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November 17, 2004

By Facsimile and Regular Mail

Honorable Kathryn Logan  
Administrative Law Judge  
Public Utility Commission of Oregon  
P.O. Box 2148  
Salem, Oregon 97308-2148

Re: In the Matter of Oregon Electric Utility Company, LLC et al., Application for  
Authorization to Acquire Portland General Electric Company, UM 1121

Dear Judge Logan:

Enclosed please find an original and five copies of Renewable Northwest Project's  
Opening Brief.

Thank you.

Yours truly,

/s/

John W. Stephens

JWS/mec  
cc: Service List  
Client  
Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1121

In the Matter of	)	
	)	
OREGON ELECTRIC UTILITY	)	<b>RENEWABLE NORTHWEST PROJECT'S</b>
COMPANY, LLC et al., Application for	)	<b>OPENING BRIEF</b>
Authorization to Acquire Portland General	)	
Electric Company.	)	

**I. INTRODUCTION**

Oregon Electric Utility Company, LLC, and its member companies (“Oregon Electric” or “Applicants”) have made several commitments to renewable resources as part of the application to acquire Portland General Electric (“PGE”). Specifically, the Applicants have stated that they will (1) “cause PGE to have” approximately 400 MWs of renewable resources by 2012, if economical (OEUC/100/Davis/48), (2) “work with stakeholders toward resolving the transmission, system integration, and other issues posed by wind and other renewable generation.” (OEUC/ 22/Davis/12), and (3) “appoint a manager with appropriate authority and responsibility” to work with environmental advocacy groups, as well as providing “periodic access to the PGE board” for these groups. OEUC/ 22/Davis/11-12.

These commitments are important in terms of demonstrating the Applicants’ understanding and support for renewable resources. They are not, however, a substantial commitment and thus do not represent a net benefit to PGE customers. If the Commission approves this application, it should condition the approval on a more robust commitment to renewable resources.

**II. LEGAL STANDARD**

ORS 757.511 and Order No. 01-778 require that before the Commission will or can authorize the acquisition of a public utility, the applicant must show (1) utility customers will be

served; and (2) granting the application is in the public interest. To meet its burden of showing utility customers will be served, the “applicant must show that consumers would experience net benefits from the transaction.” Order No. 01-778, at 1, 11. To meet its burden of showing that granting the application is in the public interest, the applicant must demonstrate that “the proposed transaction will not impose a detriment on Oregon citizens as a whole.” Order No. 01-778, at 11. In addition, ORS 757.511(3) provides that the “commission may condition an order authorizing the acquisition upon the applicant’s satisfactory performance or adherence to specific requirements.”

### **III. LEGISLATIVE AND PUC RECOGNITION OF IMPORTANCE OF RENEWABLES**

#### **A. The Oregon Legislature Has Recognized The Importance Of Renewables To A Diversified Resource Portfolio.**

In ORS 469.010, the Legislature declared Oregon’s energy policy. This policy specifically identifies renewable energy as a critical component. ORS 469.010 states:

The Legislative Assembly finds and declares that:

(1) Continued growth in demand for nonrenewable energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.

(2) It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is, therefore, the policy of Oregon:

(a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system. ....

In addition, ORS 469.100(1) requires all state agencies, including the PUC, to “consider the policy stated in ORS 469.010 in adopting or modifying their rules and policies.”

ORS 469.190 adds to this an additional, separate policy of providing tax relief for Oregon facilities that conserve energy resources or meet energy requirements through the use of renewable resources.

**B. The Commission Has Recognized The Importance Of Renewables To A Diversified Resource Portfolio.**

*In Re Investigation into Regulatory Issues which may Impact Renewable Resource Development*, UM 550, Order No. 94-727, the Commission reaffirmed its strong commitment to renewable resources:

The Commission wants to clearly state its strong desire to promote the development of renewable resources. Development of renewable resources offers the potential benefits of risk management through resource diversity and low environmental impact. Obstacles to such development should be removed and policies to promote renewable resource development should be adopted.

*Id.* at 1. *In Re Investigation into Least-Cost Planning for Resource Acquisitions by Portland General Electric Co.*, LC-15, Order No. 96-224, the Commission recognized that renewable resources “provide long-term environmental and resource diversity benefits.” *Id.* at 5.

The state energy policy and the Commission’s orders provide important context for consideration of the Applicants’ commitment to renewable resources.

