ITEM NO. RA1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 9, 2021

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** N/A

DATE: March 1, 2021

TO: Public Utility Commission

FROM: JP Batmale

THROUGH: Bryan Conway **SIGNED**

SUBJECT: PORTLAND GENERAL ELECTRIC:
(Docket No. ADV 1239/Advice No. 21-03)
Review of proposed Heavy-Duty Vehicle Charging Tariff (Schedule 53) and Staff recommendation on Electric Island contract.

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission of Oregon (Commission) suspend Advice No. 21-03 for further investigation.

Staff further recommends that the Commission direct Staff to address Electric Island in Portland General Electric's (PGE) upcoming general rate case.

DISCUSSION:

Issue

Whether the Commission should direct Staff to address Electric Island in PGE's upcoming general rate case, and whether the Commission should suspend Advice No. 21-03 for further investigation.

Applicable Rule or Law

Under ORS 757.205(1):

> Every public utility shall file with the Public Utility Commission, within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in

> force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it.

ORS 757.210 provides that the Commission may approve tariff changes if they are fair, just, and reasonable.

Under ORS 757.310(1) and ORS 757.310(2), a public utility may not charge a customer a rate or an amount for service that is either different from the rate or amount in the utilities' schedule or tariffs, or different from the rate or amount that the utility charges any other customer for similar service under similar circumstances. Additionally, a person cannot knowingly seek out any "rebate, concession or discrimination" than that named in the utility's published schedules. Under ORS 757.990, any public utility or person that violates ORS 757.310 or ORS 757.330, respectively, commits a Class A violation.[1] A Class A violation is punishable by a fine.

Under ORS 757.325:

> No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality…any public utility violating this section is guilty of unjust discrimination.

Under ORS 757.990(3), violation of ORS 757.325 is a Class A violation.[2]

Under ORS 757.357(3), the Commission shall direct each electric company to file applications for programs that would accelerate transportation electrification (TE). Under ORS 757.357(4), the Commission shall consider whether the program's investments and other expenditures:

1. Are within the service territory of the electric company;
2. Are prudent as determined by the commission;
3. Are reasonably expected to be used and useful as determined by the commission;
4. Are reasonably expected to enable the electric company to support the electric company's electrical system;
5. Are reasonably expected to improve the electric company's electrical system efficiency and operational flexibility, including the ability of the electric company to integrate variable generating resources; and

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[1] A Class A violation of ORS 757.310 or ORS 757.330 is punishable by a fine. Unless otherwise provided by law, the maximum fine for a Class A violation committed by a corporation is $4,000.
[2] The law specifies that such a violation of ORS 757.325 is subject to a fine of not more than $10,000.

6. Are reasonably expected to stimulate innovation, competition and customer choice in electric vehicle charging and related infrastructure and services.

Under OAR 860-087-0030, a Company must file an application with the Commission for each program that seeks to accelerate TE. OAR 860-087-0030(1) details what the Company must include in its Program application. Broadly, these requirements include:

(a) A description of the program;
(b) Data used to support the description;
(c) A description of program coordination;
(d) A description of the electric company's long-term strategy to accelerate transportation electrification in its service territory in an effective and efficient manner and how the proposed program fits within the long-term strategy;
(e) A description of program costs;
(f) A description of the expected program benefits;
(g) A description of how the electric company will evaluate the program; and
(h) A description of how the program addresses the considerations of Oregon Laws 2016, 028, section 20(4)(a)-(f).

Executive Order 20-04 establishes Governor Brown's new greenhouse gas emissions goals for the State of Oregon, and directs state agencies to identify and prioritize actions to meet those goals. Section 5.4(B) of the Executive Order directs the Public Utility Commission to "[e]ncourage electric companies to support transportation electrification infrastructure that: supports GHG reductions, helps achieve the transportation electrification goals set forth in Senate Bill 1044 (2019), and is reasonably expected to result in long-term benefit to customers."

