

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PORTLAND GENERAL)	UE 394
ELECTRIC COMPANY,)	
)	CALPINE ENERGY SOLUTIONS,
)	LLC’S OPENING BRIEF
REQUEST FOR A GENERAL RATE)	
REVISION)	
_____)	

I. INTRODUCTION AND SUMMARY

Calpine Energy Solutions, LLC (“Calpine Solutions”) hereby submits its opening brief to the Public Utility Commission of Oregon (“OPUC” or “Commission”), in the above-captioned case. Calpine Solutions is an electricity service supplier (“ESS”) with an interest in ensuring that Portland General Electric Company’s (“PGE”) rates and charges provide a reasonable and nondiscriminatory opportunity for eligible customers to participate in direct access. The sole issue that Calpine Solutions addressed in this proceeding that remains unresolved – and the sole issue addressed in this brief – is cost allocation of deferred costs under PGE’s transportation electrification pilots, Schedule 150.¹

As explained below, Calpine Solutions continues to recommend that deferred costs of transportation electrification – which were estimated to total \$2.5 million – should be recovered from all customers in a manner similar to the recovery of distribution costs. These costs are fundamentally related to distribution investments utilized to deliver energy to growing loads

¹ Calpine Solutions refers the Commission to its prehearing brief for additional background and Calpine Solutions’ support of the Fourth Partial Stipulation.

associated with electric vehicles (e.g., charging stations, etc.). Moreover, PGE confirmed that it began incurring the costs at issue before January 1, 2022 – a time during which the applicable statutory provision enacted in Senate Bill 1547 required cost allocation consistent with recovery of distribution investments. PGE has provided no rational justification for its proposal to recover these deferred costs based on *total* revenues, including generation revenues imputed to direct access customers. Importantly, PGE agrees that Calpine Solutions’ proposal does not allow direct access customers to bypass these deferred costs.

Thus, Calpine Solutions’ proposal is reasonable and fair. The Commission should adopt Calpine Solutions’ proposed treatment of deferred costs under Schedule 150.

II. ARGUMENT

The Commission should reject PGE’s proposal to allocate deferred costs of PGE’s transportation electrification pilots in Schedule 150 by imputing generation costs to direct access customers. While Calpine Solutions agrees that the deferred Schedule 150 costs should be non-bypassable, the proper rate allocation is to allocate the revenue requirement associated with the deferred transportation electrification costs at issue in a manner similar to the recovery of distribution investments.

As explained in testimony and Calpine Solutions’ prehearing brief, Calpine Solutions supports non-bypassability of certain costs, but urges the Commission to avoid charging direct access customers for the costs of programs that are not properly allocated to direct access customers and to carefully determine the allocation method of costs that are deemed non-bypassable.² The non-bypassability determination and the manner of allocating any non-

² Calpine Solutions/100, Higgins/5.

bypassable costs turns on the specific facts and circumstances of each set of costs.

Here, Calpine Solutions agrees that PGE's deferred costs for transportation electrification under Schedule 150 should be non-bypassable, but such deferred costs should be allocated in accordance with distribution costs, not in the manner PGE proposes. PGE estimated that these costs would total approximately \$2.5 million, but testified at the hearing that the actual costs may be less.³ The costs at issue are those incurred under pilots approved in UM 1938 and UM 2003, and such expenditures relate to PGE's efforts to develop and support use of distribution infrastructure to deliver energy to the growing loads of electric vehicles.⁴ PGE's testimony describes the UM 1938 and UM 2003 costs as including operation and maintenance costs for vehicle charging investments and even rebates paid to customers for charging infrastructure.⁵ Because businesses may use such distribution investments and related support programs, Calpine Solutions has no objection to allocating a fair share of the costs to direct access customers just like any other distribution costs. However, Calpine Solutions and PGE disagree with how such costs should be allocated to direct access customers.

