

145 FERC ¶ 61,063
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Portland General Electric Company

Docket No. ES14-10-000

ORDER AUTHORIZING ISSUANCE OF SECURITIES

(Issued February 3, 2014)

1. On November 7, 2013, as supplemented on December 23, 2013, Portland General Electric Company (Portland General or Applicant) filed an application pursuant to section 204 of the Federal Power Act¹ seeking Commission authorization to issue short-term securities in an aggregate principal amount not to exceed \$900 million outstanding at any one time (Debt Securities). The Debt Securities will be in the form of commercial paper, lines of credit from banks, and revolving credit facilities. We will grant the authorization, as discussed below.

I. Background

2. Portland General is a public utility, incorporated under the laws of the State of Oregon. Portland General owns and operates utility facilities in the state of Oregon. Portland General also has a 20 percent ownership interest in the 1,440 MW Colstrip Units 3 and 4 located in Colstrip, Montana, as well as a 79.5 percent ownership interest in an approximately 17-mile natural gas pipeline that runs from Kelso, Washington to Portland General's Beaver and Port Westward Plants at Clatskanie, Oregon. Portland General is currently constructing a wind farm in Columbia County, Washington.

II. Application

3. Portland General states that the proceeds from the issuance of the Debt Securities will be used to fund its working capital requirements; to provide interim financing for capital expenditures, extensions, additions and improvements to the utility plants and properties of the company; to provide interim financing to refund or pay at maturity certain long-term securities; and for other financial support associated with the sale and/or purchase of energy. All Debt Securities will have maturities of up to one year from the date of issuance.

¹ 16 U.S.C. § 824c (2012).

4. Applicant states that the interest rate applicable to the Debt Securities issued under a revolving credit facility may be either a fixed rate or a variable rate not to exceed the highest of: (i) the one-month, two-month, three-month or six-month London Interbank Offered rate (LIBOR), as published in the Wall Street Journal, plus up to 265 basis points; (ii) the rate of interest in effect as announced from time to time by either Wells Fargo Bank, N.A. or Bank of America, N.A. as its “prime rate;” or (iii) the federal funds effective rate, as published by the Federal Reserve Bank of New York for such day. Applicant states that the interest rates for commercial paper, notes and borrowings under lines of credit will not exceed the highest of the one-month, two-month, three-month or six-month LIBOR as published in the Wall Street Journal, effective at the date of issuance, plus up to 300 basis points. Applicant states that the *pro forma* interest coverage calculation used in Exhibit E of the application is below the Commission’s benchmark of 2.0, but that it is a direct result of two non-recurring events that do not impair the company’s ability to provide service.

III. Notices of Filing, Interventions, and Protests

5. Notice of the Application was published in the *Federal Register*, 78 Fed. Reg. 69,407 (2013), with interventions and protests due on or before November 29, 2013. None was filed.

6. Notice of the December 23, 2013 supplement was published in the *Federal Register*, 79 Fed. Reg. 652 (2013), with interventions and protests due on or before January 2, 2014. None was filed.

IV. Discussion

7. FPA section 204(a) provides that requests for authorization to issue securities or to assume obligations or liabilities in respect of any security shall be granted if the Commission finds that the issuance or assumption:

- (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and
- (b) is reasonably necessary or appropriate for such purposes.²

8. The Commission has explained that, in reviewing filings under FPA section 204, “the Commission evaluates a utility’s financial viability based on a review of the financial statements submitted in the application and the utility’s interest coverage ratio.

²*Id.* § 824c(a).

An interest coverage ratio is a measure of the utility's ability to meet future debt and interest payments."³ The interest coverage ratio is the sum of income before interest and income taxes divided by total interest expense.⁴ The Commission generally requires that FPA section 204 applicants demonstrate, on a *pro forma* basis in accordance with its regulations, that net income will equal or exceed twice total interest expense. This is a screen test used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.⁵ Nevertheless, the Commission has stated that whether or not an applicant meets this interest coverage screen does not by itself determine whether the Commission will authorize or deny the application,⁶ and the Commission has approved section 204 applications that have not met this threshold.⁷

9. Applicant has filed, as Exhibits C, D, and E to the application, *pro forma* financial statements as of September 30, 2013. Exhibit E of the application indicates that Portland General has an interest coverage ratio of 1.67, which is below the Commission's benchmark interest coverage ratio of 2.0. Applicant states, however, that the interest coverage ratio is below the Commission's benchmark as a result of two non-recurring events which impacted net income during the second quarter of 2013.

10. Applicant states that the first non-recurring event occurred in May 2013, when it determined that it had over-billed an industrial customer for a period of several years as a result of a meter configuration error. Applicant states that an analysis of this erroneous meter data also determined that its revenues were overstated. Portland General corrected this error in the second quarter of 2013 as an out-of-period adjustment, and recorded it as a reduction to net revenue; Portland General states that it refunded to the customer the amount of \$9 million.

³ *Westar Energy, Inc.*, 102 FERC ¶ 61,186 at P 15, *order on reh'g*, 104 FERC ¶ 61,018 (2003) (*Westar*).

⁴ *Id.* P 15 n.15.

⁵ *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*)).

⁶ *Id.* n.7.

⁷ *See, e.g., Westar*, 102 FERC ¶ 61,186 at P 15; *Aquila, Inc.*, 107 FERC ¶ 61,044, at P 15 (2004); *accord AEP Generation Resources, Inc.*, 145 FERC ¶ 61,213, at PP 18-23 (2013); *Commonwealth Edison Company*, 145 FERC ¶ 61,214, at PP 14-18 (2013); and *Mississippi Power Company*, 145 FERC ¶ 61,218, at PP 19-29 (2013).

