

169 FERC ¶ 61,096
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Portland General Electric Company

Docket No. EL18-109-000

ORDER ON SECTION 206 PROCEEDING AND DIRECTING COMPLIANCE
FILING

(Issued November 5, 2019)

1. In this order, we find that Portland General Electric Company (Portland General) has shown cause as to why its transmission rate for its main transmission system (Main Transmission Rate) should not be revised to reflect the reduced federal income tax rate, in response to the Commission's tax rate-related order to show cause.¹ However, pursuant to section 206 of the Federal Power Act (FPA),² we find that Portland General's transmission rate for its Colstrip transmission system³ (Colstrip Rate) is unjust and unreasonable. We therefore direct Portland General to submit a compliance filing to reduce its Colstrip Rate within 30 days of the date of this order.

I. Background

2. On March 15, 2018, the Commission issued several orders to address the effects of the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act),⁴ which, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent. Of

¹ *Alcoa Power Generating Inc.—Long Sault Division*, et al., 162 FERC ¶ 61,224 (2018) (Stated Rate Order to Show Cause).

² 16 U.S.C. § 824e (2018).

³ The Colstrip transmission system was built in the early 1980s to move power from the Colstrip generating facilities in eastern Montana to Bonneville Power Administration's and NorthWestern Corporation's (NorthWestern) transmission systems in western Montana. The Colstrip transmission system is jointly owned, operated, and maintained by the Colstrip transmission owners, which are NorthWestern, PacifiCorp, Puget Sound Energy, Inc., Avista Corporation (Avista), and Portland General.

⁴ Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

relevance here, pursuant to section 206 of the FPA, the Commission issued the Stated Rate Order to Show Cause to public utilities that use stated transmission rates under an open access transmission tariff or transmission owner tariff.

3. The Commission stated that the reduced tax rate results in lower income tax expenses for public utilities going forward. The Commission explained that public utilities recover federal corporate income tax expenses in their transmission rates, and that when tax expenses decrease, so does the cost of service. The Commission continued that it has allowed transmission rates to be established through stated rates, which include a fixed income tax component, or formula rates, which may include a fixed line item of 35 percent for the federal corporate income tax rate.⁵

4. The Commission stated that it identified Portland General as having such arrangements in effect, and that absent a change to Portland General's stated transmission rates, Portland General's stated transmission rates may not accurately reflect its cost of service. Accordingly, the Commission found that Portland General's stated transmission rates appear to be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. As such, the Commission directed Portland General to either: (1) propose revisions to its stated transmission rates under its tariff on file with the Commission to reflect the reduced tax rate and describe the methodology used for making those revisions; or (2) show cause why it should not be required to do so.⁶

5. The Commission noted that it generally does not permit single-issue ratemaking. However, given the limited scope of the revisions needed to reflect the change in the federal corporate income tax rate, the Commission would consider proposals to review Portland General's revisions on a single-issue basis.⁷ The Commission also noted that, under the show cause option, Portland General may explain how the reduced tax rate is being addressed in another proceeding pending before the Commission.⁸ Finally, consistent with providing maximum protection to customers, the Commission set the refund effective date at the earliest date possible, March 21, 2018, which is the publication date of the Commission's notice of its investigation in the *Federal Register*.⁹

⁵ Stated Rate Order to Show Cause, 162 FERC ¶ 61,224 at PP 2-3.

⁶ *Id.* P 4.

⁷ *Id.* P 4 n.6.

⁸ *Id.* P 4 n.7.

⁹ *Id.* P 5.

II. Initial Response

6. On May 14, 2018, Portland General submitted an initial response to the Stated Rate Order to Show Cause and argued that under FPA section 206 the Commission must evaluate Portland General's overall stated transmission rates, rather than a single component of those rates. Portland General contended that its stated transmission rates remain just and reasonable due to a combination of increased transmission investment and flat or declining demand since its rates were established in 2001.¹⁰ Additionally, Portland General committed to file a comprehensive analysis of its stated transmission rates using calendar year 2018 cost data after it filed its FERC Form No. 1 for the 2018 reporting year with the Commission.¹¹ Portland General asserted that, if such analysis indicated that its stated transmission rates should be reduced, Portland General committed to issue refunds to its transmission customers, with interest, dating back to March 21, 2018 even if that date is beyond the 15-month refund period provided for under FPA section 206.¹² Finally, Portland General requested that the Commission hold this proceeding in abeyance until Portland General could complete and submit its analysis.¹³

7. On November 15, 2018, the Commission issued an order acknowledging that Portland General submitted a response to the Stated Rate Order to Show Cause and held this FPA section 206 proceeding in abeyance.¹⁴

III. Supplemental Response

8. On July 25, 2019, Portland General submitted its supplemental response to the Stated Rate Order to Show Cause. In the response, Portland General asserts that it maintains two separate transmission rates—its Main Transmission Rate and its Colstrip Rate.¹⁵ Portland General argues that its stated transmission rates should not be reduced to reflect the reduced federal corporate income tax rate. Portland General also provides its

¹⁰ Portland General Initial Response at 8.

