

ORDER NO. 24-076

ENTERED Mar 21 2024

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1789

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Prudence Review of Portland Harbor
Environmental Remediation Expenses.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on March 19, 2024, 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.

ITEM NO. CA13

**PUBLIC UTILITY COMMISSION OF OREGON
REDACTED STAFF REPORT
PUBLIC MEETING DATE: March 19, 2024**

REGULAR CONSENT EFFECTIVE DATE _____ N/A _____

DATE: March 7, 2024

TO: Public Utility Commission

FROM: Mitchell Moore

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

SUBJECT: PORTLAND GENERAL ELECTRIC:
(Docket No. UM 1789)
Prudence Review of Portland Harbor Environmental Remediation
Expenses.

STAFF RECOMMENDATION:

Approve Portland General Electric Company's (PGE or Company) request to find that the Portland Harbor Environmental Remediation Costs incurred from January 1, 2022, through December 31, 2022, as well as Harborton Development Costs, are prudent and eligible for recovery.

DISCUSSION:

Issue

Whether the Commission should 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

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. 23-490, which authorized a 12-month deferral effective July 20, 2023.

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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.”¹

Analysis

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.² 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 insurance recovery, and from DSAY sales.³ 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 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]** **[END CONFIDENTIAL]** in ERCs: **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** for the Portland Harbor Superfund Site; **[BEGIN**

¹ 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).

² See Order No. 17-071, Docket UM 1789 for complete background and detailed description of PHERA mechanism.

³ 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.

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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 2022 is **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**.⁴

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 Development Costs, out of a projected \$10-\$12 million total costs when the project is completed.

As noted above, the total of ERC's incurred 2022 was more than \$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.

The earnings test is performed on amounts that have been deemed prudent by the Commission.⁵ PGE states it will apply the earnings test for the \$0.3 million ERCs that are in excess of the \$6 million exempt from an earnings test. The earnings test will be based on the 2022 Result of Operations filed in April 2023. The results will be included as part of PGE's annual update to the PHERA in March of 2024. PGE states the expenditures will not likely trigger a disallowance, as 2022 earnings (8.19 percent ROE) were below the Company's authorized ROE.

Portland Harbor Superfund Costs:

- Participation in the harbor Participation and Common Interest Agreement (PCI) Group. The PCI group employs professional consultants to help

⁴ See Confidential Attachment 1 Annual Report – PGE's accounting summary of ERCs and ERRs in the PHERA.

⁵ See paragraph 10 of the Adopted Stipulation in Order No. 17-071

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determine the share of harbor cleanup costs for each responsible party, and also provides a joint defense to resolve the Environmental Protection Agency's (EPA) claims against the parties.

- Historical research, technical and legal analysis to estimate contaminants as well as assessing responsibility for those contaminants.
- Review and negotiation of consent decrees for the Portland Harbor Natural Resource Trustee Council to finalize PGE's natural resource damages (NRD) liability.

Downtown Reach Remediation Costs:

Costs incurred during this period include performance monitoring of existing sediment caps. Costs were also incurred to respond to DEQ comments on the RM 13.1 monitoring report submitted in 2021.

Legal Expenses:

Outside legal support is utilized for the allocation process, negotiations with EPA and DEQ regarding cleanup, and negotiations with the Natural Resource Trustees and US Department of Justice regarding assessment of NRDs.

Harborton Project Development Costs:

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. Development costs incurred during this period are associated with remaining project implementation and permitting, and interaction with the Trustees and regulatory agencies (DEQ, Oregon Department of State Lands, and United States Corps of Engineers).

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

Conclusion

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.

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

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

PROPOSED COMMISSION MOTION:

Approve PGE's request to find that the Portland Harbor Environmental Remediation Costs incurred from January 1, 2022, through December 31, 2022, as well as Harborton Development Costs are prudent and eligible for recovery.

PGE UM 1789 PHERA Prudence Review 2022