

ORDER NO. 20-029

ENTERED Jan 29 2020

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2037, UE 368

In the Matters of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Application for Deferred Accounting of Costs  
Associated with the Oregon Corporate  
Activities Tax (OCAT) (UM 2037), and

Request for Approval of New Schedule 131,  
Advice No. 19-25, Oregon Corporate Activity  
Tax (OCAT) Recovery (UE 368).

ORDER

**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED**

At its public meeting on January 28, 2020, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in blue ink, appearing to read "Nolan Moser".

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**Nolan Moser**  
Chief Administrative Law Judge

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 Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: January 28, 2020**

**REGULAR** \_\_\_\_\_ **CONSENT**   X   **EFFECTIVE DATE** February 1, 2020

**DATE:** January 14, 2020

**TO:** Public Utility Commission

**FROM:** John Fox

**THROUGH:** Michael Dougherty and Marianne Gardner **SIGNED**

**SUBJECT:** PORTLAND GENERAL ELECTRIC:  
(Docket Nos. UM 2037 and UE 368/Advice No. 19-25)  
Oregon Corporate Activity Tax - Application for Deferral, Balancing  
Account, New Tariff, and Automatic Adjustment Clause.

**STAFF RECOMMENDATION:**

Approve Portland General Electric's (PGE or Company) application requesting authorization for a deferred account beginning on January 1, 2020, and a new tariff, Schedule 131, implementing a rate schedule, balancing account, and automatic adjustment clause for the Oregon Corporate Activity Tax (OCAT or CAT) with the condition that the tariff will terminate and the tax will be included in base rates at a future date to be agreed upon by the parties.

**DISCUSSION:**

Issue

Whether the Commission should approve PGE's application for deferred accounting and a new tariff Schedule 131 – Oregon Corporate Activity Tax Recovery as filed.

Applicable Rule or Law

Beginning with the date of the Application, the Commission may approve the deferral of identifiable utility expenses or revenues, the recovery or refund of which the Commission finds should be deferred in order to minimize the frequency of rate changes for the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers. ORS 757.269(2)(e) and (4). Unless subject to an

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automatic adjustment clause under ORS 757.210(1), amounts deferred are allowed in rates to the extent authorized by the Commission in a proceeding under ORS 757.210 to change rates and upon review of the utility's earnings at the time of application to amortize the deferral. ORS 757.259(4); OAR 860-027-0300(9). The Commission's final determination on the amount of deferrals allowable in the rates of the utility is subject to a finding by the Commission that the amount was prudently incurred by the utility. ORS 757.259(5).

Under ORS 757.205(1), a public utility must file schedules showing all rates, tolls, and charges for service that have been established and are in force at the time. The Commission may approve tariff changes if they are deemed to be fair, just, and reasonable. ORS 757.210. Tariff revisions or corrections may be made by filing revised sheets with the information required under the Commission's administrative rules, including OAR 860-022-0005 and OAR 860-022-0025. Filings that make any change in rates, tolls, charges, rules, or regulations must be filed with the Commission at least 30 days before the effective date of the changes. ORS 757.220.

OAR 860-022-0025(2) specifically requires that each energy utility changing existing tariffs or schedules must include in its filing a statement plainly indicating the increase, decrease, or other change made with the filing; the number of customers affected by the proposed change and the resulting change in annual revenue; and the reasons or grounds relied upon in support of the proposed change.

Unless subject to an automatic adjustment clause under ORS 757.210(1), amounts deferred are allowed in rates to the extent authorized by the Commission in a proceeding under ORS 757.210 to change rates and upon review of the utility's earnings at the time of application to amortize the deferral. ORS 757.259(4); OAR 860-027-0300(9).

### Analysis

#### *Background*

The 2019 Oregon Legislative Assembly approved a new Corporate Activities Tax effective January 1, 2020.<sup>1</sup>

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<sup>1</sup> See Oregon Laws 2019 Chapter 122, Sections 58-79 and Chapter 579, Sections 50-60.

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The tax is imposed on the privilege of doing business in Oregon and is not a transactional tax nor an income tax.<sup>2</sup> However, apportionment and tax administration will occur pursuant to existing income tax statutes.<sup>3</sup>

The tax is in addition to any other taxes or fees imposed by the State of Oregon<sup>4</sup> and will be imposed at a rate of \$250 plus 0.57 percent of taxable commercial activity in excess of \$1 million each year.<sup>5</sup> Taxable commercial activity is defined as commercial activity sourced in this state less a deduction for 35 percent of the greater of “cost inputs” or “labor costs.”

*PGE’s Initial and Revised Filings*

On November 12, 2019, the Company filed an application for deferral that will support an automatic adjustment clause rate schedule with an associated balancing account (UM 2037) and another application, Advice No. 19-25 Schedule 131 – Oregon Corporate Activity Tax Recovery (UE 368), effective January 1, 2020.

On December 4, 2019, the Company filed replacement tariff sheets changing the effective date to February 1, 2020, to provide additional time for review.

The Company requests that the applications be considered simultaneously.<sup>6</sup>

The Company’s application states:

The proposed Schedule 131 prices are applied on a percentage basis of customers' bills with the exceptions outlined in the proposed tariff, similar to PGE Schedule 106 Multnomah County Business Income Tax for customers in Multnomah County.

