

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 **LC 33**

4 In the Matter of

5 PORTLAND GENERAL ELECTRIC
6 COMPANY

7 2006 Integrated Resource Plan
8
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STAFF COMMENTS

10 Pursuant to OAR 860-038-0001(4), Portland General Electric Company (“PGE”) asks
11 that the Commission waive application of OAR 860-038-0080(1)(b) to PGE’s acquisition of the
12 Biglow Wind Project.¹ OAR 860-038-0080(1)(b) requires that electric companies include new
13 generating resources in revenue requirement at market price, and prohibits electric companies
14 from including the new generating resources in rate base. However, OAR 860-038-0001(4)
15 provides that for good cause shown, the Commission may relieve a utility of the obligations of
16 OAR 860-038-0080(1)(b). Staff of the Public Utility Commission (“staff”) submits these
17 comments pursuant to Chief Administrative Law Judge Michael Grant’s May 11, 2006
18 Memorandum.
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21 Because good cause supports PGE’s request to waive application of OAR 860-038-
22 0080(1)(b) to the Bigelow request, staff supports PGE’s request. Staff’s conclusion that good
23 cause supports the waiver is based on the materials provided by PGE² and review of prior
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25 ¹ The Biglow Wind Project is described in PGE’s application in Docket UP 234.

26 ² A copy of the PGE correspondence is provided as Attachment 1.

1 Commission orders, including Order No. 04-376, in which the Commission waived application
2 of OAR 860-038-0080(1)(b) to PGE's Port Westward project.

3 First, the attached materials demonstrate the Biglow Wind Project is consistent with
4 PGE's acknowledged least cost plan and PGE's Final Action Plan, which the Commission
5 acknowledged in Order No. 04-375. Second, the particular circumstances of PGE's acquisition
6 of the Bigelow Wind Project are such that PGE's customers may benefit if the resource is
7 recovered in rates at cost, rather than market.
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9 PGE's costs associated with the Biglow Wind Project agreement are divided principally
10 between facilities costs and royalty payments based on per kWh generated. By this structure, the
11 costs of the wind project could capture the fuel diversity benefits of a wind project. This is
12 because the royalty payments are not likely correlated with natural gas prices or coal prices.
13 While the Commission has provided parties flexibility in not adopting a prescriptive definition of
14 "market," one option for such a definition could be spot wholesale market prices. By granting
15 the waiver, the Commission has the flexibility to consider including the Biglow Wind Project in
16 rates at costs and thereby capture the benefits of fuel diversity.
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18 In addition, the Commission and PGE will have a dialogue regarding projected costs and
19 benefits before any action is taken with respect to the different phases of the project. This
20 dialogue will likely include discussion on the expected costs and benefits of each phase and help
21 inform future prudence reviews. PGE also has the right to complete each phase or sell or assign
22 the rights to do so. The phased construction and the pricing of the power provide for and create
23 the opportunity for value for PGE's customers since PGE can weigh the projected costs and
24 benefits of undertaking the additional phases.
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2 Response to Northwest Independent Power Producers Coalition Comments

3 The Northwest Independent Power Producers Coalition (NIPPC) filed comments in
4 opposition to PGE’s request for a waiver of the market pricing rule on May 22, 2006. NIPPC
5 argues that the waiver may not benefit customers because unanticipated cost increases would be
6 recovered in rates by the utility’s customers, suggesting that unanticipated cost increases may be
7 likely because PGE is not an “experienced wind power developer.” (NIPPC comments at 2.)
8 This argument is not well taken for at least two reasons. First, even if one accepted as true that
9 PGE is not an experienced wind developer, the fact is that PGE is not developing the resource in
10 isolation. Contrarily, PGE is partnering with Orion, and will obtain the benefit of Orion’s
11 experience. For example, Orion has already developed a site plan for locating the wind turbines
12 on the site and is responsible for working with the construction contractor to finalize locations by
13 the start of construction. Orion has assisted PGE to finalize its plan of service and budget and
14 cost allocations on the project. Orion is responsible for obtaining the appropriate site
15 certifications and is working with third parties to obtain transmission. Orion is also assisting
16 PGE in locating wind turbines for the project. This is only a partial list of the roles that Orion is
17 playing in the Bigelow Wind Project. In light of PGE’s partnership with Orion, NIPPC’s
18 argument that PGE’s inexperience in developing wind projects may be costly to customers is not
19 persuasive.
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22 Second, NIPPC’s arguments are not particularly pertinent to the waiver request, but are
23 more pertinent to a ratemaking proceeding. NIPPC asserts that waiver may not be in the best
24 interest of customers because it is likely that a PGE-owed wind project would not be least cost
25 over the long term, compared to an independently owned resource that goes into rates at the bid
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1 price. This assertion is inconsistent with PGE’s selection of the Bigelow Wind Project as a least-
2 cost resource.