The dispositive fact is that PGE began incurring these deferred costs in 2018 under transportation pilot programs approved by the Commission pursuant to Section 20 of Senate Bill 1547.⁶ That legislation specifically stated "[t]ariff schedules and rates" for the transportation

³ See PGE/1200, Macfarlane-Tang/45:1-3 (noting deferred amounts total approximately \$2.5 million); *but see* Staff/1700, Shierman/2:5 (stating the deferred amounts are \$2.613 million); Tr at 25:19 to 26:4 (Macfarlane, testifying actual costs through 2021 likely to be just \$1.4 million due to reduced expenditures during the pandemic).

⁴ Tr. at 26:5-10 (Macfarlane, clarifying the costs at issue were those incurred under pilots approved in UM 1938 and UM 2003); PGE/500, Bekkedahl-Macfarlane/16 (describing the costs).

⁵ PGE/500, Bekkedahl-Macfarlane/16 (Table 2); Tr at 28:21 to 29:7 (Macfarlane).

⁶ 2016 Or Laws ch 28, § 20 (codified at ORS 757.357 (2021)); Tr at 27:9-18 (Macfarlane, agreeing the costs were incurred beginning in 2018).

electrification costs “[s]hall be recovered from all customers of an electric company in a manner that is similar to recovery of distribution system investments.”⁷ Thus, the applicable statute specifically directs the deferred costs at issue to be allocated similar to distribution costs, just as Calpine Solutions recommends. PGE interprets Senate Bill 1547 differently from Calpine Solutions. However, the statute cannot be read to say anything other than what it says – that such costs “[s]hall be recovered from all customers . . . in a manner that is similar to recovery of distribution system investments.”⁸ In the words of the Oregon Court of Appeals, “the statute means what it says.”⁹

Furthermore, even if there were any room for ambiguity (and there is not), the legislative history further confirms Calpine Solutions’ interpretation of Senate Bill 1547 is correct. In the last legislative session, House Bill 2165 amended the cost recovery mandate from Senate Bill 1547 to further accelerate transportation electrification and to provide the Commission with more discretion to determine the proper allocation for such costs, but that legislative change was not effective until January 1, 2022¹⁰ – *after* PGE began incurring the deferred costs at issue here.

The cost recovery amendment was as follows:

“[(5)(a)] (9)(a) Tariff schedules and rates allowed pursuant to [*subsection (3)*] subsections (3) to (6) of this section * * * (B) Shall be recovered from [*all customers*] the retail electricity consumers of an electric company in a manner [*that is similar to the recovery of distribution system investments*] determined by the commission.”¹¹

⁷ 2016 Or Laws ch 28, § 20(5)(a)(B) (codified at ORS 757.357(5)(a)(B) (2021)).

⁸ 2016 Or Laws ch 28, § 20(5)(a)(B) (emphasis added) (codified at ORS 757.357(5)(a)(B) (2021)).

⁹ *Benzinger v. Oregon Dept. of Ins. and Finance*, 107 Or App 449, 451-452, 812 P2d 36 (1991).

¹⁰ 2021 Or Laws ch 95, § 4(9)(a)(B), effective January 1, 2022 (codified at ORS 757.357(9)(a)(B) (2022)).

¹¹ 2021 Or Laws ch 95, § 4(9)(a)(B) (deletions in italics and additions in underline).

The amendment deleted the requirement that the costs be recovered in a manner similar to distribution investments and replaced it with language giving the Commission discretion as to how the costs are recovered. The legislature's decision to provide the Commission more discretion in determining cost allocation is reflective of the fact that House Bill 2165 expanded the costs the utility would incur to promote transportation electrification and even mandated a minimum expenditure regardless of what the Commission might otherwise deem prudent.¹²

In any case, the fact that the legislature changed the wording to give the Commission discretion to determine the manner of cost allocation further underscores that Senate Bill 1547 mandated recovery similar to distribution investments for amounts incurred prior to House Bill 2165's effectiveness.¹³ Otherwise, there would have been no need to amend the cost recovery provision to remove the language expressly stating that such costs shall be recovered similar to recovery of distribution investments. And PGE provides no explanation anywhere in the evidentiary record for how its cost-allocation proposal – to spread the costs in accordance with all revenues, including imputed generation revenues for direct access customers – is a cost-allocation “similar to recovery of distribution investments.”¹⁴