**IV. APPLICANTS’ COMMITMENT TO RENEWABLE RESOURCES IS NOT SUBSTANTIAL ENOUGH TO BE CONSIDERED A BENEFIT OF THE TRANSACTION**

**A. Oregon Electric’s Renewables Target Is A Very Modest Commitment.**

The Applicant has stated that they are “willing to commit to have PGE vigorously pursue a target of 10% of 1:2 peak capacity for load, whether contracted for or owned, from renewable resources by 2012, provided it can be accomplished economically.” OEUC/22/Davis/12. This target was quantified more specifically in subsequent testimony. “Oregon Electric would cause PGE to have 400 MWs of capacity from renewable resources by 2012 if economical.”

OEUC/100/Davis/48. This commitment to renewable resources, while a step forward for PGE, is too modest to be considered a net benefit of the transaction.

A review of the numbers illustrates that this commitment is relatively insubstantial. The Applicant would seek to acquire 400 MWs of renewables over eight years. Presumably, this target includes the wind power that PGE already has in its portfolio, as well as what the company is planning to acquire as part of its 2002-2003 Integrated Resource Plan. PGE currently purchases approximately 25 MW of wind. RNP/1/Gravatt/5. PGE's 2002 IRP Action Plan, acknowledged by the Commission on July 20, 2004 as part of Order No. 04-375, includes a plan to acquire 195 MW (65 aMW ÷ 30% CF) of wind power by 2007.<sup>1</sup> This means that PGE should have approximately 220 MW of wind power by 2007. RNP/1/Gravatt/5. As a result, Oregon Electric's commitment -- beyond what PGE is planning to do independent of this purchase -- is to acquire an additional (approximately) 180 MWs of renewables over 5 years, between 2007-2012.

**B. The Opportunity Available in the Northwest Today and The Benefits of Renewable Resources Justify A Stronger Commitment to Renewable Resources.**

Oregon Electric's commitment should be compared to the robust opportunity available to utilities in the Northwest today. There are 650 MW of wind resources that are currently approved for construction throughout the region, and an additional 3,000 MWs of wind projects that have been proposed or are currently in a permitting process. RNP/1/Gravatt/7. PacifiCorp's current solicitation of renewable resources resulted in 5,600 MWs of projects. *Id.* Considered in light of the availability of resources today, the Applicant's commitment of 400 MWs over eight

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<sup>1</sup> The Applicant has already stated its support for the current plan. "Oregon Electric supports PGE's acquisition of long term wind power as part of its execution of PGE's IRP Action Plan, consistent with PGE's obligation to acquire power at competitive prices. Oregon Electric has communicated this view to PGE." OEUC/22/Davis/11.

years seems trivial.

PGE is currently “underinvested in renewables” so their customers stand to benefit greatly by the addition of more non-hydro renewables. CUB/100/Jenks-Brown/29. “There is little doubt that development of renewable power will benefit PGE’s customers.” *Id.* One of the most significant benefits for customers would be the rate stability provided by a more diverse portfolio of resources. “Most renewable energy resources have no fuel costs and are not subject to price swings of fossil fuels. As a consequence, renewable resources help to stabilize electric rates over the long term.” RNP/1/Gravatt/2. Renewables also offer significant environmental benefits because they have no harmful air emissions, they do not create environmental waste, and they don’t rely on the region’s limited water supplies. RNP/1/Gravatt/2-3. While the Applicant’s commitment to 400 MWs is an improvement, it will still represent a very small portion of PGE’s load. In order for PGE customers to reap the benefits of renewable resources, the Commission should require a more robust renewables target.

Renewable resources promote system reliability. Ten independent 50 MW resources simply do not present the same risk of outage presented by one 500 MW resource. There is virtually no risk that all or even a substantial part of the ten independent small resources will go out at the same time. It is the same principal that makes diversified investment portfolios less risky than single stocks. *See Re Portland General Electric Co.*, UF 3518, Order No. 80-021, at 6 (1980)(noting problem where PGE had put “most of its eggs in a nuclear basket”).

**C. The Renewables Target Should Be Considered In the Context of A Short-Term Owner.**

Finally, the commitment to renewables must be viewed in the context of how long the Applicant retains the company. There is at least the possibility that the Applicant would no longer own the company by 2012. TPG generally retains its investments for an average of five

to seven years. Staff/202/Morgan/19. “A commitment to renewables over eight to ten years is not a benefit if PGE is sold before the commitment is realized.” RNP/1/GRAVATT/10. The reality of short-term ownership is further evidence that Oregon Electric’s renewables commitment is not significant enough to represent a benefit of the transaction.

