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**Douglas C. Tingey**  
Assistant General Counsel

May 31, 2006

***Via Electronic Filing and U.S. Mail***

Oregon Public Utility Commission  
Attention: Filing Center  
PO Box 2148  
Salem OR 97308-2148

Re: In the Matter of PORTLAND GENERAL ELECTRIC COMPANY,  
OAR 860-038-0080, Resource Policies and Plans  
OPUC Docket No. LC 33

Attention Filing Center:

Enclosed for filing in the above-captioned docket is Portland General Electric's Response to Comments on its Application for Waiver of OAR 860-038-080(1)(b). This document is being filed by electronic mail with the Filing Center.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,

/s/ DOUGLAS C. TINGEY

DCT:am

cc: LC 33 Service List

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**LC 33**

In the Matter of PORTLAND GENERAL	)	
ELECTRIC COMPANY,	)	PGE’s Response to Comments
	)	on its Application for Waiver of
OAR 860-038-0080, Resource Policies and	)	OAR 860-038-080(1)(b)
Plans	)	

Pursuant to the Administrative Law Judge’s May 11, 2006 Memorandum, Portland General Electric Company (“PGE”) submits this Response to the Comments submitted by the Northwest Independent Power Producers Coalition (“NIPPC”). NIPPC asks the Commission to deny without prejudice PGE’s application for waiver of OAR 860-038-080(1)(b) (the “Market Price Rule”) and direct PGE to subject the Biglow Canyon wind project to a new bidding process. NIPPC’s request is based on irrelevant and speculative argument and, if granted, could jeopardize the benefits of the Biglow Canyon Project, the integrity of the competitive bidding process, and the ongoing validity of PGE’s Final Action Plan.

**I. NIPPC’s Speculation That a Non-Utility Developer Might Construct Biglow Canyon at a Lower Cost is Unsubstantiated and Irrelevant to the Issue of Whether the Market Price Rule Should be Waived**

NIPPC’s comments reduce to a simple but irrelevant and unsubstantiated argument: there is no good cause to waive the Market Price Rule because a non-utility, experienced wind developer *might* be able to develop a lower cost wind power project. As a preliminary matter, the Commission should reject NIPPC’s argument outright because it is irrelevant to the Commission’s decision on waiver. As Staff points out, it is not necessary to test PGE’s assertion that the Biglow Canyon wind project is least-cost

for the Commission to conclude that good cause warrants waiver of OAR 860-038-080(1)(b). Staff Comments at 4. PGE is not now seeking a Commission order authorizing the inclusion of Biglow Canyon project costs in revenue requirement. Rather, PGE's Application seeks waiver of the rule that would require inclusion of this project in PGE's revenue requirement at "market," allowing instead the traditional rule regarding inclusion at costs to prevail. During a future rate proceeding in which PGE proposes to include the Biglow project costs in our revenue requirement, the Commission undoubtedly will carefully examine both the decision to proceed with the Biglow Canyon project and PGE's implementation of that decision. NIPPC will have the opportunity then to make the arguments it makes now. NIPPC's speculation about the relative costs of the Biglow Canyon project are simply not relevant to whether the Commission should remove the rule's requirement to include new resources at "market."

In addition to being irrelevant, NIPPC's arguments about the relative costs of the Biglow Canyon Project are unsupported. For example, NIPPC argues that there is no good cause to waive the Market Price Rule because utility-owned, cost-based resources are not necessarily the lowest cost to consumers over the long term.<sup>1</sup> NIPPC Comments at 2. NIPPC offers no evidence to support this assertion, and ignores the vast evidence in this docket that requires a contrary conclusion with regard to the Biglow Canyon project. The fact is that the Biglow Canyon project was selected from a robust competitive bidding process with over one hundred bids consisting of both ownership and non-utility owned proposals. *Re PGE*, OPUC Docket No. LC 33, PGE Final Action Plan at 55 (March 2004). The Commission found that PGE compared all of the resources in its RFP

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<sup>1</sup> NIPPC made a similar argument in its objection to waiver of the Market Price Rule for Port Westward. The Commission granted the waiver.

on a consistent and comparable basis. OPUC Docket No. LC 33, Order No. 04-376 at p.4 (July 20, 2004). The Biglow Canyon project scored higher than the non-utility projects, demonstrating that, contrary to NIPPC's suggestion, it is more cost-effective than a non-utility project.

NIPPC's suggestion that a utility-built project might cost customers more because of unanticipated cost increases is also speculative and misplaced. NIPPC Comments at 2. NIPPC has offered no evidence that the Biglow Canyon project will experience cost increases. Should it do so, the Commission will decide whether PGE's revenue requirement may include such increases in a future ratemaking proceeding based upon the record developed at the time. Again, this objection is irrelevant to PGE's request that the Commission waive its rule requiring inclusion of new resources at "market" rather than cost.

Also irrelevant for the same reason is NIPPC's speculation that "PGE may not be able to construct and operate a wind power project at costs that can be achieved by experienced wind power developers." *Id.* at 2. Again, this is an argument that will be timely when PGE proposes to include Biglow Canyon in our revenue requirement. It is not material now.