PGE's witness testified at the hearing that the deferred Schedule 150 costs at issue will also include costs PGE will incur after January 1, 2022¹⁵ – the date House Bill 2165's more

¹² PGE/500, Bekkedahl-Macfarlane/11:14-15 (“House Bill 2165 passed in 2021 further expanding utility’s role in TE and defining infrastructure measures.”); Tr at 26:16-20 (Macfarlane, stating: “the other part of Schedule 150, which was a result of another – another House Bill from last year, HB 2165, where we’re required to recover a quarter of our percent of revenues toward TE related activities”).

¹³ *State v. Gaines*, 346 Or 160, 166-173, 206 P3d 1042 (2009) (in addition to plain meaning of statute, courts may look to context and legislative history).

¹⁴ 2016 Or Laws ch 28, § 20(5)(a)(B) (codified at ORS 757.357(5)(a)(B) (2021)).

¹⁵ Tr at 25:15-18 & 27:18 to 28:3 (Macfarlane).

lenient cost-recovery language went into effect. That was not a point that PGE clarified in its three rounds of prefiled testimony on this subject, which instead characterized the costs as “deferral accounts [PGE] started to cumulate in 2018[.]”¹⁶ Nevertheless, PGE appears to believe that because it now states it will include costs that are incurred after the effectiveness of Senate Bill 1547’s mandatory cost recovery language, the Commission can rely on the more lenient cost-recovery language from House Bill 2165 for purposes of the deferred costs at issue here. But such belief is unavailing. PGE agrees that the part of Schedule 150 at issue will include recovery of costs incurred between 2018 and January 1, 2022, and PGE agrees that such costs were incurred under the provisions of Senate Bill 1547. Thus, the more restrictive cost recovery requirements of Senate Bill 1547 must control the part of Schedule 150 at issue to ensure the tariff PGE designed will comply with all applicable laws.

Consequently, PGE’s prehearing brief is mistaken to rely on House Bill 2165 and the Commission’s approval of its Advice No. 21-26.¹⁷ That tariff filing regarded a different part of Schedule 150 and an entirely different set of transportation electrification costs that will all be incurred after January 1, 2022, and thus were solely controlled by House Bill 2165’s more discretionary cost recovery language.¹⁸ In contrast, Senate Bill 1547 controls the costs at issue here, which include costs incurred before January 1, 2022. PGE’s own testimony confirms that

¹⁶ PGE/1200, Macfarlane-Tang/45:2. Similarly, PGE’s Advice No. 21-26 stated:

“This filing does not change the Schedule 150 in the GRC and is not intended to recovery any costs from the existing TE deferrals. If the GRC proposal for Schedule 150 is approved in 2022, PGE will combine the two versions of Schedule 150 into one tariff with two parts. One consistent with HB 2165, and the other to collect deferred amounts.”

Advice No. 21-26, p. 1 (Oct. 21, 2021); *see also* Tr at 26:11 to 27:8.

¹⁷ PGE’s Prehearing Brief at 53-56.

¹⁸ Advice No. 21-26, p. 1 (Oct. 21, 2021).

the costs at issue were incurred under pilots designed and approved by the Commission pursuant to Senate Bill 1547.¹⁹

In addition to violating the applicable statute, PGE's proposal lacks necessary evidentiary support. PGE proposes to recover the deferred costs under Schedule 150 in accordance with total revenues, including generation revenues imputed to direct access customers.²⁰ But PGE provided no explanation of how these deferred costs related to transportation electrification are related to electric generation resources or PGE's generation supply. Charging stations do not generate electricity; they distribute electricity. Nor did PGE's witnesses ever explain how its allocation is consistent with recovery of distribution investments, as Senate Bill 1547 requires. The Commission should require more of PGE to justify imputing generation costs to direct access customers.

