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Douglas C. Tingey
Assistant General Counsel

May 5, 2006

Via Electronic Filing and U.S. Mail

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

Re: APPLICATION OF PGE FOR WAIVER OF OAR 860-038-0080(1)(b)
OPUC Docket No. _____

Attention Filing Center:

Enclosed for filing in the above-captioned docket is Portland General Electric's Application for Waiver of OAR 860-038-0080(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**

DOCKET NO. _____

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

OAR 860-038-0080, Resource Policies and
Plans

APPLICATION OF PGE FOR WAIVER OF
OAR 860-038-0080(1)(b)

Pursuant to OAR 860-038-0001(4), Portland General Electric Company (“PGE”) requests that the Commission waive application of OAR 860-038-0080(1)(b) to PGE’s acquisition of the Biglow Wind Project.¹ Acquisition of the Biglow Wind Project is pursuant to PGE’s IRP Final Action Plan acknowledged in Order 04-375.

OAR 860-038-0001(4) provides that for good cause shown, the Commission may relieve PGE of requirements under its Division 038 rules. As set forth below, good cause exists for waiver of OAR 860-038-0080(1)(b) for the Biglow Wind Project.²

PGE also requests that the Commission establish a process in this docket that requires any comments on this Application by May 24, 2006, permits a PGE response by May 31, 2006, and provides for consideration by the Commission at its scheduled public meeting on June 13, 2006.

¹ The Biglow Wind Project is also described in PGE’s application in Docket UP 234.

² The Commission has granted similar waivers in previous dockets. Concurrent with Order No. 04-375, the Commission entered Order No. 04-376, which granted a waiver to OAR 860-038-0080(1)(b) for inclusion of Port Westward’s capital costs in PGE’s rate base and inclusion of Port Westward’s operation and maintenance costs in PGE’s revenue requirement. The Commission also granted a waiver of this rule with respect to three resources as part of Order No. 05-1050 in PacifiCorp’s recent general rate case.

I. The Biglow Wind Project

In compliance with the Final Action Plan in PGE's most recent least cost planning docket, on March 15, 2006, PGE entered into an Asset Purchase and Development Agreement with Orion Energy, LLP and Orion Sherman Wind Farm LLC for the acquisition by PGE of wind project development assets and rights in Sherman County, Oregon. The permit for the Biglow Wind Project will support an expected aggregate installed capacity of up to 450 MW. PGE plans to construct the Project in phases, with the first phase having an expected aggregate installed capacity of approximately 126 MW and average energy of 47 MWa.

II. The Waiver Benefits Customers

PGE's Final Action Plan demonstrates that the generating resource portfolio that provides our customers with the best combination of price and rate stability includes wind resources with the Biglow Wind Project's characteristics. The first phase of the Biglow Wind Project scored, as a cost-based – not market-based – resource, high enough in the RFP process that its acquisition benefits our customers compared to other resource alternatives, including non-renewable resources. The ability to expand installation on the site only increases the value of the Biglow Wind Project.

OAR 860-038-0001(4) provides that, for good cause shown, the Commission may relieve PGE of requirements under its Division 038 rules. Unless waived, OAR 860-038-0080(1)(b) (the "Market Price Rule") will prevent PGE from including new generating resources such as the Biglow Wind Project in rate base, and will require that PGE include the Biglow Project in revenue requirement at market price and not at

cost. The Commission should grant the waiver requested by PGE because it is in our customers' best interests.

III. Waiver is Consistent with Oregon Law

The Market Price Rule is one of a series of rules, the Division 038 Direct Access Rules, that the Commission adopted in the fall of 2000. OAR 860-038-0001(4) provides, in pertinent part: "Upon application by an entity subject to these rules and for good cause shown, the Commission may relieve [the entity] of an obligations under these rules."

The Division 038 rules were implemented in an environment that no longer exists. At that time, the Commission and participants in the process contemplated that utilities would not acquire new generating resources except to serve residential and small non-residential customers. Larger-load customers would be served by the market and not by utilities. The rules required the utilities to file a Resource Plan that would lead the utilities to divest or remove from rates all generating resources not needed to serve residential and small non-residential customers.

The California energy crisis, among other things, radically changed Oregon's approach to direct access and utility-owned resources. After implementation of the Division 038 rules, the Oregon Legislature adopted HB 3633, which delayed the implementation date of direct access and required each electric utility to offer a cost of service rate option to all customers (*see* ORS 757.603). This statute permits the Commission to waive its protections only where the Commission can make specific findings designed to protect customers from an electricity market that is not fully functional or that does not produce prices which are just and reasonable. No one has requested such a waiver from the Commission.

Although the Commission is considering the Market Price Rule in docket UM 1066, a final order has not issued in that docket. PGE's comments in UM 1066 contain an extensive analysis of the reasons that a waiver of the Market Price Rule is consistent with Oregon law, and we incorporate those by reference in this Application. Waiver of the Market Price Rule is fully consistent with ORS 757.603 and the other provisions of HB 3633. Waiver will allow PGE to continue to provide the statutorily-required cost of service rate option to all customers who want it with a resource portfolio the costs and rate stability of which are most beneficial to the customers.³

PGE understands that the granting of this request is not pre-approval of these resources for ratemaking purposes, and that the inclusion of them in rates will be subject to a future ratemaking proceeding.

IV. Conclusion

The Biglow Wind Project will benefit customers. Therefore, PGE requests that the Commission issue an order waiving OAR 860-038-0080(1)(b) with respect to the Biglow Wind Project, so that that rule will not prohibit PGE from (i) including the capital costs of the Biglow 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 Wind Project in PGE's revenue

³ In the Stipulation in Docket UM 1206 entered into in August 2005, PGE also agreed to propose for OPUC approval three-year and five-year options for customers with aggregate loads larger than 1 MW to opt out of cost of service rates with a fixed transition amount. PGE further agreed to propose that for the windows occurring in 2005 and 2006 (for service beginning in 2006 and 2007 respectively) a transition amount that does not include long-term resources identified in its 2004 IRP Action Plan. PGE did so for the 2005 window, and will do so for the 2006 window. Eligible customers will, therefore, through the 2006 window, be able to opt-out of cost of service with a transition adjustment that will not include the Biglow Wind Project.

requirement in a manner similar to the operations and maintenance costs of PGE's other owned generating plants.

DATED this 5th 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 APPLICATION OF PORTLAND GENERAL ELECTRIC COMPANY FOR WAIVER OF OAR 860-038-0080(1)(b) 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 from OPUC Docket LC 33.

Dated at Portland, Oregon, this 5th day of May, 2006.

/s/ DOUGLAS C. TINGEY

Douglas C. Tingey

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