



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

July 12, 2006

VIA ELECTRONIC MAIL AND HAND DELIVERY

Attention: Filing Center
Public Utility Commission of Oregon
550 Capitol Street NE, #215
P.O. Box 2148
Salem, OR 97308-2148
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Re: *In the Matter the Public Utility Commission of Oregon Staff's Investigation
Relating to Electric Utility Purchases from Qualifying Facilities*
OPUC Docket: UM 1129
DOJ File No. 330-020-GN0041-04

Enclosed are an original and five copies of OREGON DEPARTMENT OF
ENERGY'S REPLY BRIEF, with certificate of service, in the above-captioned matter for
filing with the Public Utility Commission today.

Sincerely,

/s/ Janet L. Prewitt

Janet L. Prewitt
Assistant Attorney General
Natural Resources Section

Enclosures

c: UM 1129 Service List
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JLP:jrs/GENQ6704

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1129**

In the Matter of the

PUBLIC UTILITY COMMISSION OF
OREGON

Staff's Investigation Relating to Electric
Utility Purchases from Qualifying Facilities

**OREGON DEPARTMENT OF
ENERGY'S REPLY BRIEF**

I. Introduction

In this Reply Brief, the Oregon Department of Energy (ODOE) discusses the position taken regarding contract length for Quality Facilities (QFs) larger than 10 MW by Portland General Electric (PGE) in its Opening Brief. In short, ODOE urges the Commission to clarify that the stipulation entered by the parties does not preclude negotiated PURPA contracts exceeding 20 years.

II. The Partial Stipulation Does Not Limit QF Contracts to 20 Years.

In a Ruling, issued March 3, 2006, Administrative Law Judge (ALJ) Kirkpatrick adopted an issues list containing 14 issues. ODOE submits this reply brief to request that the Commission clarify a term of the stipulation entered into by the parties to settle Issue 1.a. As set forth in the Ruling, Appendix A, Issue 1.a. states:

What Contract length should Qualifying Facilities larger than 10 MW be entitled to?

In its opening brief, PGE includes the following discussion of Issue 1.a.:

“Issue 1.a.: Qualifying Facilities larger than 10 MW should be entitled to a contract of no more than 20 years in length.

Despite our reservations about fixing negotiation parameters for negotiated QF contracts, PGE is willing to agree to a duration limit for these

contracts. Specifically, PGE has stipulated with other parties *that nonstandard contracts should be limited to 20 years in length* in order to balance risks imposed on the utility with a term that may be needed by a QF in order to secure financing.”

Phase II Opening Brief of Portland General Electric Company, at 8 (emphasis added).

ODOE asks the Commission to clarify the meaning of the stipulation and to determine that the partial stipulation does not apply where the contracting QF and utility agree to a term longer than 20 years. The stipulation for Issue 1.a. is set out in full below:

The parties have agreed to the following resolution of Issue 1(a) in the Phase II issues list:

The parties agree that *QFs larger than 10 MW should have the unilateral right to select a contract length of up to twenty years for a PURPA contract.*

The parties have not reached agreement regarding whether the utility and QF should be permitted to enter into PURPA contracts with terms longer than 20 years.

The parties also specifically recognize that the contract length selected by the QF may impact other contractual issues, including but not limited to, the avoided cost determination with respect to that QF.

PPL/408, Griswold/11 (emphasis added).

PGE overstates the nature of the agreement. First, PGE asserts that 20 years is an outside limitation on QF contract length. While it is true that under the stipulation a QF may *unilaterally* choose a contract up to 20 years, the stipulation is silent on whether a QF and utility may negotiate a longer term. It should be noted that the issue statement, and the stipulation, both speak in terms of the length of a contract that a QF is *entitled* to. PGE’s statement that “PGE has stipulated with other parties that nonstandard contracts should be limited to 20 years in length” is overbroad. While the stipulation clearly entitles the QF to a 20-year contract, nothing in that language limits the *negotiated* length of a QF contract. In fact, the stipulation clearly states that the parties have *not* reached

Conclusion

For the reasons stated, the Commission should clarify that a QF and utility may voluntarily enter into a contract for longer than 20 years.

Dated this 12th day of July, 2006.

Respectfully submitted,

HARDY MYERS
Attorney General

/s/ Janet L. Prewitt

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Department of Energy

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of July, 2006, I served the foregoing OREGON DEPARTMENT OF ENERGY'S REPLY BRIEF on the persons listed below by electronic mail and by mailing a full, true and correct copy thereof addressed to the persons at the addresses on the UM 1129 service list (with the exception of those parties who have waived paper service).

Dated: July 12, 2006.

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