ITEM NO. CA12

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 25, 2020

REGULAR ____ CONSENT _X_ EFFECTIVE DATE ___December 18, 2018___

DATE: August 20, 2020

TO: Public Utility Commission

FROM: Mitchell Moore

THROUGH: Bryan Conway, John Crider, and Matt Muldoon **SIGNED**

SUBJECT: PORTLAND GENERAL ELECTRIC:
(Docket No. UM 1991(1))
Requests authorization of Deferred Accounting of Research and Development Tax Credits.

STAFF RECOMMENDATION:

Staff recommends that Portland General Electric's (PGE or Company) application for authorization to use deferred accounting for the net costs or benefits of Research and Development (R&D) tax credits be approved for the 12-month period beginning December 18, 2018 and the 12-month period beginning December 18, 2019.

Staff recommends that PGE's request to amortize the R&D tax credits through an automatic adjustment clause rate schedule be approved.

DISCUSSION:

Issue

Whether the Commission should authorize PGE's use of deferred accounting for later rate making treatment of the net benefits associated with PGE's actual tax credits and the costs associated with a consultant to determine the proposed tax credits, effective December 18, 2018, and whether amortization of those credits should be refunded to customers through an automatic adjustment clause mechanism.

Applicable Rule or Law

PGE makes this filing pursuant ORS 757.259(2)(e) and OAR 860-027-0300.

ORS 757.259(2)(e) provides the Commission with discretion to authorize the deferral of identifiable utility expenses or revenues upon a finding that amounts should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.

OAR 860-027-0300 generally sets forth the Commission's application requirements for deferrals and amortization of deferred amounts.

Analysis

Background

The R&D tax credit represents a federal and state income tax incentive for the performance of qualified research within the U.S. to develop new or improved products, processes, or software. The R&D tax credit is calculated as a percentage of qualified expenses determined by §41 of the Internal Revenue Code and by ORS 317.152. The R&D tax credit must be used before production tax credits ("PTCs") such that the use of R&D tax credits could delay the use of PTCs, which could increase the PTC carryforward balance.

In Order No. 18-464 (Docket No. UE 335), the Commission adopted the third partial stipulation (dated September 6, 2018), which specifies that PGE will hire a consultant to determine how much of PGE's costs qualify for the R&D tax credits. The stipulation also specifies that any net benefit resulting from the study would be refunded to customers and any net costs would be split evenly between PGE's customers and shareholders.

On December 18, 2018, PGE filed an initial application for deferral of net benefits or costs associated with PGE's R&D Tax Credits for the initial vintage of 2016-2018 tax credits. That filing also specified the projected flow of refunds and true-ups to actuals.

On December 18, 2019, PGE filed a supplemental application seeking reauthorization of this deferral for the net benefits and costs associated with the 2019 vintage of R&D tax credits.

In order to determine the R&D tax credit for each vintage, PGE expects to incur costs to pay for a consultant who will help PGE determine the amount of R&D tax credit by tax return year. For the first vintage, PGE and the consultant will evaluate potential R&D tax credits for years 2016 through 2018. The calculated credits will be applied to the respective tax returns, which will then be subject to IRS audit. A subsequent study will be conducted to determine tax credits for the 2019 vintage year.

The approval of the application will support the use of an automatic adjustment clause rate schedule, which will provide for changes in rates reflecting the refund or collection of the applicable R&D tax credit vintages over subsequent years.

Proposed Accounting
For each applicable vintage, and on a yearly basis:

- If the Deferred Amount is a credit, PGE proposes to record it as a regulatory liability in FERC account, 254 Other Regulatory Liability, with a debit to FERC account 407.3 Regulatory Debits.
- If the Deferred Amount is a debit, PGE proposes to record it as a regulatory asset in FERC account 182.3, Other Regulatory Assets, with a credit to FERC account 407.4, Regulatory Credits.

In the absence of a deferred accounting order from the Commission, PGE states that it would continue to evaluate whether to pursue the R&D tax credit for shareholder benefit.

Estimate of Amounts
The first vintage of the R&D tax credit associated with PGE's R&D study included tax years 2016 to 2018. The second vintage will reflect the 2019 tax year. PGE's cost of the study to determine the first vintage of R&D tax credit for tax years 2016-2018 was approximately $0.4 million and the resulting R&D tax credits were estimated to be approximately $5.3 million.

The reserve for uncertain tax position is $1.4 million, which PGE will maintain in the account as a reserve because IRS audits typically disallow a portion of the proposed credit. The first vintage net benefit available for refund is approximately $3 .5 million. The cost and benefits of the 2019 vintage will not be determined until that study is complete.

Information Related to Future Amortization

- Prudence Review – The prudence review for amortization of this deferral should include verification that the revenues are appropriate. Further, the accounting methodology used to determine the final balance should be verified.

- Earnings review – Prior to amortization, an earnings review should be conducted pursuant to ORS 757.259(5).

- Sharing – The UE 335 stipulation states that all prudently incurred costs and benefits would be collected or refunded from or to customers:

- PGE's customers will receive a refund of 100 percent of the Deferred Amount, when it is a net benefit.
- PGE's customers will receive a charge of 50 percent of the Deferred Amount when it is a net cost.

- Three Percent Test (ORS 757.259(6)) – The three percent test measures the annual overall average effect on customer rates resulting from deferral amortizations. The three percent test limits (exceptions at ORS 757.259(7) and (8)) the aggregated deferral amortizations during a 12-month period to no more than three percent of the utility's gross revenues for the preceding year. Because PGE is an electric utility, ORS 757.259(8) allows the Commission to consider up to a six percent limit.

- Rate Spread/Design – The deferred amount eligible for amortization will be subject to a supplemental revenue schedule, grossed up for taxes, and allocated to each schedule using the applicable schedule's forecasted energy on the basis of an equal percent of revenues

Conclusion

PGE's application requests authorization to defer, for future inclusion in customer rates, the net revenue associated with R&D tax credits beginning in the year 2016 and extending forward on a yearly basis. As the application is in accordance with the stipulation approved in Commission Order No. 18-464 and meets the requirements of ORS 757.259 and OAR 860-027-0300, Staff recommends PGE's application be approved. Staff also agrees that yearly amortization of net tax credits is appropriately accomplished through an automatic adjustment clause mechanism.

PROPOSED COMMISSION MOTION:

Approve PGE's application for authorization to use deferred accounting for the net costs or benefits of R&D tax credits for the 12-month period beginning December 18, 2018, and the 12-month period beginning December 18, 2019.

Approve Staff PGE's request to amortize the R&D tax credits through an automatic adjustment clause rate schedule.