<u>Analysis</u>

In this memo, Staff first discusses background, legal concerns, and a recommended actions related to PGE's contract with a non-residential customer for the "Electric Island" project. Staff then provides comments regarding Advice No. 21-03, Nonresidential Heavy-Duty Electric Vehicle Charging Program.

Electric Island Contract
PGE and a non-residential customer in PGE's service territory in April 2019 entered into a negotiations to build public, heavy-duty charging stations and infrastructure on Swan Island at the non-residential customer's North American headquarters (herein referred to as the "Electric Island"). The resulting contract between the companies was executed on September 15, 2020. PGE and the customer issued press releases on December 1,

2020, widely distributed in both state-wide and national news.[3] Staff discovered the Electric Island agreement on December 1, 2020, through those press releases.

The contract provides that the customer will install charging stations capable of supporting up to 1MW charging loads. These charging stations would be compatible with the customer's commercial and heavy-duty trucks that are currently under development. The charging stations are termed public charging stations in the contract.

PGE is building the make-ready and distribution infrastructure to support the heavy-duty vehicle charging at Electric Island. PGE and the non-residential customer intend to eventually include energy storage at the site, although the ownership of the batteries has not been decided. The non-residential customer will also be building an educational facility at the site.

Construction of Phase 1 is nearly complete and will go into service in spring of this year. PGE has already made most of the make-ready and distribution infrastructure investment in the Electric Island project. Under the contract, PGE will be also be contributing three years of site operations and maintenance in addition to the investments. DEQ Clean Fuels credits produced by the charging facility will be split evenly between PGE and the customer.

Staff Actions on Electric Island Contract
In December 2020, Staff expressed regulatory compliance concerns about the contract, in light of the absence of an applicable tariff and legal requirements around customer contracts and tariff filings. Staff met with PGE to understand the agreement and determine next steps. At the first meeting between Staff and PGE on January 8, 2021, Staff counsel stated that it believed PGE was required to have a tariff for this type of situation.

The second meeting in January involved learning more details about Electric Island from PGE. The Company addressed why it entered into the contract with a single customer prior to establishing an approved tariff, as per the usual regulatory process. In short, PGE viewed Electric Island as an investment that fell within their authority to

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[3] For examples of the wide distribution of the press release, see the following: Portland General Electric, *Daimler Trucks North America, Portland General Electric announce public heavy-duty electric truck charging site*, Portland General Electric Newsroom, December 1, 2020; *see also* Cassandra Profita, *PGE, Daimler team up to build charging hub for electric trucks in Portland*, Oregon Public Broadcast, December 1, 2020; *see also* Go Electric Oregon, *Daimler Trucks North America, Portland General Electric announce plan for "Electric Island" public heavy-duty electric charging site*, Go Electric Oregon, December 4, 2020; *see also* Chris Galford, *Portland General Electric, Daimler Trucks North America to create public heavy-duty electric truck charging site,* Daily Energy Insider, December 3, 2020; *see also* Pete Danko, *PGE, Daimler building electric truck charging site on Swan Island*, Portland Business Journal, December 6, 2020.

invest in distribution planning and as an appropriate action in light of legislative and governor activities around transportation electrification and greenhouse gas reduction efforts.

In response to Staff concerns, PGE filed Advice No. 21-03, a Nonresidential Heavy-Duty Electric Vehicle Charging Program tariff on February 10, 2021. The Company filed the Program under Division 87 of the Oregon Administrative Rules as a Transportation Electrification Program.

In its filing, PGE stated the following to explain why it entered into the Electric Island deal without a tariff, and why it filed the tariff:

> …we sought opportunities for partnering on projects where such learnings could be gathered. In doing so, at the time, we acted without the appropriate tariff in place. The decision to proceed was made as the company anticipated additional legislative and regulatory authority to engage in such projects, but that authority did not materialize within the expected timelines. As such, PGE is seeking to remedy the situation through the filing of this tariff and hope that this tariff can be expedited and will be approved by OPUC before a project goes into service. While the process is not ideal, these projects are valuable and will deliver significant benefits to our customers.[4]

Staff appreciates the Company's forthright statement and approach to addressing the situation. Of note, Staff interprets PGE's "remedy" as meaning the Company hopes the proposed tariff applies retroactively to the investments already made by PGE in the Electric Island project and future contractual expenses.