3 PGE conducted a bidding process that resulted in its selection of the Biglow project. In
4 its application for waiver, PGE asserts that “[t]he first phase of the Bigelow Wind Project scored,
5 as a cost-based – not market-based – resource, high enough in the RFP process that its
6 acquisition benefits our customers compared to other resource alternatives, including non-
7 renewable resources.” (PGE Application for Waiver of OAR 860-038-0080(1)(b).) The
8 company will be required to demonstrate this conclusion in a future rate case. It is not necessary
9 for the Commission to test PGE’s assertion that the Bigelow Wind project is least-cost for the
10 Commission to conclude that good cause warrants waiver of OAR 860-038-0080(1)(b). The
11 Commission will have opportunity in a future rate case to do so and will presumably “look[]
12 carefully at PGE’s assumptions and costs.” (OPUC Order No. 04-376 at 4.)
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14 Staff also disagrees with NIPPC’s recommendation that the Commission wait to review
15 the waiver request until such time as PGE completes a new bidding process, “which would
16 refresh PGE’s information regarding Biglow and other potential competing projects, including
17 other competing wind projects.” (NIPPC comments at 4.) Staff disagrees with the
18 recommendation because the delay would be detrimental to the project.
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20 A new bidding process would take at least several months to complete. PGE has not yet
21 made a final determination as to whether it can and should acquire wind turbines in 2007 in order
22 to have the facility on-line by the current expiration date for the federal tax credit (December 31,
23 2007). Further, PGE’s agreement with Orion requires certain milestones to be met. In addition,
24 PGE has milestones it must meet in its \$12.5 million funding agreement with the Energy Trust of
25 Oregon to support the above-market costs of new renewable resources, which yet another
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1 competitive bidding process likely would compromise. These milestones are consistent with the
2 current expiration of the federal tax credit. Even if the Trust modified its agreement with PGE to
3 extend these milestones to accommodate a new bidding process, such a process would create
4 uncertainty for the Trust's budgeting process and hold up funds that could go toward other
5 renewable

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DATED this _____ day of May 2006.

Respectfully submitted,

HARDY MYERS
Attorney General

Stephanie S. Andrus, #92512
Assistant Attorney General
Of Attorneys for Staff of the Public
Utility Commission of Oregon

May 19, 2006

Marc Hellman
Administrator
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, Oregon 97301-2551

Marc:

In our telephone discussion last week, you requested additional material regarding the Biglow Canyon project. You mentioned four issues – relationship with PGE's 2002 Integrated Resource Plan, how PGE will apply for ETO funding, the need for a waiver of OAR 860-038-0080(1)(b), and information that can be publicly shared regarding the assignability of the contract. Our responses are in the attachment. I will send the electronic versions as well.

If you have questions or need additional information, please call me at (503) 464-7580.

Sincerely,

Patrick G. Hager
Manager, Regulatory Affairs

Attachment

cc: Jay Dudley

Attachment
Supporting Materials on the Biglow Canyon Project

1. *Please provide more information about how the Biglow Canyon project is related to PGE's 2002 Integrated Resource Plan and related Request for Proposals.*

Port Westward was the only project specifically identified by name in PGE's 2002 Integrated Resource Plan (IRP). However, the Biglow Canyon project was included in the short list on which the Final Action Plan is based. Moreover, the IRP process included the evaluation of more than 100 bids received in response to PGE's June 2003 Request for Proposals (RFP). The September 2004 Final Report of the Independent Observer (Final Report) makes clear that, in the RFP evaluation process, PGE properly compared the Biglow Canyon ownership bid to many other possible resources. For example, the Independent Observer noted that "the evaluation criteria utilized by PGE were clearly designed to address the unique aspects of different technologies, by adjusting the criteria to reflect the unique nature of these technologies, such as wind and other renewable resources." (See Final Report, page 48.) Conclusions of the Final Report include "The evaluation process was a very fair and comprehensive process," and "There did not appear to be any inherent biases between ownership and contract options." (See Final Report, page 55).

