, and allow for PGE to present (and parties to consider) at a later date an updated net revenue requirement (i.e., inclusive of any amounts received from the Sureties).

Events at Carty are an Extraordinary Event

PGE's capital costs greater than the \$514 million approved in Commission Order 15-356 are not only necessary costs to place Carty into service; the costs are also associated with extraordinary events. The Commission has historically used deferred accounting to address costs that arise from extraordinary events.⁹ For example, Commission Order No. 07-049 determined that some costs associated with a Boardman Outage were extraordinary and eligible for deferral. By authorizing PGE's deferral, the Commission would remain consistent in its application of deferred accounting to extraordinary events.

C. Proposed Accounting for recording amounts deferred.

Under Generally Accepted Accounting Principles (GAAP), PGE will account for the

⁹ Order No. 05-1070 at 2.

ongoing depreciation expense related to the incremental capital costs (i.e., capital costs greater than the \$514 million approved in Commission Order 15-356), as well as any related increased costs using the appropriate FERC accounts for such costs. For example, incremental depreciation expense will be recorded to FERC account 403, Depreciation Expense.

For regulatory accounting purposes, PGE proposes to record the deferred amount as a regulatory asset in FERC account 182.3, Other Regulatory Assets, with a credit to FERC account 407.4, Regulatory Credits. Under GAAP financial reporting requirements, the amounts reported as being deferred as a regulatory asset will be limited to amounts meeting the requirements of Accounting Standards Codification (ASC) 980 – Regulated Operations.

D. Estimate of Amounts to be recorded for the next 12 months.

Prior to receiving any amounts from the Sureties, PGE estimates total Carty capital costs to be between \$640 million and \$660 million (i.e., \$126 million to \$146 million greater than the \$514 million previously estimated in Commission Docket No. UE 294). For the purpose of providing a revenue requirement estimate in this Application, PGE assumed that capital costs slightly higher than the mid-point of the \$126 million to \$146 million range would close to plant by the fourth quarter of 2016. Using this assumption, PGE estimates the revenue requirement associated with the capital costs in this Application to be approximately \$18 million from August 2016 through July 2017. However, PGE's deferral amount will ultimately depend on the resolution of PGE's claims against the Sureties and any amounts PGE receives as a result of its claims.

E. Notice.

A copy of the notice of application for deferred accounting treatment and a list of persons served with the notice are attached to the Application as Attachment A.

II. Summary of Filing Conditions:

- A. Earnings Review: This deferral is subject to an earnings review pursuant to ORS 757.259(5).
- B. Prudence Review: The deferral is subject to a prudence review.
- C. Sharing Percents: This deferral is not subject to sharing.
- D. Rate Spread / Rate Design: The rate spread/rate design will be consistent with the prevailing rate spread/rate design at the time of amortization.
- E. Three Percent Test: The three percent test applies to this deferral account.

III. Conclusion.

For the reasons stated above, PGE requests authorization to defer the revenue requirement associated with the incremental capital costs of Carty for future rate-making treatment effective July 29, 2016. PGE also seeks a delay of Commission review of this Application until all legal actions, including PGE's claims against the Sureties, are resolved and PGE can identify an updated net revenue requirement (i.e., inclusive of any amounts received from the Sureties). PGE expects the deferral will continue for several years and will file for re-authorization as necessary.

Dated this 29th day of July, 2016.



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Attachment A

Notice of Application for Deferred Accounting of
Revenue Requirement Associated with the
Carty Generating Station

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM _____

In the Matter of the Application of Portland General Electric Company for an Order Approving the Deferral of Incremental Revenue Requirement Associated with the Carty Generating Station

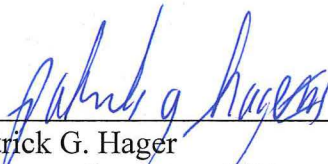
Notice of Application for Deferral of Incremental Revenue Requirement Associated with the Carty Generating Station and Delay of Commission Review of PGE's Application until Legal Actions are Resolved

On July 29, 2016, Portland General Electric Company (PGE) filed an application with the Public Utility Commission of Oregon (Commission) for an Order authorizing deferral of incremental costs associated with the Carty Generating Station. PGE also seeks a delay of Commission review of this Application until all legal actions are resolved.

Approval of PGE's Application will not authorize a change in PGE's rates, but will permit the Commission to consider allowing such deferred amounts in rates in a subsequent proceeding.

This Application is on the Commission website. Any person who wishes to submit written comments to the Commission on PGE's Application must do so by August 31, 2016.

Dated this July 29, 2016.



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Certificate of Service

I hereby certify that I have this day caused the foregoing **Notice of Application for Deferral of Incremental Revenue Requirement Associated with the Carty Generating Station and Delay of Commission Review of PGE's Application until Legal Actions are Resolved**, to be served by electronic mail to those parties whose e-mail addresses appear on the attached service list for OPUC Docket UE 294.

Dated at Portland, Oregon, this 29th day of July 2016.



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