

ORDER NO. 20-314

ENTERED Sep 25 2020

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1789(3) and (4)

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Request for Reauthorization to Defer  
Revenues and Costs Related to the Portland  
Harbor Environmental Remediation Account  
and Prudence Review of Portland Harbor  
Environmental Remediation Expenses.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on September 22, 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:



---

**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  
REDACTED STAFF REPORT  
PUBLIC MEETING DATE: September 22, 2020**

**REGULAR**  **CONSENT**  **EFFECTIVE DATE** September 22, 2020

**DATE:** September 14, 2020

**TO:** Public Utility Commission

**FROM:** Mitchell Moore

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

**SUBJECT:** PORTLAND GENERAL ELECTRIC:  
(Docket No. UM 1789(3) and (4))  
Re-authorization to Defer Revenues and Costs Related to the Portland Harbor Environmental Remediation Account and Prudence Review of Portland Harbor Environmental Remediation Expenses.

**STAFF RECOMMENDATION:**

Staff recommends that the Commission (1) approve Portland General Electric Company's (PGE or Company) 2019 application for reauthorization in the Company's July 11, 2019, filing and (2) find that the Environmental Remediation Costs incurred from January 1, 2019 through December 31, 2019, as well as Harborton Development Costs are prudent and eligible for recovery.

**DISCUSSION:**

Issue

Whether the Commission should: (1) approve PGE's 2019 application for reauthorization in the Company's July 11, 2019, filing, and (2) approve PGE's request to find costs and revenues associated with the Portland Harbor Superfund sites prudent, and allow those amounts to be transferred to the Portland Harbor Environmental Remediation Account (PHERA).

Applicable Law

Under ORS 757.259, the Commission may authorize deferred accounting for later incorporation in rates. Specific amounts eligible for deferred accounting treatment with

Docket No. UM 1789(3) and (4)  
September 14, 2020  
Page 2

interest authorized by the Commission include:

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 or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.

ORS 757.259(2)(e).

Under ORS 757.259, the Commission may authorize deferred accounting for later incorporation in rates. In OAR 860-027-0300(3), the Commission has set forth the requirements for the contents of deferred accounting applications. Applications for reauthorization must include that information along with a description and explanation of the entries in the deferred account to the date of the application for reauthorization and the reason for continuation of deferred accounting. OAR 860-027-0300(4). Notice of the application must be provided pursuant to OAR 860-027-0300(6).

The PHERA cost recovery mechanism, which includes a deferral of costs and revenues, and the Company's corresponding Schedule 149, were first approved by the Commission in Order No. 17-071. The deferral was most recently reauthorized by the Commission in Order No. 18-357, which authorized a 12-month deferral effective July 15, 2018.

In Order No. 17-071, the Commission determined that costs and revenues associated with environmental remediation and restoration activities in the Portland Harbor Superfund site would be reviewed annually for prudence prior to being transferred to a balancing account whereby costs would be offset by certain revenues and subsequently eligible for recovery through an amortization schedule. To determine whether a cost was prudently incurred and recoverable in rates, "the Commission examines the objective reasonableness of a company's actions measured at the time the company acted."<sup>1</sup>

---

<sup>1</sup> In re PacifiCorp, dba Pacific Power, Application for an Accounting Order Regarding Excess Net Power Costs, Docket No. UM 995, Order No. 02-469 at 4 (July 18, 2002).

Docket No. UM 1789(3) and (4)  
September 14, 2020  
Page 3

### Analysis

## **PGE's 2019 Application for Reauthorization of Deferral of Revenues and Costs Related to the Portland Harbor Environmental Remediation Account**

### *Background*

In Commission Order No. 17-071, the Commission approved the PHERA, a cost recovery mechanism (Schedule 149) that tracks and records costs and revenues associated with PGE's liability for environmental remediation and restoration in the Portland Harbor and Downtown Reach sites located in and along the Willamette River, as well as Harborton Restoration Project Development Costs. The mechanism tracks costs and revenues in the Annual Account prior to prudence review, and then transfers prudently-incurred costs and revenues to the Balancing Account for recovery over a period of time according to the principles established in Order No. 17-071.

The Commission reauthorized the Company's cost recovery mechanism most recently in Order No. 18-357 for a 12-month deferral effective July 15, 2018. On July 11, 2019, the Company filed an application for reauthorization of the cost recovery mechanism for a 12-month deferral. In this application, PGE requests the reauthorization commence effective July 15, 2019 through July 14, 2020.