In contrast to PGE's proposal, Calpine Solutions' proposal is reasonable and consistent with sound rate design. The deferred costs relate to PGE's efforts to develop and support use of infrastructure to deliver energy to the growing loads of electric vehicles,²¹ and the costs should be allocated to all customers in the same manner as any other distribution costs.²² Although PGE asserts that the costs are not limited to physical distribution infrastructure,²³ PGE's witness ultimately agreed the costs for the pilot programs at issue (e.g., rebates and customer support)

¹⁹ PGE/500, Bekkedahl-Macfarlane/12:7 to 13:16; Tr at 29:8-15 (Macfarlane, agreeing costs were incurred pursuant to Senate Bill 1547).

²⁰ Calpine Solutions/100, Higgins/7:5-10; PGE/1200, Macfarlane-Tang/45.

²¹ Calpine Solutions/100, Higgins/8:8-11; *see also* PGE/500, Bekkedahl-McFarland/15-16 (describing the deferred costs); PGE/1700, Bekkedahl-McFarland/28:16-19 (stating these loads will grow four-fold by 2025 and nine-fold by 2030).

²² Calpine Solutions/200, Higgins/4-5.

²³ Tr at 25:7-9 (Macfarlane, asserting costs included "rebates for charging for residential pilot and business pilot, technical and outreach assistance and pilot evaluation").

were all ultimately related to distribution investment to serve growing electric vehicle loads.²⁴ Thus, recovery similar to any other distribution costs is warranted. Specifically, to the extent that the deferred costs are specific to a customer class, such costs should be directly assigned to that class and recovered from customers based on their distribution revenue requirement.²⁵ To the extent that the deferred costs are not specific to a single class, the costs should be allocated to each class in proportion to each class's distribution revenue requirement.²⁶

Furthermore, PGE agrees that under Calpine Solutions' proposal non-residential customers would pay the same distribution-based allocation for these deferred costs whether they purchase energy through direct access or from PGE's cost-of-service offerings.²⁷ Direct access customers would not bypass these costs under Calpine Solutions' proposal. If a specific program's costs were specific to a specific non-residential customer class, Calpine Solutions' proposal would allow for allocation of all such costs to those customers regardless of whether they purchase energy from PGE or an ESS, just as any other distribution investments are treated.

Finally, the Commission should not approve PGE's tariff pending further determinations in UM 2024, as PGE and Staff recommend.²⁸ If the Commission approves PGE's cost recovery for these deferred amounts now, the matter will be resolved for these deferred costs, because PGE's proposal amortizes the previously incurred costs in rates in just one year.²⁹ Thus, if the Commission is unsatisfied with the record on the point and wishes to defer the question until UM

²⁴ PGE/500, Bekkedahl-Macfarlane/16 (Table 2); Tr at 28:21 to 29:7 (Macfarlane).

²⁵ Calpine Solutions/100, Higgins/9:1-11.

²⁶ Calpine Solutions/100, Higgins/9:1-11.

²⁷ Calpine Solutions/200, Higgins/6; Tr at 29:16-24 (Macfarlane).

²⁸ PGE/2200, Macfarlane-Tang/14:6-9; PGE/3000, Macfarlane-Tang/15:11-16; Staff/900, Gibbens/17:19 to 18:2.

²⁹ Staff/1700, Shierman/4:11-16.

2024, it should do so without approving rate recovery on an interim basis.

III. CONCLUSION

For the reasons stated above, the Commission should adopt Calpine Solutions' proposal to allocate deferred costs under Schedule 150 in a manner consistent with distribution costs.

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RICHARDSON ADAMS, PLLC

/s/ Gregory M. Adams

Gregory M. Adams (OSB No.101779)

515 N. 27th Street

Boise, Idaho 83702

Telephone: (208) 938-2236

Fax: (208) 938-7904

greg@richardsonadams.com

Of Attorneys for Calpine Energy
Solutions, LLC