Agenda Date: December 10, 2020
Item Numbers: A1-A7

Dockets: **UE-200234, UG-200264, UE-200407, UG-200408, UG-200479, UE-200780, and UG-200781**

Companies: PacifiCorp, d/b/a Pacific Power and Light Company
Northwest Natural Gas Company
Avista Corporation, d/b/a Avista Utilities
Cascade Natural Gas Corporation
Puget Sound Energy

Staff: Kristen Hillstead, Regulatory Analyst
Joanna Huang, Regulatory Analyst

Recommendation

Staff recommends that the commission:

(1) Issue an order granting in part and denying in part the petition filed by PacifiCorp, d/b/a Pacific Power and Light Company, in Docket UE-200234, as revised on December 3, 2020, subject to conditions, authorizing deferred accounting treatment of costs and benefits associated with the COVID-19 public health emergency, requiring the company to record deferred expenses in FERC Account 186, and denying the company's request to accrue interest on the deferral balance.
(2) Issue an order granting the petition filed by Northwest Natural Gas Company in Docket UG-200264, as revised on November 5, 2020, subject to conditions, authorizing deferred accounting treatment of costs and benefits associated with the COVID-19 public health emergency.
(3) Issue an order granting the petition filed by Avista Corporation, d/b/a Avista Utilities in Dockets UE-200407 and UG-200408, as revised on November 23, 2020, subject to conditions, authorizing deferred accounting treatment of costs and benefits associated with the COVID-19 public health emergency, and requiring the company to record deferred expenses in FERC Account 186.
(4) Issue an order granting the petition filed by Cascade Natural Gas Corporation in Docket UG-200479, as revised on November 24, 2020, subject to conditions, authorizing deferred accounting treatment of costs and benefits associated with the COVID-19 public health emergency.
(5) Issue an order granting in part and denying in part the petition filed by Puget Sound Energy in Dockets UE-200780 and UG-200781, as revised on November 6, 2020, subject to conditions, authorizing deferred accounting treatment of costs and benefits associated with the COVID-19 public health emergency and denying the request to defer unspecified "other costs" and labor costs.

Staff also recommends that the commission require the utilities to track normalized earnings on a rolling 12-month basis and report those earnings upon any request for recovery of the deferral.

Background

Between March 20, 2020, and September 3, 2020, the five energy companies regulated by the commission filed petitions for deferred accounting treatment for costs associated with the COVID-19 pandemic.

In June, the commission formed a workgroup of stakeholders in Docket U-200281 to facilitate the development of guidelines for ensuring that customers experiencing economic hardship as a result of the pandemic would maintain access to essential services. Workgroup members participated in several workshops and exchanged proposed guidelines, including guidelines related to deferred accounting. Staff prepared a Term Sheet that (a) consolidated the terms on which the workgroup members agreed, and (b) recommended terms to resolve the disputed issues. After the proposed "Term Sheet" was heard at the October 6, 2020, recessed open meeting, staff produced a "Revised Term Sheet" which was discussed at the October 15, 2020, open meeting.

On October 20, 2020, the commission issued Order 01 in Docket U-200281, adopting the four guiding principles recommended in the Revised Term Sheet with regard to considering petitions for deferred accounting for COVID-related costs. However, the commission declined to adopt staff's position on the categories of costs appropriate for deferred accounting treatment, stating that the dockets in which the commission will consider each utility's deferred accounting petitions are the appropriate venues for resolving those petitions. Staff had identified five cost categories where deferred accounting treatment may be appropriate: (1) specific, incremental COVID costs, (2) bad debt expense, (3) late payment fees, (4) reconnections charges, and (5) costs associated with bill payment assistance programs.