NIPPC is correct that PGE structured the purchase agreement to permit future decisions as to whether to proceed with additional phases. At each phase of the project, we will look at alternatives to ensure that going forward with the construction of additional capacity at Biglow Canyon provides our customers the best combination of

price and rate stability as compared to other alternatives<sup>2</sup>. This argument does not weigh against a waiver of the Market Price Rule for the project, however. Again, NIPPC mistakes this waiver request for the rate case in which PGE requests to include Biglow Canyon's costs in revenue requirement and the Commission must determine whether PGE's decision to proceed with the project was prudent.

**II. There is No Evidence That a New Round of Bidding Will Produce a Different Result, And It Could Compromise Benefits From the Project, the Integrity of the RFP, and the Ongoing Validity of PGE's Action Plan**

NIPPC asks the Commission to direct PGE to complete a new bidding process to refresh PGE's information regarding Biglow Canyon and other potential competitive projects. NIPPC Comments at 1 and 4. NIPPC suggests that a new bidding process is necessary because nearly all variables affecting price have changed. *Id.* at 3. However, NIPPC produces no evidence to establish that a new RFP will produce a different result.

As Staff points out, a new process would take at least several months to complete and could compromise many benefits of the project, including eligibility for the federal production tax credit and funding from the Energy Trust of Oregon to support the above-market costs of renewables. Staff Comments at 4-5. It is also likely that the costs of materials and equipment needed for the project will continue to rise during the time it will take to run a new RFP.

PGE selected the Biglow Canyon project through a rigorous competitive bidding process that was designed and conducted pursuant to rules established by the

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<sup>2</sup> In addition the parties specifically structured the payments to Orion to maximize Orion's motivation and opportunity to remain involved in the project and to work with PGE to construct as reliable a project as possible. The payments to Orion are primarily tied to a royalty on the amount of power generated from the project. In fact, royalty payments are the payments made for phases 2 and 3. As a result, Orion will continue to have a strong incentive for all phases to provide PGE assistance wherever possible.

Commission.<sup>3</sup> The Commission has recognized that the success of a competitive bidding process depends on the participants knowing the rules up front. *See, Re Investigation into Competitive Bidding by Investor-Owned Electric Utility Companies*, OPUC Docket No. UM 16, Order No. 91-1383 at 4 (Oct. 18, 1991). PGE and the bidders have followed the rules established and approved by the Commission at the beginning of PGE's supply side RFP process. Further, PGE made it clear in its Final Action Plan that it would choose among wind projects from its short list of RFP bids to provide about 65 MWa energy. OPUC Docket No. LC 33, PGE Final Action Plan at 22. PGE's action plan was acknowledged by the Commission. OPUC Docket No. LC 33, Order No. 04-375 (July 20, 2004).

Changing the rules of the RFP and the results of the action plan now by conducting a new RFP is not fair to PGE, to Orion, to the other bidders who participated in good faith in the original RFP or to the many stakeholders who participated in the development of PGE's IRP action plan. It would raise a plethora of issues about the continuing validity of PGE's action plan, and it may also cast doubt on, and harm participation in, future Commission-approved RFPs, as bidders will be reluctant to spend time and resources developing a bid if they believe that the conclusion of a Commission-approved RFP process is simply another RFP. The Commission previously rejected an eleventh-hour proposal by NIPPC to conduct a new bidding process with regard to the selection of Port Westward. *Id.* at 10. It should likewise reject this proposal.

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<sup>3</sup> PGE's RFP was designed according to the guidelines adopted by the Commission in Order No. 91-1383. The RFP was conducted in accordance with a process approved by the Commission in Order 03-387. In that order, the Commission determined that PGE's RFP "can reasonably be expected to result in a fair and unbiased process which allows the company to obtain the least cost resources needed to fill its identified energy and capacity requirements." *Re* PGE, OPUC Docket No. UM 1080, Order No. 03-387 at 2 (July 3, 2003).

### **III. Conclusion**

For the reasons set forth in its Application, in Staff's Comments and in this Response to Comments, PGE respectfully requests that the Commission issue an order waiving OAR 860-038-0080(1)(b) with respect to the Biglow Canyon wind project, so that that rule will not prohibit PGE from (i) including the capital costs of the Biglow Canyon wind project in PGE's rate base for ratemaking purposes in a manner similar to the capital costs of PGE's other owned generating plants, and (ii) including the operations and maintenance costs of the Biglow Canyon wind project in PGE's revenue requirement in a manner similar to the operations and maintenance costs of PGE's other owned generating plants.

DATED this 31<sup>st</sup> day of May, 2006.

Respectfully submitted,

/s/ DOUGLAS C. TINGEY

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing RESPONSE TO COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY to be served by First Class US Mail, postage prepaid and properly addressed, and by electronic mail, upon each party on the attached service list in OPUC Docket LC 33.

Dated at Portland, Oregon, this 31<sup>st</sup> day of May, 2006.

/s/ DOUGLAS C. TINGEY

Douglas C. Tingey

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