Agenda Date: March 28, 2024
Item Number: A1

Docket: **UE-230810**
Company: Puget Sound Energy

Staff**:** Chris McGuire, Regulatory Analyst – Energy Rates and Services
Joel Nightingale, Regulatory Analyst – Energy Planning

Recommendation

Commission Staff recommends the Commission grant in part and deny in part, subject to conditions, the petition for deferred accounting treatment filed by Puget Sound Energy in Docket UE-230810 on September 29, 2023, as revised on March 8, 2024.

Specifically, Commission Staff recommends that the Commission:

1. Grant PSE's request to defer the PPA expenses, offsetting benefits, and a return on the PPAs, subject to the condition that the return on the PPAs be calculated at PSE's authorized cost of debt rather than at PSE's authorized rate of return, and
2. Deny PSE's request to continue deferring a return on the PPAs beyond January 1, 2024, which is the date the Commission authorized PSE to begin rate recovery of the underlying PPAs.

Summary of Filing

On September 29, 2023, in Docket UE-230810, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission), a petition seeking an Accounting Order authorizing PSE to defer the costs associated with three demand response (DR) power purchase agreements (PPAs) pursuant to RCW 80.28.410, to track and preserve them for later ratemaking treatment. On March 8, 2024, PSE filed a revised petition adding the benefits of the PPAs to its request for deferred accounting and modifying the requested start date of the deferral period from July 2023 to September 2023.[1]

In its petition, PSE seeks authorization to defer:

1. The expenses and offsetting benefits of the PPAs for the period September 2023 through December 2023, and
2. A return on the PPAs at the Company's authorized rate of return (ROR), beginning September 2023 and continuing beyond January 1, 2024, which is the date the underlying PPAs were included in rates.

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[1] PSE's revised petition also removed the Company's earlier request that it be allowed to file a Notice of Intent to Defer – rather than a petition for deferred accounting treatment – for all future resources qualifying under RCW 80.28.410(1).

<u>**Background**</u>

RCW 80.28.410.

On May 7, 2019, the Washington State Legislature enacted Engrossed Second Substitute Senate Bill 5116 (ESSSB 5116), which included various provisions intended to support electric utilities' transition to clean energy.[2] Section 21 of ESSSB 5116 added a new section to RCW 80.28 – codified as RCW 80.28.410 – for the primary purpose of allowing electric companies to account for and defer for later consideration by the commission costs incurred in connection with major projects in the company's clean energy action plan (CEAP).[3]

RCW 80.28.410(2) provides that the costs that an electric company may account for and defer pursuant to RCW 80.28.410(1) include the costs – including the costs of capital – associated with the execution of an applicable PPA. The cost of capital that a company may account for and defer for a qualifying PPA is calculated as a rate of return that is no less than the utility's authorized cost of debt and no greater than the utility's authorized rate of return.[4]

PSE's Execution of Demand Response PPAs in 2023

Between March 10, 2023, and September 27, 2023, PSE executed PPAs with three separate demand response aggregators: Oracle America, Inc. (Opower), AutoGrid Systems, Inc., and Enel X North America, Inc. Each of the PPAs are for a term of five years and are for capacity and the associated conservation attributes of the aggregator's services.

PSE's Deferred Accounting Petition, Docket UE-230810 (this filing)

On September 29, 2023, PSE filed a petition for deferred accounting treatment pursuant to RCW 80.28.410 for the costs of the three DR PPAs referenced above. In its petition, which PSE revised on March 8, 2024, the Company seeks authorization to (1) defer the expenses and offsetting benefits of the PPAs for the period September 2023 through December 2023, and (2) defer a return on the PPAs at the Company's authorized ROR, beginning September 2023 and continuing beyond January 1, 2024.

Power Cost Update, Docket UE-230805

On September 29, 2023, PSE filed a 2024 Power Cost Update in Docket UE-230805 to revise the rate recovering its PCA baseline to account for updated cost forecasts for 2024. In its 2024 Power Cost Update, PSE included the costs for the DR PPAs described above. The Commission allowed PSE to include the PPA costs in the 2024 PCA baseline and, accordingly, into rates effective January 1, 2024.[5]

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[2] Chapter 288, Laws of 2019.
[3] Pursuant to RCW 19.280.030.
[4] RCW 80.28.410(2)(b).
[5] *See* Docket UE-230805, Order 01 at 5 ¶16.