Summary of Petitions

Although the commission declined to adopt staff's position on the categories of costs appropriate for deferred accounting treatment, all five utilities filed revised petitions largely reflecting staff's position as described in the Revised Term Sheet. The table below summarizes the elements of each utility's petition:

	PacifiCorp	NWN	Avista	Cascade	PSE
Deferral of "Term Sheet" Costs					
(1) Specific Incremental Costs	Yes	Yes	Yes	Yes	Yes
(2) Bad Debt Expense	Yes	Yes	Yes	Yes	Yes
(3) Late Payment Fees	Yes	Yes	-	Yes	Yes
(4) Reconnection Charges	Yes	Yes	Yes	Yes	Yes
(5) Bill Assistance	Yes	Yes	Yes	Yes	Yes
Other Requests					
Deferral of "Other" (Unspecified) Costs	-	-	-	-	Yes
Deferral of Labor Costs	-	-	-	-	Yes
Interest on Deferral	Yes	-	-	-	-
FERC Account (Deferral Recorded to)	182.3	186	182.3	186	186
CARES Act – NOL Carry-back Benefit	-	-	Yes	-	-

Discussion

Deferral of "Term Sheet" Costs

Consistent with the position outlined in the Revised Term Sheet in Docket U-200281, staff supports allowing deferred accounting treatment for (1) specific, incremental COVID costs, (2) bad debt expense, (3) late payment fees, (4) reconnections charges, and (5) costs associated with bill payment assistance programs.

However, consistent with guiding principle 1 in the Revised Term Sheet, petitions should not include overly broad requests, such as requests for deferred accounting for unspecified "other costs." The commission adopted guiding principle 1 in Order 01 of Docket U-200281[1], specifically noting that those principles were broadly supported by the workgroup members. Therefore, staff recommends the commission grant the companies' petitions only to the extent that the petitions themselves identify the specific cost the utilities are seeking to defer.[2]

Special Note 1 – Late Payment Fees and Reconnection Fees

On April 17, 2020, Governor Inslee issued Proclamation 20-23.2 which, among other things, prohibits energy providers from charging late fees or reconnection fees. This prohibition has been extended through December 31, 2020.

[1] Docket U-200281 at ¶ 23.
[2] The Revised Term Sheet provides examples for the level of specificity needed, such as incremental costs associated with "personal protective equipment, cleaning supplies and services, contact tracing, medical testing, financing costs to secure liquidity, information technology updates, equipment needed for remote work options, and the administrative needs to implement the term sheet components accepted by the Commission."

Although staff supports deferred accounting treatment for late payment fees and reconnection charges (consistent with the Revised Term Sheet), staff notes that, given Proclamation 20-23.2, it is far from certain that deferrals for those items will be appropriate for cost recovery. Deferring those fees and then recovering them later could be viewed as functionally equivalent to the utilities charging the fees that the proclamation prohibits. But that is an issue for another day.

Special Note 2 – Recording to FERC Account 182.3 vs. FERC Account 186

FERC Account 182.3 – Other regulatory assets, and FERC Account 186 – Miscellaneous deferred debits, both are used for recording regulatory deferrals. However, whether or not a deferral should be recorded to one account versus the other depends on the degree to which recovery is probable. Amounts should be recorded to Account 182.3 when it is "probable" the amounts will be included in future rates,[3] and amounts should be recorded to Account 186 when the final disposition of those amounts is "uncertain."[4]

Not only is it unclear how (or whether) costs will be determined to be "incremental," but utilities could be legally precluded from recovering certain of the deferred costs in question. This is particularly true for Late Payment Fees and Reconnection Fess which, as discussed above, utilities are prohibited from charging per the Governor's Proclamation 20-23.2. Given the nature of the costs the utilities are requesting to defer, the final disposition of the deferrals is in fact uncertain. Therefore, it is more appropriate to record the deferred amounts to FERC Account 186.

Special Note 3 – Extraordinary Circumstances

Staff recommends that the commission recognize that upon any request for recovery the companies bear the burden of proving circumstances were extraordinary. Recording and recovering these deferrals is predicated upon the utilities being confronted with extraordinary circumstances and financial instability going forward.

