

ORDER NO. 22-454

ENTERED Nov 18 2022

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1991(3)

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Application for Reauthorization to Defer
Benefits or Costs Associated with Research
and Development Tax Credits.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on November 15, 2022, 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
STAFF REPORT
PUBLIC MEETING DATE: November 15, 2022**

REGULAR **CONSENT** **EFFECTIVE DATE** _____ **N/A**

DATE: November 3, 2022

TO: Public Utility Commission

FROM: Kathy Zarate

THROUGH: Bryan Conway, Marc Hellman, and Matt Muldoon **SIGNED**

SUBJECT: PORTLAND GENERAL ELECTRIC:
(Docket No. UM 1991(3))
Requests for reauthorization to defer costs associated with its PGE's R&D
Income Tax Credits.

STAFF RECOMMENDATION:

Staff recommends that the Commission approve Portland General Electric Company's (PGE, or Company) application to defer costs associated with its PGE's Research and Development (R&D) Income Tax Credit for the 12-month period beginning December 18, 2021, through December 17, 2022.

DISCUSSION:

Issue

Whether the Commission should authorize PGE's request to defer costs associated with its PGE's R&D Income Tax Credits.

Applicable Law

Under ORS 757.259, the Commission may authorize deferred accounting for later incorporation in rates. Upon a finding that amounts 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, the Commission may authorize deferred accounting treatment with interest of utility expenses and revenues.

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OAR 860-027-0300 generally sets forth the Commission's application requirements for deferrals and amortization of deferred amounts.

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 an 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).

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.

The Commission's final determination on deferred amounts 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).

Analysis

Background

The R&D tax credit represents a federal and state income tax incentive for the performance of qualified research within the U.S. to develop new or improved products, processes, or software. The R&D tax credit is calculated as a percentage of qualified expenses determined by §41 of the Internal Revenue Code and by ORS 317.152. The R&D tax credit must be used before production tax credits ("PTCs") such that the use of R&D tax credits could delay the use of PTCs, which could increase the PTC carryforward balance.

On December 17, 2021, PGE filed a supplemental application seeking reauthorization of this deferral for the net benefits and costs associated with the 2021 vintage of R&D tax credits. The filing also requested continued the use of an automatic adjustment clause, to provide for on-going changes in rates reflecting the net R&D tax credits and true-ups of the applicable vintages.

In addition, Commission Order No. 18-464,¹ adopted the third partial stipulation, which specified that PGE would hire a consultant to determine how much of PGE's costs

¹ Commission Order No. 18-464, *In the Matter of Portland General Electric Company Request for a Rate Case*, Docket No. UE 335, Appendix D p.2, Dec. 14, 2018 (adopting the Third Partial Stipulation of the Parties).

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qualify for the R&D tax credits. The stipulation also specified that any net benefit resulting from the study would be refunded to customers and any net costs would be split evenly between PGE's customers and shareholders.

Description of Expenses

The deferral will record the benefits associated with PGE's actual R&D tax credits netted against the costs of a consultant to perform the studies to determine the proposed R&D tax credits to claim on PGE's income tax returns. In addition, each year's net benefit or cost constitutes a vintage of R&D tax credits. As a result, of the on-going nature of determining each vintage of credits, plus refunding them, and truing-up each vintage of R&D tax credits to final actual amounts, PGE proposes that this deferral continue to support an automatic adjustment clause.

Proposed Accounting

PGE proposes to continue to use two separate accounts for the applicable vintage. PGE proposes to record it as a regulatory liability in FERC account, 254 Other Regulatory Liability, with a debit to FERC account 407.3 Regulatory Debits. If the Deferred Amount is a debit, PGE proposes to record it as a regulatory asset in FERC Account 182.3, Other Regulatory Assets, with a credit to FERC Account 407.4, Regulatory Credits. In the absence of a deferred accounting order from the Commission, PGE would continue to evaluate whether to pursue the R&D tax credit for shareholder benefit.

Estimated Deferrals in Authorization for the Next 12 Months

The cost and benefits of the fourth vintage, for tax year 2021, will not be determined until that study is complete in the year 2022. Below, lists the current vintages, the R&D tax credits, the adjustments to derive the net benefit available for customer refund, and the expected refund year:

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Table 1
R&D Tax Credit Vintages

(\$ in millions)	Tax Years	A R&D Tax Credits	B Reserve for Uncertain Tax Position	C Study Cost	D=A+B+C Net Benefit Available for Refund	Net Benefit Refund Year	Final Refund / Collection Amount*	Final Refund / Collection Year*
Vintage 1	2016-2017-2018	\$5.3	(\$1.4)	(\$0.4)	\$3.5	2021	TBD	TBD
Vintage 2	2019	\$0.27	\$0	(\$0.01)	\$0.26	2021	TBD	TBD
Vintage 3	2020	\$1.5	\$0	(\$0.08)	\$0.91	2022	TBD	TBD
Vintage 4	2021	TBD	TBD	TBD	TBD	2023	TBD	TBD

* Post IRS audit or expiration of statute of limitations

Information Related to Future Amortization

- Prudence Review – The prudence review for amortization of this deferral should include verification that the revenues are appropriate. Further, the accounting methodology used to determine the final balance should be verified.
- Earnings review – The R&D tax credits are subject to an automatic adjustment clause rate schedule and thus are not subject to an earnings review under ORS 757.259(5).
- Share Percentages – All prudently incurred costs and benefits would be collected or refunded from or to customers based on the following:
 - PGE’s customers will receive a refund of 100 percent of the Deferred Amount when it is a net benefit.
 - PGE’s customers will receive a charge of 50 percent of the Deferred Amount when it is a net cost.
- Rate Spread/Rate Design – Any Deferred Amount will be subject to a supplemental revenue schedule 105, grossed up for taxes, and allocated to each schedule using the applicable schedule’s forecasted energy on the basis of an equal percent of revenues.
- Three Percent Test (ORS 757.259 (6)) – The amortization of the Deferred Amounts for each vintage associated with the R&D tax credits will be subject to

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the three percent test in accordance with the ORS 757.259(6), which limits aggregated deferral amortizations during a 12-month period to no more than three percent of the utility's gross revenues for the preceding year.

Conclusion

Staff concludes that reauthorization of the deferral of R&D tax credits complies with the requirements of ORS 757.259 and OAR 860-027-0300 and is consistent with Commission Order No. 18-464, approving the third partial stipulation. Staff also agrees that the yearly amortization of net tax credits is appropriately accomplished through continued use of an automatic adjustment clause mechanism.

The Company has reviewed this memo and agrees with its contents.

PROPOSED COMMISSION MOTION:

Approve Portland General Electric's (PGE or Company) application for reauthorization to defer costs associated with its PGE's R&D Income Tax Credits for 12 months beginning December 18, 2021.

PGE UM 1991(3) R&D Tax Credit Deferral