<u>Discussion</u>

A need for policy guidance.

This is the first petition filed with the Commission pursuant to RCW 80.28.410 and, as such, it presents the Commission with a case of first impression with respect to how it will implement the statute. The language of RCW 80.28.410 is in places unclear and open to interpretation, creating open policy questions and, in this particular case, leaving Commission Staff (Staff) and PSE with differing perspectives on what is, and what is not, permitted under the law. Staff therefore believes that some form of policy guidance from the Commission on the proper implementation of this statute is needed.

Staff notes two areas of the statute of particular relevance to PSE's petition where the parameters of the law are unclear and Commission guidance is needed. Specifically, resolution of PSE's petition requires answers to the following questions:

1. Over what duration may a utility defer a return on a qualifying PPA, and
2. What are the standards for determining what return a utility may earn on a qualifying PPA, given that RCW 80.28.410(2)(b) allows a return that is no lower than the utility's authorized cost of debt and no greater than the utility's authorized rate of return.

In comments filed to this docket on March 1, 2024, Northwest & Intermountain Power Producers Coalition (NIPPC) also urged the Commission to provide policy guidance for implementing RCW 80.28.410 and identified similar policy questions to questions 1 and 2 that Staff notes above.[6] NIPPC additionally identified a need for policy guidance regarding the types of PPAs that are eligible under RCW 80.28.410. While Staff agrees that Commission guidance in this area would be helpful, Staff does not believe resolving PSE's petition for deferred accounting requires addressing that question.

Deferral of PPA expenses and offsetting benefits

In this petition, for the three DR PPAs discussed above, PSE seeks to defer the PPA expenses and offsetting benefits[7] that the Company recorded between September and December 2023.

Staff does not contest this portion of the Company's petition. RCW 80.28.410 allows utilities to account for and defer the costs of a new resource, including a PPA, provided that the resource was identified in the utility's CEIP. Furthermore, the question of whether a DR PPA, specifically, qualifies for deferred accounting under RCW 80.28.410 was answered for PSE in the Settlement

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[6] NIPPC identified in its comments that the Commission will need to address what the standards will be for allowing a rate of return and what that return might be.

[7] PSE added the offsetting benefits to its revised petition, filed March 8, 2024, in response to the Commission taking formal note of the offsetting benefits of DR PPAs in Docket UE-230805, Order 01 at 5 ¶16 ("the value of the DR contracts carries an offsetting benefit amounting to $880,000, which will accrue to the benefit of customers").

Stipulation in PSE's 2022 general rate case.[8] In the Final Order approving the settlement, the Commission affirmed that, whether they are PPAs or not, to the extent that DR costs relate to projects identified in the Company's CEIP, the costs qualify under the statute.[9]

Staff has confirmed that the Demand Response resources in question were identified in PSE's CEIP, and therefore believes that the expenses and offsetting benefits for the associated PPAs qualify for deferral under the law. PSE's requested deferral period of September 2023 through December 2023 is also appropriate as it corresponds to the period spanning the date PSE initially filed this accounting petition up to the date PSE began recovering the going-forward PPA expenses in rates.

Deferral of a Return on the PPAs

In this filing PSE seeks to defer a return on the PPAs beginning September 2023 and continuing beyond January 1, 2024, which is when the PPAs were incorporated into rates. While PSE included the expenses for these three PPAs in its 2024 Power Cost Update, PSE did not include the return on those PPAs in its proposed power cost baseline for 2024. Therefore, the rates that went into effect on January 1, 2024, included recovery of the going-forward PPA expenses but did not include recovery of a going-forward return on those PPAs.

While Staff supports PSE's request to defer a return on these PPAs between September 2023 (the month PSE initially filed this petition) and December 2023 (the last month prior to the PPAs being included in rates on January 1, 2024), under Staff's reading of the law, RCW 80.28.410 does not permit PSE to continue deferring a return on the PPAs beyond the date the PPAs are included in rates (i.e., beyond December 2023).

RCW 80.28.410(2)(b) allows a utility to earn a return on a qualifying PPA over the duration of the PPA. However, under RCW 80.28.410(1) the utility cannot continue to *defer* a return after the date the underlying PPAs are included in rates. RCW 80.28.410(1) states:

> "if the company files a general rate case or other proceeding for the recovery of such costs, <u>deferral ends on the effective date</u> of the final decision by the commission in such a proceeding." (Emphasis added.)