Compliance Concerns Regarding Contract Execution Prior to a Tariff
Two fundamental regulatory principles undergird Staff's concerns about the timing of the executed contract and the subsequent tariff filing that should be addressed by the Commission. First, PGE entered into a contract without a required tariff. Second, PGE's proposed tariff appears to request that the tariff be applied retroactively to expenditures already made and/or committed to under the contract.

1. PGE Should Not Have Acted Without a Tariff

A main tenant of the utility regulatory process in Oregon is that utilities are subject to rate regulation and required to file tariffs and schedules for all services they provide with the Commission.[5] This tenant is a statutory requirement in ORS 757.205(1), which states:

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[4] Docket No. ADV 1239, *Portland General Electric Heavy-Duty Vehicle Charging Tariff,* at p. 2.
[5] *See Northwest Climate Conditioning Ass'n v. Lobdell,* 79 Or. App. 560 (1986) at p. 565.

> Every public utility shall file with the Public Utility Commission, within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it.

The reason that the legislature required tariffs to be on file is so that all activities by the public utility are open to public inspection. Under ORS 757.205, the activities of a public utility come before the Commission, and the Commission then determines whether the rates, terms, and conditions of that activity are "fair, just and reasonable" for ratepayers.[6] This transparency seeks to prohibit public utilities from entering into discriminatory deals and preferential treatment for one customer over another.

Under ORS 757.310, public utilities cannot charge a customer for service that is different than what is in their tariff or schedules. Additionally, a public utility cannot charge a customer a different amount than what the utility charges any other customer for a similar service under similar circumstances.[7]

The prohibition also extends to persons that seek out any "rebate, concession or discrimination" other than those that are named in a utility's published schedules.[8]

The common theme in these prohibitions against special deals is that a utilities' tariffs for all services must be public, subject to public inspection, and approved by the Commission. This requirement allows the Commission to exercise its duty to ensure all services are fair, just, and reasonable. When a utility provides a service without a tariff, the utility what that service for ratepayers should be. This is a function that is reserved to the Commission.

In the case of Electric Island, PGE did not bring the Electric Island partnership to the Commission for public inspection. This creates concerns about authority, unjust discrimination, and preferential treatment.

Because the filing and approval of tariffs and schedules is a fundamental tenant of regulation, Staff has brought this concern to the Commission's attention and has recommendations for next steps.

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[6] ORS 757.210.

[7] If a utility does so, they have committed a Class A violation of the statute and are subject to a civil penalty. Under ORS 757.325, if a public utility gives undue or unreasonable preference or advantage to a customer, then they are guilty of unjust discrimination. This violation carries a civil penalty of not more than $10,000, and is also a Class A violation of the statute.

[8] ORS 757.330.

2. The Tariff does not apply retroactively.

In the proposed tariff for the heavy-duty charging program, PGE states the following:

> … PGE is seeking to remedy the situation through the filing of this tariff and hope that this tariff can be expedited and will be approved by OPUC before a project goes into service. While the process is not ideal, these projects are valuable and will deliver significant benefits to our customers.[9]

Staff interprets this language as PGE requesting that the tariff apply retroactively to its investment made in September of 2020. If PGE is requesting that this February 2021 tariff filing apply retroactively to an investment made in 2020, Staff believes that this is inconsistent with the prospective nature of Commission decision making. The Commission power comes directly from the Legislature, and therefore may only act within the authority delegated to it. This generally means that only prospective changes to rates are lawful.