PacifiCorp, d/b/a Pacific Power and Light Company

On March 20, 2020, PacifiCorp filed its initial petition in Docket UE-200234. On November 9, 2020, the company amended its petition in response to the Revised Term Sheet conditions. PacifiCorp's petition includes two noteworthy elements:

1. Requests to record the deferral balance to FERC Account 182.3; and
2. Requests a carrying charge (interest) on the deferral balance.

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[3] 182.3 Other regulatory asset. A. . . . the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies. . .B. . . . those charges which would have been included in net income. . . probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services. . .

[4] 186 Miscelllaneous deferred debits. . . . unusual or extratordinary expenses not included in other accounts. . . and items the final disposition of which is uncertain.

Regarding FERC Account 182.3 – As described above, staff believes COVID-related deferrals should be recorded to FERC Account 186 rather than FERC Account 182.3. The commission should require PacifiCorp to do just that.

Regarding interest accruing on the deferral – In these dockets, the commission is considering petitions for deferred accounting, not what should happen after the deferral is created. PacifiCorp's request to assess a carrying charge on the deferral balance is out of scope and, accordingly, the commission should decline to render a decision on that portion of the company's request.[5]

Northwest Natural Gas Company

On March 25, 2020, NW Natural filed its initial petition in Docket UG-200264. On November 5, 2020, NW Natural amended its petition to align with the Revised Term Sheet conditions.

NW Natural's revised petition is consistent with the guiding principles staff has applied in its review of these petitions. NW Natural's revised petition identifies specific costs for deferral, proposes to record deferred amounts to FERC Account 186, and does not request that interest accrue on the deferral balance. NW Natural's petition should be granted, as revised.

Avista Corporation

On May 4, 2020, Avista filed its initial petition in Dockets UE-200407 and UG-200408. On November 23, 2020, the company amended its petition to align with the Revised Term Sheet conditions. Avista's petition includes three noteworthy elements:

1. Does not request deferred accounting treatment for Late Payment Fees;
2. Requests to record the deferral balance to FERC Account 182.3;
3. Requests to defer benefits associated with the CARES Act.

Regarding Late Payment Fees – Avista does not request deferred accounting treatment for late payment fees because Avista does not charge late payment fees in Washington. Regardless, since Avista is not requesting to defer late payment fees, late payment fees are not at issue in Docket UE-200407 and UG-200408.

Regarding FERC Account 182.3 – As described above, staff believes COVID-related deferrals should be recorded to FERC Account 186 rather than FERC Account 182.3. The commission should require Avista to do just that.

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[5] Even if that weren't the case, granting deferred accounting already is an extraordinary measure that provides utilities with the prospect of future revenues that they otherwise would have no chance of receiving. Utilities should not be asking ratepayers to provide a profit margin on top of deferred accounting treatment.

Regarding the Coronavirus Aid, Relief, and Economic Security (CARES) Act passed by Congress and signed into law by President Trump on March 27, 2020[6]– The CARES Act allows for companies who have a taxable net operating loss (NOL) for tax years 2018, 2019, and 2020 to carry that loss back to the five prior tax years. Carrying that loss backward means the company can retroactively reduce its tax liability for prior years, effectively generating a tax refund. Avista projects an NOL for 2019 and is therefore requesting deferred accounting treatment for the NOL carry-back tax benefit. Avista proposes to use the NOL carry-back tax benefit to offset the increased expense. None of the other companies qualify.

Cascade Natural Gas Corporation

On May 27, 2020, Cascade filed its initial petition in Docket UG-200479. On October 30, 2020, and again on November 24, 2020, Cascade amended its petition to align with the Revised Term Sheet conditions.

Cascade's revised petition is consistent with the guiding principles staff has applied in its review of these petitions. Cascade's revised petition identifies specific costs for deferral, proposes to record deferred amounts to FERC Account 186, and does not request that interest accrue on the deferral balance. Cascade's petition should be granted, as revised.