PSE filed a power cost update on September 29, 2023, wherein the Company included the costs for the DR PPAs described above. The Commission allowed PSE to include the PPA costs in the 2024 PCA baseline rates effective January 1. 2024. Therefore, under the plain language of RCW 80.28.410(1), the deferral ends on January 1, 2024.

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[8] Appendix A, Settlement Stipulation and Agreement, to Final Order 24/10, Dockets UE-220066, UG-220067, & UE-210918 (*Consolidated*) ¶ 32 ("The cost of any DER PPA for distributed generation, battery resources and demand response costs are eligible for recovery through PSE's PCORC, PCA Mechanism and/or annual power cost update and are eligible for potential earning on PPAs pursuant to RCW 80.28.410").

[9] *See* Final Order 24/10, Dockets UE-220066, UG-220067, & UE-210918 (*Consolidated*) ¶ 258.

To be clear, Staff does not dispute that PSE can earn a return on a qualifying PPA over the duration of the contract. Staff only disputes that the return can continue to be deferred after the PPAs are included in rates. Utilities seeking to earn a return on a PPA over the duration of the contract should include the going-forward return in its proposed rates at the same time it includes the PPA expenses in its proposed rates.

Deferred Return on PPAs should be calculated at the Authorized Cost of Debt

In this filing, for the return on the PPAs that PSE seeks to defer, PSE requests to calculate the return at the Company's full authorized rate of return, which is the maximum return allowed under the law. RCW 80.28.410(2)(b) allows for a return on qualifying PPAs that is no less than the company's authorized cost of debt and no greater than the company's authorized rate of return. For reference, per the settlement stipulation in PSE's 2022 GRC,[10] PSE's current authorized rate of return is 7.156 percent and PSE's current authorized cost of debt is 5.00 percent.

In Staff's view, where statute provides a range of possible rates that the Commission may consider for calculating the return on qualifying PPAs, the Commission should authorize a rate at the upper end of that range only when the Company has adequately justified using the upper end of the range. PSE's petition did not provide such justification.

In its petition, PSE states only that a full rate of return is appropriate "because these are long-term PPAs and as such, will be financed using PSE's full capital structure." However, it is not clear to Staff how the length of a PPA has any bearing on the Company's capital costs. PSE does not pay for the full contract cost up front and, therefore, the PPAs do not require long-term financing.

To be clear, PSE did incur capital costs to finance the PPA expenses prior to those expenses being included in rates starting January 1, 2024. However, the only costs in this petition that PSE was required to finance were the PPA expenses over a single three-month period (September through December 2023). PSE's suggestion in its petition that these PPAs require long-term financing is not accurate, and as such is not a compelling (or valid) reason for providing the Company with a return at the upper end of what is allowed under the law. Therefore, Staff recommends that the Commission deny PSE's request to defer a return on the PPAs calculated at the Company's full authorized ROR, and instead order the Company to calculate the return using the Company's authorized cost of debt.

Comments of Interested Parties

On March 1, 2024, Northwest & Intermountain Power Producers Coalition (NIPPC) filed comments in this docket in support of PSE's request to defer a return on the PPAs and urging the Commission to provide generic guidance on implementing RCW 80.28.410, particularly in

[10] Dockets UE-220066 and UG-220067.

regard to what types of PPAs are eligible, what the standards will be for allowing a rate of return on PPAs, and what that rate of return might be.

Conclusion

The PPA costs, including the cost of capital, that PSE incurred between September and December 2023 qualify for deferred accounting treatment under the parameters of RCW 80.28.410, and, therefore, the Commission should grant PSE's petition for an accounting order specifically, and only, as it pertains to the costs PSE incurred over that period. However, the Commission should deny PSE's request to defer a return on the PPAs calculated at the Company's full authorized ROR, and instead order the Company to calculate the return using the Company's authorized cost of debt.

Given that the PPAs in question were included in the 2024 Power Cost Update in Docket UE-230805, with rates effective January 1, 2024, the Company is not permitted by the plain language of RCW 80.28.410 to continue deferring a return on the PPAs after the PPAs are embedded in rates. Therefore, the Commission should deny the portion of PSE's petition that pertains to deferral of a return on the PPAs beyond December 31, 2023.