

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2031

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,Application for Support for the
Reclassification of Plant in Service.

ORDER

DISPOSITION: SECOND REVISED STIPULATION ADOPTED

I. INTRODUCTION AND PROCEDURAL HISTORY

On August 29, 2019, Portland General Electric Company (PGE) filed an application seeking to reclassify certain facilities from distribution to transmission. PGE has filed a petition for a declaratory order at the Federal Energy Regulatory Commission (FERC) to reclassify the assets and requests that the Public Utility Commission of Oregon support or not oppose its proposed reclassification.¹ On September 5, 2019, PGE submitted a supplement to its initial filing. Staff of the Public Utility Commission of Oregon, the Oregon Citizens' Utility Board (CUB), the Alliance of Western Energy Consumers (AWEC), and Avangrid Renewables LLC (Avangrid) all participated as parties to the proceeding. During the course of the investigation, Staff filed testimony and exhibits. PGE filed responses to bench requests on October 22, 2019. AWEC filed replies to four of PGE's responses to bench requests on October 29, 2019.

Following settlement discussions, PGE, Staff, and CUB filed a partial stipulation with supporting testimony on October 22, 2019, resolving all issues in this docket between those parties.² On October 30, 2019, AWEC filed an objection to the partial stipulation. The Commission conducted an evidentiary hearing on November 4, 2019. PGE, Staff, and CUB filed a revised partial stipulation with supporting testimony on November 5, 2019, addressing in further detail certain substation assets that were not comprehensively addressed in the originally filed partial stipulation.³ Staff and PGE filed individual

¹ *Portland General Electric Company, Petition for Declaratory Order for Reclassification of Certain Assets of Portland General Electric Company under EL 19-95, Federal Energy Regulatory Commission*, Docket No. EL19-95-000 (Sept 9, 2019).

² On October 24, 2019, PGE filed a revised version of Stipulating Parties' Exhibit 101.

³ Stipulating Parties/200; Edmonds – Muldoon – Jenks/2. The revised partial stipulation is otherwise consistent with the terms and approaches addressed in the originally filed partial stipulation.

responses to AWEC's objection on November 8, 2019. Also on November 8, 2019, AWEC filed an opening brief and PGE, Staff, and CUB jointly filed an opening brief. Staff filed a closing brief on November 13, 2019. On November 15, 2019, PGE, Staff, CUB, and AWEC (stipulating parties) filed a second revised stipulation (hereafter, stipulation), resolving all issues between the stipulating parties. Avangrid is not a party to the partial stipulation. The administrative law judge closed the record on November 18, 2019.

II. PGE RECLASSIFICATION

In its application, PGE proposes to reclassify 57 kV and 115 kV facilities, currently classified as distribution, as transmission assets, representing approximately \$210.2 million in net plant as of December 31, 2018. The Commission previously adopted a stipulation regarding PGE's reclassification of assets in 2001.⁴ According to PGE, its looped 57 kV and 115 kV facilities are functioning as transmission assets. PGE states that reclassification will enable PGE to include these facilities in FERC-jurisdictional transmission rates.

PGE contracted with a consultant to conduct an independent engineering analysis of PGE's proposed reclassifications.⁵ In conducting the analysis, the consultant relied upon one line diagrams, system maps, power flow cases, contingency lists, and other system data. The consultant conducted its analysis in a series of steps, incorporating factors identified by FERC.⁶ In the final step, the consultant identified assets deemed to be integrated transmission facilities based on the overall facts and circumstances. In response to a bench request, PGE provided a detailed explanation of the method used for each of the seven factors PGE applied, as well as the results of PGE's application of each of the seven factors it applied to the assets proposed for reclassification.⁷

III. STAFF RECLASSIFICATION

In the analysis conducted by Staff, Staff applied each factor of the seven factor test to individual assets to arrive at a designation of distribution or transmission for each factor.⁸ Staff then evaluated whether each asset was functionally more associated with

⁴ *In the Matter of Portland General Electric Company's Proposal to Restructure and Reprice Its Services in Accordance With the Provisions of SB 1149*, Docket No. UE 115, Order No. 01-325 (Apr 26, 2001) (approving PGE's two-part process for reclassification comprised of classifying as generation any assets wholly dedicated to a generating facility and then applying the seven indicators of local distribution facilities established by FERC in Order No. 888).