### *Description of Expense*

The expenses and revenues covered under this deferral involve construction, environmental permitting and design, legal expenses caused by pursuing historical insurers, Schedule 149 tariff revenues, insurance proceeds, and DSAY<sup>2</sup> revenues net of Harborton Restoration Project development costs.

### *Reason for Deferral*

With this filing made on July 11, 2019, PGE requests continuation of deferred accounting to recover amounts associated with its environmental cleanup and remediation liability that was approved in Order No. 17-071. Staff agrees that this deferral will minimize the frequency of rate changes and more appropriately match the costs borne by, and the benefits received by, ratepayers consistent with the grounds for authorizing a deferral under ORS 757.259(2)(e).

### *Proposed Accounting*

PGE proposes to continue to record deferred amounts accrued or incurred into the

---

<sup>2</sup> Discount Service Acre Year is a unity of measurement for Natural Resource Damages. DSAY units to be produced by Harborton Restoration Project. See UM 1789, Staff Reply Testimony, Staff/100, Moore/7-17.

Docket No. UM 1789(3) and (4)  
September 14, 2020  
Page 4

following regulatory asset account on the balance sheet:

182.3001	Other Regulatory Assets – Portland Harbor Environmental Costs
182.3001	Other Regulatory Assets – Natural Resource Damages
182.3001	Other Regulatory Assets – Environmental Administrative and Legal Costs

*Estimated Deferrals in Authorization Period*

PGE estimates the deferred amount to be approximately \$8.5 million for the period July 15, 2019 through July 14, 2020.

*Information Related to Future Amortization*

- Earnings Review – Costs included in the PHERA are subject to an earnings test as specified in Order No. 17-071, Appendix A.
- Prudence Review – Commission Order No. 17-071 specifies that an annual prudence review of costs and revenues in the PHERA will be conducted by Staff before being transferred to the balancing account for amortization.
- Sharing – Costs and revenues are not subject to a sharing mechanism, except those amounts above the earnings threshold set forth in Order No. 17-071, Appendix A.
- Rate Spread/Design – Pursuant to Schedule 149 Special Condition 5, functionalized costs recoverable through Schedule 149 will be allocated to each rate schedule according to relative use of generation, distribution, and transmission service.

**Prudence Review of Portland Harbor Environmental Remediation Expenses**

*Background*

The PHERA is a cost recovery mechanism that tracks and records costs and revenues associated with PGE’s liability for environmental remediation and restoration in the Portland Harbor Superfund sites located in and along the Willamette River.<sup>3</sup> The mechanism tracks and then allocates costs and revenues for recovery over a period of time, and includes an automatic adjustment clause to enable PGE to recover prudent costs that meet an earnings test threshold that are in excess of revenues received from

---

<sup>3</sup> See Order No. 17-071, Docket UM 1789 for complete background and detailed description of PHERA mechanism.

Docket No. UM 1789(3) and (4)  
 September 14, 2020  
 Page 5

insurance recovery, and from DSAY sales.<sup>4</sup> The Commission approved the PHERA in Order No. 17-071, and as part of that approval, the Company is required to submit annually a report of its costs and revenues for Staff to review for prudence and subsequent inclusion in the PHERA balancing account. Staff has 120 days to complete its review and report its findings and recommendations to the Commission.

### *Staff Review*

Staff reviewed the Company's filing, associated work papers, and Annual Report to ensure that costs to be included in the PHERA are: a) actually incurred; b) solely incremental and associated with the environmental remediation and restoration activities as defined in the Commission Order; c) reasonable; and d) correctly accounted for in the PHERA. Staff also reviewed the accounting procedures to ensure that costs and revenues are accounted for in a manner consistent with the Stipulation and the Commission's Order.

During the reporting period, PGE incurred approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in ERCs: [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for the Portland Harbor Superfund Site; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for Downtown Reach remediation activities; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in legal defense costs; and these amounts have accrued [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in interest. These ERCs are offset by [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in ERRs from insurance recovery proceeds, interest accrual, and carry-forward amounts from previous year's offset. The net balance of ERC's for 2019 is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].<sup>5</sup>

Harborton Restoration Project Development Costs (Harborton Costs) are also accounted for in the PHERA but treated differently. These costs are not allocated for recovery by ratepayers, nor offset by insurance proceeds, nor subject to earnings review. Rather these costs will be offset by the sale of DSAYs that are created as a result of the Harborton project. However, Harborton Costs are also subject to prudence review by the Commission. To date PGE has incurred approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in Harborton Costs, out of an anticipated \$10-\$12 million total costs when the project is completed.