¹¹ *Id.* at 1-2, 11-12.

¹² *Id.* at 2, 11-12.

¹³ *Id.* at 12-13.

¹⁴ *Portland Gen. Elec. Co.*, 165 FERC ¶ 61,129 (2018).

¹⁵ Portland General Supplemental Response at 5.

analysis based on the 2018 calendar year cost data from Portland General's FERC Form No. 1, including actual load data, and the effects of the Tax Cuts and Jobs Act.

9. Portland General asserts that its analysis shows that it could support an increase in its Main Transmission Rate of \$0.07 per kilowatt (kW) per month (from \$0.523 per kW per month to \$0.593 per kW per month).¹⁶ Portland General contends that this is due to increased transmission investment and flat or declining demand since its current Main Transmission Rate was established in 2001.¹⁷

10. Further, Portland General states that its analysis demonstrates that the Colstrip Rate should be \$0.63 per kW per month lower (from \$1.64 per kW per month to \$1.01 per kW per month).¹⁸ Portland General argues that, while its analysis results in an expected rate that is less than its current Colstrip Rate, revisions are not necessary because Portland General's marketing arm has been the only customer that has taken service over the Colstrip transmission system. Portland General also argues that the expected increase for its Main Transmission Rate offsets the expected decrease for its Colstrip Rate. Finally, Portland General contends that given the unique circumstances associated with the Colstrip transmission system, Portland General should not be required to address the Colstrip Rate outside of Portland General's next transmission rate case. Portland General argues that such an outcome is consistent with the Commission's treatment of Avista's stated transmission rate for its Colstrip transmission system in the Commission's order that terminated a similar tax-rate related FPA section 206 proceeding for Avista.¹⁹

IV. Notice and Responsive Pleadings

11. Notice of Portland General's supplemental response was published in the *Federal Register*, 84 Fed. Reg. 37,856 (2019), with interventions and protests due on or before August 15, 2019. None was filed.

V. Commission Determination

12. As described above, Portland General filed a supplemental response to the Stated Rate Order to Show Cause arguing that no revisions to its Main Transmission Rate are necessary because Portland General has offsetting increases in other expenses. In support

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 1-2.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 5-6 (citing *Avista Corp.*, 165 FERC ¶ 61,122 (2018)).

of its arguments, Portland General provided evidence of its increased costs, which it states act as an offset to the benefits of the reduced federal corporate income tax rate. Given Portland General's response and the fact that customers will continue to benefit from a lower transmission rate for Portland General's main transmission system, we find that no revisions to Portland General's Main Transmission Rate are necessary here.

13. However, we disagree with Portland General's arguments that revisions are unnecessary to its Colstrip Rate, and find that its Colstrip Rate is unjust and unreasonable. First, as stated in Portland General's supplemental response and as shown in its rate analysis using 2018 cost data, the Colstrip Rate should be \$1.01 per kW per month, which is lower than the current Colstrip Rate of \$1.64 per kW per month.²⁰ Second, while Portland General's marketing arm has been the only customer to take service over the Colstrip transmission system, it may not be the only customer to do so in the future. For example, NorthWestern, the managing partner of the Colstrip transmission system, filed a Large Generator Interconnection Agreement for Clearwater Energy Resources to interconnect to the Colstrip transmission system²¹ and Portland General has seven other active interconnection requests that are being managed by NorthWestern.²² Third, the facts presented in the Avista proceeding are distinguishable from those here. Specifically, Avista stated that it intends to file a full stated transmission rate case with the Commission in 2019 to update its stated transmission rates, which Avista contended should be higher due to increased investment costs.²³ Portland General makes no such representation that it intends to file a full rate case with the Commission to revise its stated transmission rates.

14. For these reasons, we find that Portland General's current Colstrip Rate is unjust and unreasonable and direct Portland General to reduce its Colstrip Rate to \$1.01 per kW per month, which is the just and reasonable rate.

²⁰ Portland General Supplemental Response at 5.

²¹ See *NorthWestern Corp. et al.*, Docket No. ER19-2052-000 (July 23, 2019) (delegated order).

²² See *Northwestern Corp.*, Filing, Docket No. ER19-2052-000, at 3 (filed June 5, 2019).

²³ *Avista Corp.*, 165 FERC ¶ 61,122 at P 6.

15. Therefore, we direct Portland General, within 30 days from the date of this order, to submit a compliance filing with revised tariff records in eTariff format²⁴ to implement the Colstrip Rate reduction effective March 21, 2018. Additionally, consistent with its commitment,²⁵ Portland General is directed to make refunds of all amounts collected from customers for periods after the March 21, 2018 effective date in excess of the revised Colstrip Rate with interest.

The Commission orders:

(A) Portland General is hereby directed to submit a compliance filing, as discussed in the body of this order.

(B) Portland General is hereby directed to provide refunds, with interest calculated pursuant to 18 C.F.R. § 35.19a (2019), within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁴ *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).

²⁵ Portland General Initial Response at 2.