**V. APPLICANTS’ COMMITMENT TO RENEWABLES ONLY “IF ECONOMICAL” IS VAGUE AND FURTHER LIMITS THE BENEFIT OF THE RENEWABLES COMMITMENT**

The Applicant states that the 400 MW renewables target would be reached if renewable resources are “economical.” OEUC /100/Davis 48. To define or further explain its interpretation of what makes a resource economic, the Applicant refers to PGE’s Integrated Resources Planning (IRP) process. (“What I intended to communicate by the use of the word ‘economically’ is better said by reference to the integrated resource planning process.” OEUC/100/Davis 48.). The IRP process is obviously the best venue for resource analysis and selection by the utility, but the Applicant provides little detail as to how its renewables target will actually be reached via the IRP process. In order to provide some certainty to its renewables commitment, the Applicant needs to explain how renewables will be evaluated in the IRP.

**A. An Acknowledged IRP Does Not Mean Resources Will Actually Be Acquired.**

It is important to note that the fact that the renewables target may be part of an acknowledged resource plan does not provide any certainty that the resources will be acquired. The Applicant explains that PGE cannot make long-term commitments in the absence of Commission acknowledgment of an IRP, due to concerns about access to sufficient capital.<sup>2</sup>

While acknowledgment does not bind the Commission to future ratemaking action, it is strong evidence that PGE’s selection of resources was prudent at the time made. This enables PGE to raise capital for new resources, or make long-

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<sup>2</sup> The concern about Commission acknowledgment is really only relevant for the additional 180 MWs the Applicant would direct PGE to acquire. As noted above, the Commission has already acknowledged PGE’s plans to acquire 195 MW of wind power by 2007. Order No. 04-375.

term contractual commitments. Should PGE propose a resource plan to meet a renewable resource target that the Commission does not acknowledge, it could not proceed. The risk of disallowance would increase the cost of capital far above its ability to meet it.

OEUC /100/Davis/49. Acknowledgement of an IRP may provide some certainty for financing, but it in no way guarantees that the resources will actually be acquired. The Applicant has stated that “PGE incurs substantial risk if it fails to acquire resources in accordance with an acknowledged plan,” CUB/317/Jenks-Brown/1. In reality, however “utilities often do not acquire resources in accordance with an acknowledged plan,” and “there is a history of utilities failing to acquire cost-effective conservation resources and renewable resources that are part of an approved IRP.” CUB/300/Jenks-Brown/18. By conditioning its approval of the application with a strong renewables target, the Commission can provide some greater certainty that the renewables would actually be acquired.

**B. The Applicants’ Commitment to Renewables Can Be Improved By Including Details on How Renewable Resources Will Be Evaluated in an IRP**

By incorporating its renewables commitment in the IRP process, the Applicant implicitly raises the issue of how resources are compared and evaluated within the IRP analysis. While it may be reasonable for the Applicant to incorporate its renewables target into PGE’s IRP process, they have provided very little specific information as to how its future IRPs will evaluate renewable resources in an effort to reach its stated target of 400 MWs by 2012. The Applicant does reference existing IRP guidelines, as well as, generally, issues raised by the RNP testimony.

This process, under the Commission’s current guidelines, explicitly requires that PGE consider the many risks of non-renewable resources and the many benefits of renewable resources in identifying a least cost resource plan. These are the very attributes that RNP discusses and which we agree are critical considerations in selecting resources for the future.

And Oregon Electric will ensure that PGE is innovative in its approach to demonstrating the value of renewable resources, including taking into consideration the risk mitigation benefits of renewable resources.

OEUC/100/Davis/48-49. The assertion that PGE will consider the risks and benefits of resources as part of the IRP is very important, but the Applicant leaves the details to speculation. If the renewables target is to be considered a real and substantial value of the transaction, greater detail on how, specifically, renewables will be evaluated in the IRP must be included in the commitment.