⁵ The consultant performed separate analyses of PGE's system in Oregon and its Colstrip system in Montana.

⁶ PGE/101, Edmonds – Galaway/43-58; *Mansfield Municipal Electric Dept. v. New England Power Co.*, 454, 97 FERC 61,134 (2001), *reh'g denied*, Opinion No. 454-A, 98 FERC 61,115 (2002).

⁷ PGE Response to Bench Request 4.

⁸ Joint Staff/100; Muldoon – Hanhan – Rashid/35-38.

distribution or transmission, considering the seven factors in the aggregate.⁹ In conducting its analysis, Staff relied on one line diagrams and system maps.¹⁰ Additionally, Staff relied in part on PGE's power flow studies.¹¹ Staff provided detailed summary tables of the results of their analysis, showing for each asset the results for each factor, and the resulting proposed classification.¹² Under Staff's analysis, Staff found the 57 kV facilities should be classified as distribution, and identified many of the 115kV facilities as transmission.¹³

IV. STANDARD OF REVIEW

In Order 888, FERC formulated a seven-factor test to determine whether unbundled facilities should be classified as transmission and subject to FERC jurisdiction, or as local distribution and subject to state jurisdiction.¹⁴ Whether facilities are used in transmission is a question of fact to be decided by FERC.¹⁵ As a prerequisite to filing a transmission or local distribution facility classification at FERC, however, FERC requires that utilities consult with their state regulatory authorities.¹⁶ FERC will defer to determinations by state regulatory authorities as to which facilities are local distribution, provided that the state regulatory authority applies FERC's seven factors.¹⁷

The seven factors are:

1. Local distribution facilities are normally in close proximity to retail customers.
2. Local distribution facilities are primarily radial in character.
3. Power flows into local distribution systems; it rarely, if ever, flows out.
4. When power enters a local distribution system, it is not reconsigned or transported on to some other market.
5. Power entering a local distribution system is consumed in a comparatively restricted geographical area.
6. Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.

⁹ Joint Staff/100; Muldoon – Hanhan – Rashid/35-38; Tr. at 37-39 (Nov 15, 2019).

¹⁰ Tr. 12-14, 31-37 (Nov 15, 2019).

¹¹ *Id.* at 14.

¹² Joint Staff/104.

¹³ *Id.*

¹⁴ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. 31,036 (1996), 61 Fed. Reg. 21,540, at 21,619-620, 21,626-627, ("Order No. 888"), *on reh'g*, Order No. 888-A, FERC Stats. & Regs. 31,048, 62 Fed. Reg. 64,688 (1997), *on reh'g*, Order No. 888-B, 81 FERC 61,248 (1997), *on reh'g*, Order No. 888-C, 82 FERC 61,046 (1998), *aff'd*, *Transmission Access Policy Study Group v. FERC*, 343 U.S. App. D.C. 151, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom.*, *New York v. FERC*, 535 U.S. 1 (2002).

¹⁵ *Federal Power Commission v. Southern California Edison Company*, 376 U.S. 205, at 210, n.6 (Mar 2, 1964); Order No. 888, at 21,626, n.546, *citing Connecticut Light & Power Co. v. FPC*, 324 U.S. 515, at 534-535 (1945).

¹⁶ Order No. 888 at 21,627.

¹⁷ *Id.* at 21,625, 21,627.

7. Local distribution systems will be of reduced voltage.¹⁸

FERC recognizes that in some cases the seven factors may not be fully dispositive, and that states may find other technical factors that may be relevant.¹⁹ Application of the seven factor test involves case-specific determinations based on the totality of the circumstances.²⁰

V. STIPULATION

The stipulation sets forth a reclassification of certain assets, agreed to by the stipulating parties.²¹ The stipulating parties state that PGE and Staff each performed an independent seven factor test analysis of PGE assets. The stipulating parties explain that they reviewed the differences in the results of those analyses to arrive at the reclassifications set forth in the stipulation in Stipulating Parties Exhibits 201 through 203. The stipulating parties state that no 57 kV assets are included in the reclassifications under the stipulation. Under the stipulation, PGE will update its reclassification request before FERC to include only that subset of assets agreed to by the Stipulating Parties and as approved by the Commission; and AWEC will withdraw its protest at FERC and file a statement explaining that it now supports the stipulation.