Recommended Actions on the Executed Contract
Staff believes the Commission has two options to pursue in response to PGE's actions. First, the Commission can direct Staff to consider the extent to which the Electric Island investment is subject to rate recovery in a future general rate case. The second is that the Commission can pursue civil penalties against PGE for statutory violations of ORS 757.310 and 757.325.

Staff believes the civil penalties are not necessary. PGE took responsibility for its noncompliance through the filing of its heavy-duty charging tariff and was forthcoming with Staff about remedying its noncompliance. This indicates PGE is aware of the severity of acting without a tariff in place, and as a result, Staff does not recommend pursuing civil penalties. Instead, Staff recommends that the Commission direct Staff to consider the Electric Island investment in a future general rate case.

Staff also encourages PGE to develop internal processes and procedures to ensure that this noncompliance doesn't happen in the future. To that end, Staff would like to give PGE a 30-day window to review executed contracts and ensure there doesn't need to be an associated tariff in place. If there are other such contracts in place that are brought to Staff within 30 days, Staff will work with PGE to achieve regulatory compliance.

Response to Tariff Filing
Staff appreciates both the opportunity and need around heavy-duty electric vehicle charging. Medium- to heavy- duty vehicles comprise only an approximate 5 percent of

[9] Cite to tariff filing, page 2.

vehicles on the road nationally, but contribute over 20 percent of total emissions from the transportation sector.[10] Supporting the transition of goods movement from fossil fuels to less emitting sources of energy is a central tenant to both state and regional GHG reduction policies.[11] Most importantly, reducing emissions from goods movement plays a central role in addressing the historic health inequities experienced by minority and low-income communities from transportation air-pollution.[12] To this end, Oregon ranks as one of the nation's leading states for negative health risks from diesel, with the Portland region facing significantly higher risks due to its role as a global freight corridor.[13] For all these reasons, Staff sees the proposed heavy-duty vehicle charging program as important to ratepayers, stakeholders, state policy makers, and citizens. Staff values PGE's initiative to move into this policy space by partnering with local manufacturers and operators of heavy-duty electric vehicles to advance this technology.

Despite the very clear and pressing need to advance heavy-duty vehicle electrification through this program, Staff would still like 90 days to work closely with the Company to engage stakeholders and to return with an updated filing. To accomplish this, Staff will recommend that the tariff be suspended and investigated. Our rationale is discussed below.

Staff's Rationale to Suspend and Investigate
In reviewing this tariff filing, relative to the requirements under OAR 860-087-0030, Staff would like more information about PGE's program application before making a recommendation to the Commission. Further, as the tariff was filed February 10, 2021, there was not sufficient time for other stakeholders to review and comment, nor for Staff to submit information requests that allow adequate time for the Company to respond.[14]

Some areas of this transportation electrification program Staff would like to explore with the Company and stakeholders over the next 90 days include:

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[10] *See* Center for Climate and Energy Solutions, Federal Vehicle Standards Overview, https://www.c2es.org/content/regulating-transportation-sector-carbon-emissions/.
[11] *See* Governor's EO 20-04, April 2020 and West Coast Green Highway, http://www.westcoastgreenhighway.com/index.htm.
[12] *See* Oregon DEQ's Community-Scale Air Toxics Ambient Monitoring Report, 2019, https://www.epa.gov/sites/production/files/2020-01/documents/oregon_deq_project_plan.pdf, "DEQ's environmental justice analysis for air toxics in the Portland area showed that minority and low-income populations are disproportionately impacted by diesel engine exhaust from both on-road and construction equipment.". *See also* Scientific American, "Minorities Breath More Than Their Share of Polluted Air", June 1, 2019, https://www.scientificamerican.com/article/minorities-breathe-more-than-their-share-of-polluted-air/.
[13] *Id.*
[14] Staff would note that it surveyed stakeholders after PGE filed this tariff and found that stakeholders were not aware of this filing with an effective date of March 15, 2021.