Bids which qualified for the RFP short list were then considered for the Final Action Plan. After extensive portfolio analysis, we developed a Final Action Plan which included the goal to "Acquire about 65 MWa (195 MW) of wind generation." (See Final Action Plan, page 11.) Table 4 of the Final Action Plan also includes the acquisition of 65 MWa of wind power. (See Final Action Plan, page 12.) Commission Order No. 04-375, which acknowledged the Final Action Plan, includes an "Overview of PGE's Final Action Plan" on page 4. The Overview includes item 3, which is a goal to "Acquire approximately 65 MWa (195 MW) of wind generation, provided that the necessary transmission and integration services can be obtained, and that the ETO funds permit a price within the range of other alternatives."

2. *How will PGE apply for funding from the Energy Trust of Oregon?*

PGE entered into a Master Funding Agreement (MFA) with the ETO in October 2005 that provided for a \$12.5 MM pool of funds to be used by PGE for buying down the cost of renewable energy projects. This pool of funds is currently available for use until the end of 2007. PGE is currently pursuing amendment of the MFA to extend fund availability to 2008, should such a time extension be necessary to complete the construction of Phase 1 of the Biglow Canyon Wind Farm.

Pursuant to the MFA, PGE is required to execute a Project Funding Agreement (PFA) with the ETO that specifies the nature of an applicant renewable project. The PFA must include such details as project scope, scale and financial requirements. Further specification of how funds would be withdrawn and applied (schedule and payee) would also be required. The MFA also requires that the PFA be executed within 60 days of receiving all necessary approvals to move forward with a project.

3. *What additional information can you provide on assignability?*

Orion has agreed to remove Section 17.1 (reprinted below) from the protective order.

“17.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, except that Buyer, on the one hand, and Sellers, on the other hand, may not assign their respective rights or obligations hereunder without the prior written consent of the other Party, such consent not to be unreasonably withheld; provided, however, that (i) prior to Completion of any Phase, Buyer may assign its rights and obligations hereunder with respect to such Phase to a wholly-owned subsidiary (provided Buyer remains jointly and severally liable with such wholly-owned subsidiary), and (ii) after Completion of any Phase, Buyer may assign its rights and obligations hereunder with respect to such Completed Phase to any third party, provided that such assignment shall be subject to terms of the Royalty Agreement, the Royalty Trust Deed (which must become a senior lien upon assignment) and the Buyer Set-Off Rights. It shall be unreasonable for Sellers to withhold consent for an assignment to any third party if (A) such assignment is subject to terms of the Royalty Agreement, the Royalty Trust Deed (which must become a senior lien upon assignment) and the Buyer Set-Off Rights, (B) the proposed assignee is financially sound and experienced in the development of wind projects, and (C) the proposed assignee has firm, or conditional firm, transmission rights necessary for such Phase of the Project to be assigned and such assignee commits to operate such Phase with conditional firm or better transmission rights. Any assignment in contravention of this provision shall be void.”

4. *Is a waiver required by PGE?*

Waiver by the OPUC of its rules to allow PGE to seek cost based rate base treatment of the project is a condition precedent to PGE acquiring wind turbines and executing a construction contract for the project.

CERTIFICATE OF SERVICE

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I hereby certify that on the _____ day of May 2006, I served the within STAFF
COMMENTS upon the follow persons by electronic mail, and by then depositing in the United
States Post Office at Salem, Oregon, a full, true and correct copy thereof addressed to:

Jason Eisdorfer Citizens' Utility Board of Oregon 610 SW Broadway Suite 308 Portland, Oregon 97305	Rates and Regulatory Affairs Portland General Electric 121 SW Salmon Street 1 WTC 0702 Portland, Oregon 97204
Susan Ackerman NIPPC PO Box 10207 Portland, Oregon 97296-0207	Janet Prewitt Department of Justice 1162 Court Street, NE Salem, Oregon 97301
Brad Van Cleve Davison Van Cleve 333 SW Taylor Street Suite 400 Portland, Oregon 97204	Phil Carver Oregon Department of Energy 725 Marion Street, NE Suite 1 Salem, Oregon 97301
John W. Stephens Esler Stephens & Buckley 888 SW Fifth Avenue Suite 700 Portland, Oregon 97204-2021	Sonja Ling Renewable Northwest Project 917 SW Oak Suite 303 Portland, Oregon 97205
Irion Sanger Davison Van Cleve 333 SW Taylor Suite 400 Portland, Oregon 97204	Lincoln Wolverton East Fork Economics PO Box 620 La Center, Washington 98629

and prepaying the postage thereon.

Stephanie S. Andrus, #92512
Assistant Attorney General
Of Attorneys for Staff of OPUC

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