In the context of an IRP, there are analytic tools that can be used that ensure that resources are considered equitably. For example, fossil resources are vulnerable to any carbon tax imposed in the future and an IRP can account for that. RNP/1/Gravatt/8. The Commission addressed this issue specifically in Order No. 93-694, *Guidelines for the Treatment of External Environmental Costs*, where it directs utilities to, “at a minimum” examine a set of adders for nitrogen oxides, total suspended particulates, and carbon dioxide. Further, in Order No. 03-508, the Commission acknowledged PacifiCorp’s IRP which included an \$8/ton CO<sub>2</sub> adder in its base case. By including a value for harmful environmental emissions, the risk mitigation benefit of renewable resources will be incorporated into the IRP. If the renewables target is to be pursued through the IRP, this is one example of what is needed to make the Applicant’s commitment more substantial.

**VI. OTHER SIGNIFICANT ISSUES AFFECTING RENEWABLE RESOURCES HAVE NOT BEEN ADEQUATELY ADDRESSED BY THE APPLICANT**

**A. Resolving Regional Transmission Require a Stronger Commitment from the Applicant**

Oregon Electric has committed to work with stakeholders to address transmission and other integration issues posed by wind power and other renewables. OEUC/22/Davis/12. This is

a very important pledge that should be included as a condition of the approval. The commitment to working towards transmission solutions, however, can also be strengthened. Transmission constraints are the greatest barrier to realizing the full potential of renewable power in the Northwest. RNP/1/Gravatt/9. There are both short-term and long-term solutions in which PGE can play a part. Specifically, PGE can support efforts aimed at accommodating renewables soon, such as offers of partial-firm service and other storage and shaping products. PGE can also be more proactive in long-term efforts, such as Grid West, to “accommodate the unique characteristics of renewable resources and make more efficient use of the Northwest transmission system for all resources.” RNP/1/Gravatt/9.

**B. Senate Bill 1149 and PGE’s Renewable Energy Option Programs Are Related to the Consideration of the Applicant’s Commitment to Renewable Resources.**

Oregon Electric has stated its strong support for the “policy objectives that underlie SB 1149 and expects to support those objectives well into the future.” OEUC/100/Davis/45. For renewable resource development in Oregon, the 3% public purpose charge and the investments made through the Energy Trust of Oregon are vital. The Applicant’s commitment to renewable resources would be strengthened by a commitment to maintaining the intent and direction of SB 1149.

Related to this are the renewable energy option programs offered by PGE at the direction of SB 1149. PGE’s programs are currently successful and are nationally ranked among the best in the nation. RNP/1/Gravatt/10. The importance of these programs to PGE’s overall renewable resource program should be acknowledged, along with a recognition that the programs can be improved. See RNP/1/Gravatt/10.

**VII. THE COMMISSION SHOULD REQUIRE A MORE SUBSTANTIAL COMMITMENT TO RENEWABLES TO ESTABLISH A NET BENEFIT**

If the Commission approves this application, it should condition the approval on a substantial commitment to new renewable resources. While the Applicant is to be commended for including some consideration for renewables, the offer is too modest to establish a net benefit.

Specifically, any approval should be conditioned as follows:

1. Oregon Electric and PGE commits to meeting 10% of total energy load with new, non-hydro renewable resources by 2014. RNP/1/Gravatt/11.
2. Oregon Electric and PGE commit to work with stakeholders toward resolving the transmission constraints affecting the development of wind power and other renewable resources in the region. OEUC/22/Davis/12.
3. Oregon Electric and PGE commits to appointing a manager with appropriate authority and responsibility to work with environmental advocacy groups, including renewables advocates. These groups will be provided periodic access to the PGE board. OEUC/22/Davis/11-12.

**VIII. CONCLUSION**

Renewable resources offer real benefits to PGE customers through risk mitigation, rate stability, and a clean environment. Oregon Electric has recognized these benefits and has made a modest commitment to increasing PGE’s renewable portfolio. However, this commitment is not significant enough to be considered a net benefit for customers. If the Commission approves the

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application, it should condition the approval on a more substantial commitment to renewables, which includes a commitment to acquire new, non-hydro renewable to meet 10% of PGE's total energy needs by 2014.

DATED this \_\_\_\_ day of November, 2004.

ESLER, STEPHENS & BUCKLEY

By: \_\_\_\_\_  
/s/  
John W. Stephens  
Of Attorneys for Renewable Northwest  
Project

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## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **RENEWABLE NORTHWEST PROJECT'S OPENING BRIEF** on the following persons on November 17, 2004, by hand-delivering, faxing, or mailing (as indicated below) to each a copy thereof, and if mailed, contained in a sealed envelope, with postage paid, addressed to said attorneys at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

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