- *Budget Relative to Benefits*: The tariff appears to propose up to $5 million to heavy-duty EV manufacturers to "contribute a portion of the project development costs including costs related to investments behind the customer meter."[15] The total budgeted is $10 million and the tariff would expire on March 14, 2023. Notably, there is also only one customer in PGE's territory that is a heavy-duty EV manufacturer. At this time, the chargers and trucks covered by the tariff are pre-commercial. Staff would like to engage with PGE and stakeholders to have a clear understanding of the use of ratepayer funding to contribute toward the research and development for pre-commercial technology. Quickly exploring other potential benefits such as Clean Fuels Program credits and new retail electricity revenues is important also.[16] And so a clearer sense of the anticipated net benefits to ratepayers through this tariff program is necessary for Staff's analysis under OAR 860-087-0030.

- *Grid edge research:* Staff would seek clarification as to how the Company's proposed investments in make-ready infrastructure leads to the study of the grid edge applications of otherwise mature technologies.

- *Engagement with Project:* As a benefit, this seems important but also naturally forthcoming from customer activity and potentially independent of a large ratepayer investment in the project. Staff would like a better understanding of the necessity of a ratepayer dollars, beyond existing incentives, to achieve project engagement. Does a market failure exist, whereby a customer would not make such a speculative EVSE investment in heavy-vehicle, DC charging without additional funding? Is there a competitive aspect to PGE's involvement, relative to ESSs and/or other vehicle charging companies?

- *Data Collection:* Staff would like to better understand how this objective could require upwards of a $5 million ratepayer investment in the project's make ready capital expenditures. Staff would note the Commission recently authorized Schedule 52 where ratepayers pay $500 per port for nonresidential EVSE projects as part of a data sharing agreement.[17]

The investigation this tariff will cover these and other topics in PGE's Advice No. 21-03 using the OAR 860-087-0030 requirements as roadmap.

[15] *See* Docket No. ADV 1239, Portland General Electric, Advice No. 21-03, NEW Schedule 53, Nonresidential Heavy-Duty Electric Vehicle Charging Program, February 10, 2021, page 53-2.
[16] *See* Docket No. ADV 1239, Portland General Electric, Advice No. 21-03, NEW Schedule 53, Nonresidential Heavy-Duty Electric Vehicle Charging Program, February 10, 2021, p. 9.
[17] *See* Docket No. ADV 1155, OPUC, Letter from OPUC to PGE,, December 15, 2020, p. 1.

In addition to ensuring the filing is complete per OAR 860-087-0030, this filing's effective date unfortunately left little time for interaction and discussion. Staff believes that creating a short window of time for the Company to address questions regarding the proposal from Staff ***and*** stakeholders would be important and welcome.

For these two reasons, Staff recommends that the Commission suspend the tariff filing for further investigation. Staff believes that it can complete its investigation and return to the Commission within three months.

Conclusion

With regards to the Electric Island contract, the Commission has a regulatory responsibility to ensure that all rates and services a utility provides are fair, just, and reasonable. The statutes that grant the Commission its authority require that a utilities' tariffs for all services must be public, subject to public inspection, and approved by the Commission under penalty of law. Staff finds that PGE recognizes this and recommends only that the Commission direct Staff to address PGE's investment in Electric Island in PGE's next General Rate Case.

With regards to the February 2021 heavy-duty electric vehicle filing, Staff is supportive and see the need for such investments. However, Staff believes a suspension of PGE's Advice No. 21-03 is appropriate, as additional work is necessary in order to meet the analytical requirements set out in OAR 860-087-0030, and the proposal could benefit from greater stakeholder engagement. Staff proposes the Company, stakeholders and Staff work together with some amount of haste so that we can return to the Commission in 90 days or less with a final recommendation on this filing.

PROPOSED COMMISSION MOTION:

Direct Staff to address Electric Island in PGE's upcoming rate case and suspend and investigate PGE's Advice No. 21-03.