---

<sup>4</sup> DSAYs – Discount Service Acre Years are credits generated by a restoration project that reflect quantified units of restored natural resources. These credits can be monetized and sold to other liable parties.

<sup>5</sup> See Confidential Attachment A – PGE's accounting summary of ERCs and ERRs in the PHERA.

Docket No. UM 1789(3) and (4)  
September 14, 2020  
Page 6

As noted above, the total of ERC's incurred 2019 was over \$6 million. Order No. 17-071 states:

Before being transferred to the PHERA Balancing Account, the first \$6 million of prudently-incurred ERC are exempt from an earnings test, but amounts exceeding \$6 million are subject to an earnings test. ERCs exceeding \$6 million will be reduced by any earnings above PGE's authorized return on equity approved in the most recent general rate case.

PGE states it will perform an earnings test as part of the 2019 Result of Operations filing. The results of the earnings test will be included as part of its quarterly update to the PHERA at the end of September. PGE does not anticipate the expenditures will trigger a disallowance, as 2019 earnings were well below the Company's authorized ROE of 9.5 percent.

In response to Staff DR Nos. 93 and 94, PGE notes that it hired a full-time legal position to support the allocation process of determining the share of costs between potentially responsible parties for environmental cleanup and remediation, and negotiations with federal and state agencies regarding cleanup activities and assessment and settlement of natural resource damage liability. PGE anticipates this will save on overall legal expenses, which had previously been contracted through outside counsel.

With regard to the Harborton development project, as of PGE's June 2020 Quarterly report submitted on June 29, 2020, no easement or deed restriction had been placed on the Harborton property. This will occur as part of the Habitat Development Plan (HDP), which is the agreement between PGE and the Trustees for the project documentation. The Trustees and PGE are finalizing the HDP (technical, financial, and legal agreements), and PGE anticipates placing the easement or deed restriction on the Harborton property later this year.

PGE started construction on the Harborton site in June 2020. PGE anticipates construction to be complete by the end of 2020, with the expectation that DSAYs would then be available from the project by the end of the year.

The Harborton construction entails the excavation of approximately 165,000 cubic yards of soil to build a channel connected to the Willamette River for juvenile fish. This soil is being stockpiled onsite to create upland habitat. After completion of the channel, trees and boulders will be placed in the channel to create fish habitat. The channel and upland areas will be planted with native trees and shrubs to complete the habitat construction.

Docket No. UM 1789(3) and (4)  
September 14, 2020  
Page 7

Regarding the marketing and sale of DSAYs, PGE continues to reach out to potential parties to discuss potential DSAY sales. To date, PGE has non-disclosure agreements with six parties, and is in negotiations to execute purchase and sale agreements with four parties.

Staff did not find compliance issues with Commission Order No. 17-071 when reviewing PGE's calculations and accounting.

### Conclusion

Staff concludes that PGE's application to re-authorize deferral of the costs and revenues related to the PHERA for the July 15, 2019 – July 14, 2020 period is consistent with ORS 757.259 and Commission Order No. 17-071, and should be approved.

Staff finds that the offsetting and interest calculation fully complies with the stipulation and Commission Order set forth in UM 1789. Staff notes that because total ERC amounts were above \$6 million, an earnings test should be performed prior to offsetting ERCs with ERRs. PGE correctly kept Harborton development costs as a separate line item in the PHERA balancing account for better tracking of its costs to ensure the total revenues from the project exceed the development costs upon project completion. Staff found no calculation errors, and believes that the subsequent balance in the PHERA balancing account is correct.

In addition, Staff believes that the costs submitted in PGE's filing are prudently incurred costs and should be included in the PHERA.

### **PROPOSED COMMISSION MOTION:**

Approve PGE's request to defer, for the twelve month period beginning July 15, 2019, costs and revenues associated with the PHERA; approve PGE's 2019 application for reauthorization in the Company's July 11, 2019, filing, and also find that the Environmental Remediation Costs from January 1, 2019 through December 31, 2019, as well all costs associated with the Harborton Development Project, are prudent and eligible to transfer to the PHERA balancing account for amortization.