Puget Sound Energy

On September 3, 2020, PSE filed its initial petition in Dockets UE-200780 and UG-200781. On November 6, 2020, PSE filed a revised petition to align with the Revised Term Sheet conditions. PSE's petition includes two noteworthy elements:

1. Request deferred accounting treatment for other incremental costs associated with COVID-19, as may be identified, and
2. Requests deferred accounting treatment for certain labor costs that would typically be charged to capital, but is now being charged to expense.

Regarding deferral of unspecified, "other costs" – As noted above, consistent with guiding principle 1 in the Revised Term Sheet, petitions should not include overly broad requests, such as requests for deferred accounting for unspecified "other costs." The commission adopted guiding principle 1 in Order 01 of Docket U-200281, specifically noting that those principles were broadly supported by the workgroup members. Therefore, staff recommends the commission deny this portion of PSE's petition.

Regarding the deferral of Labor costs, staff does not support companies deferring labor expenses. PSE asserts these labor expenses are for employees temporarily unable to work due to the pandemic where such labor is typically capitalized but now must be charged to expense. PSE

[6] From Section 2203(b)(1) of the the CARES Act, Section 172(b)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph: . . . (I) such loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss. . .

provided no additional explanation for these costs or how it intends to identify the level of labor cost attributable to the pandemic. It remains unclear what costs the commission would be authorizing PSE to defer, or why the utility must record incremental labor expense for employees that are not working. Therefore, staff cannot conclude that these costs are appropriate for deferral.

Customer Comments

Staff received 214 comments opposed to the accounting petitions filed by the utilities. The commenters oppose rate increases because they believe the utilities are not experiencing financial hardship from the pandemic, to the same degree as rate payers. Some commenters also included concerns about being on a fixed income. One commenter expressed financial concern, stating that their small business had been decimated by the pandemic. Another commenter spoke of their experience working at a local food bank, and the increasing need they have witnessed since the pandemic began.

Public Counsel (PC) and The Energy Project (TEP) Joint Comments; Earthjustice Comments

On November 19, 2020, PC and TEP (Joint Commenters) filed Joint Comments to the companies' accounting petitions. The Joint Commenters advocate for revisions to the Revised Term Sheet, summarized below with staff's responses:

- No deferral of labor costs – staff agrees.
- No deferral of Non-labor costs; except bad debt costs fully offset by cost reductions – staff disagrees. Staff supports the Revised Term Sheet, which includes incremental costs for reasonable measures taken by the Utility in response to the COVID-19 pandemic.
- No deferral of lost revenues due to forgone late fees/reconnection charges – staff disagrees, addressed above. Also, although technically lost revenues, late fees/reconnection charges are proxies for utility costs associated with late payments and service reconnections, which the utility continues to incur.
- No carrying charge/interest – staff agrees, as described above.
- Earnings test as a condition for deferral – staff disagrees, in part. An earnings test employed to determine whether or not an individual cost can be deferred is administratively problematic the commission is making the decision now on whether or not to allow the deferral. Making the deferral conditional upon a future earnings state calls into question what the commission actually is authorizing in these orders. The commission should just make the decision now on what it is authorizing utilities to defer and not concern itself with placing parameters on monthly deferrals. However, staff does support PC/TEP's recommendation that companies track their earnings at the time the deferrals are booked in order for parties later to verify that each company was in fact experiencing financial hardship as a result of the pandemic.

On December 4, 2020, Earthjustice, on behalf of Puget Sound Sage and Front and Centered, filed comments recommending the commission deny the accounting petitions in their entirety. Earthjustice largely echoes the Joint Commenters comments and concerns, and similarly advocates for a "shared sacrifice."

Staff notes that the deferred accounting utilities request will not affect rates at this time. Any amounts that utilities later request for rate recovery will be subject to a prudence review. Upon any request for rate recovery, utilities must demonstrate that the costs were incremental, prudently incurred, not offset by cost savings, resulted from extraordinary circumstances, and presented the utility with extraordinary hardship.