The stipulation includes reclassifications of common assets, such as land, control buildings and appurtenant structures, yard area lighting, fencing, and landscaping at substations with both transmission and distribution assets.²² The stipulating parties explain that a substation was deemed joint use when at least three 115 kV or greater non-radial lines connect to the substation (three or more test). For joint use substations, common assets were allocated between transmission and distribution based on a ratio of the original cost of the transmission and distribution assets in that substation. For substations with both transmission and distribution assets that did not meet the three or more test, the common assets remain classified as distribution.

Additionally, the stipulating parties identify four characteristics that reflect the reclassifications set forth in the stipulation as follows:

- A. Radial lines both to distribution and to customers tend to be distribution, but radial generation tie facilities tend to be transmission for accounting purposes but should be classified as production for ratemaking purposes;

¹⁸ *Id.* at 21,620.

¹⁹ *Id.* at 21,627 (“FERC will consider jurisdictional recommendations by states that take into account other technical factors that the state believes are appropriate in light of historical uses of particular facilities.”).

²⁰ *Southwest Power Pool, Inc.*, 149 FERC 61,051, 61,382 (Oct 16, 2014); *California Pacific Electric Company, LLC*, 133 FERC 61,018, 61,075 (Oct 7, 2010).

²¹ Stipulating Parties/201-203.

²² *Id.* at 202.

- B. Non-radial line segments of 100 kV or higher voltage tend to be transmission;
- C. Transformers with a secondary voltage under 100 kV tend to be distribution; and
- D. Substation assets (e.g., circuit breakers) that are part of the path that connects the transmission line segments, or equipment associated with transformers with a secondary voltage higher than 100 kV, are considered transmission.²³

The stipulating parties agree that any existing assets not specifically classified as distribution or transmission consistent with these characteristics will be classified as distribution. Additionally, the stipulating parties request that the Commission adopt these characteristics as a streamlined classification approach to be used for any newly energized and reconfigured assets for four years after this order. The stipulating parties state that Commission adoption of this streamlined approach would reduce the need to perform the full seven factor test for this period.

The stipulation provides that PGE will not seek reclassification of assets either at the Commission or at FERC, absent specific circumstances for a four year period after issuance of a Commission order in this proceeding. Specifically, the stipulating parties agree that PGE may seek reclassification if PGE completes a merger or acquisition, or joins a regional transmission organization or independent system operator as a full participating member.²⁴ Additionally, the stipulating parties agree that PGE may, after consulting with Staff, deviate from the stipulation to the extent required as a result of a material change in law or regulation impacting the reclassification approach.

Additionally, the stipulating parties acknowledge that alignment of cost recovery with the reclassification will require a transmission rate case at FERC and a general rate case at the Commission. The stipulating parties state that if a timing mismatch occurs between the rate effective dates of those proceedings, certain customers, including direct access customers may pay for service under the 115 kV facilities in both distribution and transmission rates. Under the stipulation, PGE commits to propose a method to hold all customer classes harmless, preventing double recovery, for the time between the rate effective date in FERC and Commission rate cases including the reclassified assets, in the event such a timing mismatch occurs. Further, under the stipulation, Staff, CUB, and AWEC agree to support PGE's efforts to develop this method and obtain Commission approval, recognizing that any such mechanism would be subject to Commission approval.

²³ Second Revised Stipulation/3-4 (Nov 15, 2019).

²⁴ Participation in selective markets such as the CAISO Energy Imbalance Market or Extended Day-Ahead Market, or joining a Regional Planning organization (e.g., NorthernGrid) do not constitute exemptions that would permit reclassification under the revised partial stipulation.