And states:

PGE's estimate of the CAT for 2020 is \$7.4 million. However, given that this is a new tax and the ultimate tax amount remains uncertain the actual tax amount may differ. PGE's proposed balancing account and automatic adjustment clause will allow PGE to true up the differences between PGE's estimated CAT collected under Schedule 131 and its actual CAT expense. These differences will be

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<sup>2</sup> Chapter 122, Section 63.

<sup>3</sup> Chapter 122, Section 64 and 74.

<sup>4</sup> Id.

<sup>5</sup> Chapter 122, Section 64.

<sup>6</sup> UM 2037/UE 368 – PGE’s applications at 1.

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credited or charged to customers through an annual update of Schedule 131 prices.

In Staff's view, the new OCAT is fundamentally different from the MCBIT in that it is a statewide tax that does not need to be isolated and recovered from a specific subset of the Company's customer base as is required for the MCBIT under OAR 860-022-0045. Also, as noted above, the tax is in addition to any other taxes or fees imposed by the State of Oregon. In other words, from a ratemaking perspective, the OCAT is simply an increase in the overall state tax burden. Accordingly, Staff's position is the OCAT ought to be estimated and rolled into base rates as soon as practicable.

#### *Administrative Uncertainty*

The Oregon Department of Revenue has issued limited taxpayer guidance for the OCAT and expects to release draft administrative rules through the spring of 2020.

Because the law is new and complex, the precise amount of PGE's OCAT expenses are not yet clear. Accordingly, the preliminary calculations provided with this filing reflect high level estimates that will likely differ from the actual amount of OCAT expense incurred.

#### *All Party Workshop*

On December 13, 2019, Portland General Electric (PGE) hosted a workshop to discuss the OCAT filings which was attended by PGE, PacifiCorp, Staff, Oregon Citizens' Utility Board (CUB), and Alliance of Western Energy Consumers (AWEC).

Notwithstanding mention of MCBIT in the various filings, both Companies expressed a willingness to roll the OCAT into base rates when appropriate, the utilities will work in good faith to make that determination, and the utilities will continue to file deferrals for taxes each year until rolled into base rates. In particular, PGE and PacifiCorp cited the following significant uncertainties which need to be resolved prior to inclusion of the OCAT in base rates:

- How the numerous exclusions from the definition of commercial activity<sup>7</sup> will apply to the Companies' various revenue streams.
- The specifics of what will be allowable with regard to calculating the deduction for 35 percent of the greater of "cost inputs" or "labor costs".

Staff, CUB, and AWEC expressed a willingness to support the proposed rate recovery mechanism with the understanding the OCAT will be rolled into base rates as soon as practicable and a willingness to work in good faith to make that determination.

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<sup>7</sup> See Chapter 122, Section 58 as amended by Chapter 579, Section 50.

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*Deferral Amount and Proposed Tariff*

PGE's estimate of the CAT for 2020 is \$7.4 million. The proposed OCAT recovery rate for 2020 based on this amount is 0.395 percent of the total billed amount to the Customer excluding the RPA Credit (Schedule 102), Public Purpose Charge (Schedule 108), Energy Efficiency Funding Adjustment (Schedule 109), Low Income Assistance Charge (Schedule 115) and all other separately stated taxes.

The Company also states that the proposed Schedule 131 rate change will result in a 0.4 percent overall rate increase for approximately 900,000 Customers. A typical Schedule 7 Residential Customer consuming 800 kWh monthly will see a bill increase of approximately \$0.38.

Staff notes that the 0.395 percent tariff rate is less than the 0.57 percent incremental OCAT tax rate, with the difference being attributable mostly to the deduction for 35 percent of the greater of "cost inputs" or "labor costs". Staff has reviewed the Company's calculations underlying the proposed tariff and considers them to be a reasonable estimate given the uncertainties discussed above.

The OCAT is new and, in Staff's view, an extenuating circumstance that was not foreseen in the Company's most recent general rate case, therefore a lower standard of material harm should be applied when evaluating the deferral.<sup>8</sup> Also, the circumstances are similar to the recent deferral of Tax Cut and Jobs Act benefits where the Company agreed to forgo the review of the utility's earnings at the time of application to amortize the deferral in favor of customers.<sup>9</sup>

Staff believes approval of the requested relief is a reasonable outcome under the circumstances and will result in fair, just, and reasonable rates.

Staff also notes that, as a result of the delayed effective date, the initial tariff will be set to recover \$7.4 million over the 11-month period beginning February 1, 2020, rather than 12 months as originally filed. Subsequent years will recover 12 months of taxes over the calendar year.

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<sup>8</sup> See *In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Application for the Deferral of Storm-Related Restoration Costs*, Docket No. UM 1817, Order No. 19-274, at 3.

<sup>9</sup> See *In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Application for Authorization to Defer Benefits Associated with the US Tax Reconciliation Act*, Docket No. UM 1920, Order No. 18-459, at 5.

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Conclusion

For the reasons stated above, Staff recommends the Commission approve the Company's application to establish a new tariff Schedule 131 – Oregon Corporate Activity Tax Recovery effective February 1, 2020, and the associated deferral, balancing account, and automatic adjustment clause with the condition that the tariff will terminate and the tax will be included in base rates at a future date to be agreed upon by the parties.

**PROPOSED COMMISSION MOTION:**

Approve Portland General Electric's application requesting authorization for deferred accounting beginning on January 1, 2020, and a new tariff, Schedule 131, implementing a rate schedule, balancing account, and automatic adjustment clause for the Oregon Corporate Activity Tax with the condition that the tariff will terminate and the tax will be included in base rates at a future date to be agreed upon by the parties.

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