11. Applicant states that the second non-recurring event involved a charge to earnings in the second quarter of 2013 to reflect abandonment of a transmission project that would have interconnected Applicant to the regional grid operated by the Bonneville Power Administration. Applicant states that, it suspended the development of the transmission project and wrote off the expenses it had incurred in developing the project as a result of updated forecasts of demand and future transmission capacity. Portland General states that, as a result of its decision to suspend permitting and development of the transmission project, a pre-tax loss of approximately \$52 million (\$31 million after tax) was recorded as construction work in progress.

12. Applicant states that, as a result of these two items, net income attributable to the company for the six months ending June 30, 2013 was only \$27 million compared with \$75 million for the six months ending June 30, 2012. Applicant states that the interest coverage ratio for the 12-months ending September 30, 2013 would have been 2.14 if these two items were excluded. Notwithstanding, Applicant states that these non-recurring events will not impact Portland General's ongoing revenue stream or its ability to pay interest on or principal of borrowings on a going-forward basis.

13. Portland General has also provided alternative reasons for the Commission to conclude that, despite the effects of the two earnings adjustments described above, it may reasonably be expected to be able to meet its ongoing financial and utility obligations. For instance, Applicant explains that, despite the earnings adjustments, its secured and unsecured debt is rated investment grade by Moody's Investors Service (Moody's) and Standard and Poor's Rating Services (S&P) and that it has continued to successfully access the capital markets at reasonable pricing. Applicant also contends that, its annual cash flow operations have been relatively strong for 2010, 2011 and 2012, representing a cash flow of \$391 million, \$453 million and \$494 million, respectively.

14. Applicant states that it continues to have strong access to debt and equity markets. Portland General states that in order to issue bonds, it must receive authorization from the Oregon Public Utility Commission (Oregon Commission) and satisfy certain earnings coverage and security provisions set forth in the Indenture of Mortgage and Deed of Trust securing the bonds. Applicant states that, subsequent to the June 2013 earnings adjustments, it issued \$225 million principal amount of first mortgage in bonds and entered into an agreement for the issuance of an additional \$155 million principal amount of first mortgage bonds. In addition to the bond issuances, Portland General states that, in June 2013, it entered into an Equity Forward Sale Agreement (EFSA), with approval from the Oregon Commission, in connection with the public offering of 11,100,000 shares of its common stock, with an initial value of \$317 million. Portland General explains that it will receive the proceeds from the forward sale of the common stock when the EFSA is settled, not later than June 2015.

15. Also, Applicant states that, on December 7, 2013, the Oregon Commission approved Portland General's rate case settlement. As a result, Applicant will receive a

\$61 million annual revenue increase effective January 1, 2014. This settlement results in a revenue increase of 3.6 percent. Applicant states that, since the rate increase is effective January 1, 2014, Portland General will begin to have access to these funds immediately. Applicant adds that, because the rate increase was not effective until January 1, 2014, the financial benefit of the rate increase was not factored into the *pro forma* financial statements.

16. Applicant states that it has successfully accessed both debt and equity markets as discussed above. Applicant states that having access to these additional resources as well as having access to state regulatory procedures if needed to raise additional funds will help to ensure the company's ability to meet its customers' needs as well as cover its debt obligations.

17. We conclude that, even though the Applicant was unable to satisfy a two-times interest coverage ratio test,⁸ it has provided us with an alternative basis upon which we can conclude that issuance of the Debt Securities will not impair Applicant's ability to perform public utility service. Therefore, based on the information provided in the application, we conclude that the proposed issuance of Debt Securities: (1) will be for lawful objects within Applicant's corporate purposes and compatible with the public interest, is necessary or appropriate for or consistent with the proper performance by Applicant of service as a public utility, and will not impair Applicant's ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.

18. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.⁹ First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility asset. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. Applicant agrees that the Debt Securities will be subject to the four restrictions on such securities specified in *Westar*.¹⁰

⁸ *Commonwealth Edison Company*, 145 FERC ¶ 61,214 at P 16.

⁹ *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

¹⁰ Application at 10.

19. Accordingly, we authorize the following:
- a. Applicant is authorized to issue Debt Securities in an aggregate principal amount not to exceed \$900 million, subject to the interest rate limitation below. The Debt Securities may consist of commercial paper, lines of credit from banks, and revolving credit facilities. All Debt Securities will have maturities of up to one year from the date of issuance.
 - b. The interest rate applicable to the Debt Securities issued under a revolving credit facility may be either a fixed rate or a variable rate not to exceed the highest of: (i) the one-month, two-month, three-month or six-month London Interbank Offered rate (LIBOR), as published in the Wall Street Journal, plus 265 basis points; (ii) the rate of interest in effect as announced from time to time by either Wells Fargo Bank, N.A. or Bank of American, N.A. as its “prime rate;” or (iii) the federal funds effective rate, as published by the Federal Reserve Bank of New York for such day. The interest rates for commercial paper, notes and for borrowings under lines of credit are not to exceed the highest of the one-month, two-month, three-month or six-month LIBOR as published in the Wall Street Journal, effective at the date of issuance, plus up to 300 basis points.

The Commission orders:

- (A) Applicant is hereby authorized to issue Debt Securities in the form of commercial paper, lines of credit from banks, and revolving credit facilities in an aggregate amount not to exceed \$900 million outstanding at any one time.
- (B) The authorization granted in this order is effective February 7, 2014, as requested, and terminates on February 6, 2016.
- (C) The authorization granted is subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.
- (D) The authorization granted in Ordering Paragraph (A) is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.