The stipulating parties agree that the terms of the stipulation, including the asset reclassifications, represent a reasonable settlement of all issues in this proceeding. The stipulating parties request that the Commission adopt the second revised stipulation and support reclassification of the assets identified in Stipulating Parties Exhibits 201 through 203.

VI. RESOLUTION

We find the terms of the stipulation are supported by sufficient evidence, appropriately resolve the issues in this case, and contribute to an overall settlement in the public interest. Accordingly, we adopt the second revised partial stipulation as discussed below.

Whether a facility is local distribution or transmission is determined based on the seven factor test.²⁵ In order to accept the reclassifications set forth in the stipulation, such reclassifications must be consistent with the seven factor test. A determination under the seven factor test is based on the totality of the circumstances after considering all factors.

We have reviewed the stipulation, testimony, and exhibits in the record. We acknowledge that the parties do not necessarily agree on the methodologies used to support the reclassifications contained in the stipulation. Nonetheless, we find that based on PGE's and Staff's separate analyses, the asset reclassifications contained in the stipulation represent a reasonable result that is consistent with the seven factor test. Additionally, we find reasonable the agreed-upon allocation method for classifying common assets not susceptible to classification under the seven factor test.

We recognize that the four characteristics identified by the stipulating parties are consistent with the results of the seven factor test as applied to PGE's facilities and the reclassifications in the stipulation. The stipulating parties agree that any existing assets not specifically classified as distribution or transmission consistent with these characteristics will be classified as distribution. The stipulation additionally provides that PGE will use four identified characteristics in classifying newly energized assets for four years after the issuance of an order approving the stipulation. We recognize this provision as an agreement between the parties, and not binding on any future classification proceeding. We further recognize that use of the four characteristics identified in the stipulation will help ensure consistency with the classifications adopted in this proceeding for newly energized assets and assets not specifically addressed within the asset reclassification tables.

Additionally, in the stipulation, PGE commits to not seek reclassification of assets either at the Commission or at FERC, absent specific circumstances, for a four year period after issuance of a Commission order in this proceeding. We recognize this provision as a commitment by PGE not to initiate reclassification during this time period, but note that

²⁵ Order No. 888 at 21,620.

this does not foreclose others from raising, or the Commission or FERC from addressing, reclassification issues within a future proceeding, including during this four year period.

Under the stipulation, PGE commits to propose a method to hold all customer classes harmless for the time between the rate effective date in FERC and Commission rate cases that include the reclassified assets to account for any mismatch in timing. We direct that PGE consult with Staff and other parties to establish a process to develop and obtain Commission approval of such a method prior to the effective date of any change in transmission rates that include the reclassified assets.

Finally, we note that, as the applicant it is incumbent on PGE to present its case based on a clear application of FERC's prevailing test. This is especially essential when an applicant seeks an expedited review of its application as was the case here. Here, Staff provided a comprehensive analysis, set forth in their prefiled testimony and addressed in further detail at the evidentiary hearing. We emphasize that Staff's testimony in particular ensured that the Commission had the robust record needed to support a decision in this proceeding.

VII. ORDER

IT IS ORDERED that:

1. The second revised stipulation between Portland General Electric Company, Staff of the Public Utility Commission of Oregon, the Oregon Citizens' Utility Board, and the Alliance of Western Energy Consumers filed on November 15, 2019, attached as Appendix A, is adopted as addressed in this order.
2. Portland General Electric Company shall file this order with all attachments and supporting exhibits with the Federal Energy Regulatory Commission, consistent with the terms of the stipulation.
3. Portland General Electric Company shall consult with Staff and other parties to develop and obtain Commission approval of a method to hold all customer classes harmless for the time between the rate effective date in FERC and Commission rate cases that include the reclassified assets. Portland General Electric Company shall commence this process with sufficient time to obtain Commission approval prior to the effective date of any change in transmission rates that include the reclassified assets.

Made, entered, and effective Nov 21 2019.



Megan W. Decker
Chair




Stephen M. Bloom
Commissioner



Letha Tawney
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.