

ITEM NO. 1

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 18, 2017**

REGULAR X CONSENT EFFECTIVE DATE May 1, 2017

DATE: April 13, 2017

TO: Public Utility Commission

FROM: Max St. Brown

THROUGH: Jason Eisdorfer and Marc Hellman

SUBJECT: PORTLAND GENERAL ELECTRIC:
(Docket No. ADV 523/Advice No. 17-05) Schedule 134, Gresham
Privilege Tax Payment Adjustment

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should suspend for further investigation Portland General Electric Company's (PGE or Company) Advice Filing No. 17-05 (Advice Filing) for a new Schedule 134 related to a Gresham Privilege Tax Payment Adjustment.

DISCUSSION:

Issue

Whether the Commission should allow PGE's proposed new Schedule 134 and accompanying rates to go into effect.

Applicable Rule or Law

PGE submitted its Advice Filing pursuant to ORS 757.205, 757.210 and ORS 757.259(1) and OARs 860-022-0030 and 860-022-0040. ORS 757.205 requires a utility to file a schedule with the Commission showing all rates it has established (rate schedule). ORS 757.210 allows the Commission to suspend a proposed rate schedule and hold a hearing either upon its own motion or upon written complaint filed the utility's customers or any other proper party. ORS 757.259(1) authorizes the Commission to allow a utility's rate schedule to include amounts lawfully imposed retroactively by order

or another governmental agency or amounts deferred subject to section (2) of the statute.

Analysis

On February 24, 2017, PGE filed its Advice Filing with the Commission for approval of a new schedule, Schedule 134, and accompanying new rates. The proposed Schedule 134 is applicable only to customers in the City of Gresham (City) and its rate is two (2) percent of the total billed amount to the customer excluding Schedule 108, 109, and 115 charges and all other separately stated taxes.¹ The purpose of the rate is to recover, on a retroactive basis, privilege tax payments for the period January 13, 2012 to August 31, 2016, and, if court-ordered, associated interest amounts.²

As brief background, the City adopted its Resolution No. 3056 (Resolution) in May 2011 to increase utility license fees from five percent to seven percent effective on July 1, 2011. The increase was an additional two percent of gross revenues from the then-current 1.5 percent to 3.5 percent effective on July 1, 2011. PGE initially collected the full amount of the City's imposed license fees while it challenged the legality of the City's Resolution in circuit court. PGE's legal theory was that the utility license fees were actually "privilege taxes", and as such, the City could not lawfully implement its additional two percent increase on customer bills. The circuit court issued its decision on January 12, 2012, in PGE's favor. Following the court's decision PGE stopped collecting the increased fees/taxes from its customers as of January 13, 2012. Subsequently, upon the City's appeal, the Oregon Court of Appeals in its decision issued on July 2, 2014, reversed the circuit court ruling and concluded that the City's increase was lawful. PGE appealed the Court of Appeals decision and on May 5, 2016, the Oregon Supreme Court held that while the "utility license fee" was indeed a "privilege tax," the increase was nonetheless lawful. The Oregon Supreme Court subsequently denied PGE's request for reconsideration on July 14, 2016.

From July 1, 2011 to January 12, 2012, PGE collected the full 3.5 percent from the City's customers, and then stopped collection the increase amount from January 13, 2012, until it commenced doing so starting September 1, 2016, going forward. The Company's proposed Schedule 134, if allowed, would recover from the City's customers the approximately seven million dollars over a five-year period that PGE did not collect from January 2012 through August 2016.

¹ See Schedule 134 attached to PGE's initial Advice No. 17-05 filing.

² Ibid

On March 31, 2017, the City filed comments (Comments) that raised a number of factual and legal issues. The City requested that the Commission reject or suspend and investigate PGE's Advice Filing.³

On April 12, PGE submitted a request to extend the effective tariff date to July 1 to provide parties more time to work through the issues. Staff contacted PGE to discuss the merits and drawbacks of extending the tariff dates from a procedural perspective. As a result of that discussion, PGE submitted a second supplemental filing essentially withdrawing its previous request and maintaining the requested May 1 effective date.

PGE has stated that it agrees that Advice No. 17-05 should be suspended to conduct an investigation.

Conclusion

Staff reviewed PGE's workpapers and found that the proposed rate is accurate from a computational perspective. However, Staff agrees with the City and PGE that a formal investigation is the preferred method by which to procedurally build a basis by which the Commission will make its findings and determinations. Much of it may very well concern the resolution of legal issues.

PROPOSED COMMISSION MOTION:

Suspend for further investigation PGE's Advice Filing No. 17-05.

Reg1-Advice No. 17-05 (PGE) 4-18-17

³ The Commission may not reject an Advice Filing unless it fails to meet one of the Commission's procedural requirements set forth in OAR 860-022-0025(2) and 860-022-0030(1). Staff concludes that PGE's Advice Filing is sufficient under these rules and as such the Commission may not reject it.