



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 9, 2007

VIA ELECTRONIC MAIL AND HAND DELIVERY

Public Utility Commission of Oregon
Attention: Filing Center
550 Capitol Street NE, Suite 215
P.O. Box 2148
Salem, OR 97301-2148
PUC.FilingCenter@state.or.us

Re: *In the Matter of a Rulemaking to Adopt Rules Related to Small Generator
Connection*
PUC Docket No.: AR 521
DOJ File No.: 330-030-GN0901-07

Enclosed are an original and one copy of Oregon Department of Energy's
Comments on Proposed Rules in the above-captioned matter for filing with the PUC
today.

Sincerely,

Janet L. Prewitt
Assistant Attorney General
Natural Resources Section

Enclosures

c: AR 521 Service List

JLP:jrs/GENV9666

- 1 1. The rules should be clarified to encourage parties to agree to a dispute resolution
2 mechanism as part of the negotiation process, as well as in the interconnection
3 agreement. If the parties agree in advance to the alternative dispute resolution
4 mechanism set out in the Commission rules, either party can, without further agreement,
5 initiate the dispute resolution process.
- 6 2. The Commission should clarify its expectation that both parties will use qualified
7 professionals to support the decision-making process, including in the informal dispute
8 resolution process

9 **Transparency of Complaint Process**

10 In order to make the choice between alternative dispute resolution and resort to the
11 Commission's complaint process meaningful, the Commission should clarify the complaint
12 process applicable to interconnection agreements so that the costs, process and time required to
13 reach a decision on the complaint are reasonably known at the outset.

14 **Dispute Resolution Recommended Revisions to Staff's Proposal**

15 The Oregon Department of Energy continues to be concerned about how negotiation
16 impasse between a small generator and the utility will be resolved. Small generators have
17 limited resources for the negotiation process. However, subject to the comments below, ODOE
18 supports the adoption of alternative dispute resolution criteria and procedures as described in
19 proposed OAR 860-082-0080.

20 **1. Discovery in Arbitration Proceedings:**

21 In previous comments, ODOE noted that in Order #07-360 in Docket UM 1129 the
22 Commission has recently indicated its intent to "use a process similar to the arbitration process
23 for telecommunications carriers" in that docket and to adopt similar rules in Division 29 for
24 small power producers and co-generators. The telecommunications arbitration provisions
25 contain the following rule regarding discovery:

26 OAR 860-016-0030(5) Formal discovery procedures will be allowed only to the extent
deemed necessary to by the arbitrator. Parties will be required to cooperate in good faith
in voluntary, prompt and informal exchanges of information relevant to the matter.

1 Unresolved discovery disputes will be resolved by the arbitrator upon request of a party.
2 The arbitrator will order a party to provide information if he/she determines the
3 requesting party has a reasonable need for the requested information and the request is
4 not overly burdensome.

5
6 The Commission should add this provision to OAR 860-082-0080(4).

7 **2. Mutual Agreement to Arbitrate**

8 ODOE previously pointed out that the requirement for mutual agreement to engage in
9 arbitration could render the provision meaningless because, as it is phrased in the proposed rules,
10 the parties might already be in conflict before they have to decide whether to use the alternative
11 dispute resolution mechanism. To some extent this issue can be minimized if the rules make it
12 clear that parties should address dispute resolution prior to engaging in negotiations or as part of
13 the contract, and that when a dispute arises, either party may initiate the alternative dispute
14 resolution mechanism without further agreement. ODOE proposes adding the following
15 language to OAR 860-0080(4):

16 (4) The Public Utility, the Interconnection Customer or Applicant may use the following
17 dispute resolution process only if both Parties to the dispute mutually agree in writing. *If*
18 *the parties agree to the dispute resolution process of this section before commencing*
negotiations or as a contract term in the interconnection agreement, either party may
initiate the process described in this section.

(New language in italics).

19 ODOE also suggests that the Commission provide that interconnection application forms offer
20 parties the opportunity to explicitly consider adopting the alternative dispute resolution
21 mechanism.

22 **3. Evidence of Attempts to Resolve Disputes Informally**

23 As previously suggested by ODOE, the following provision should be added to Section
24 860-082-0080 (3):

25 “(c) Complaint filed under these rules shall set forth
26

1 (A) The efforts made by the parties to resolve the dispute on an informal basis,
and
2 (B) If either party proposed the adoption of a voluntary alternate dispute
resolution provision to resolve the issue that was rejected by the other party, a
3 statement of the reasons given by the rejecting party for rejecting the alternate
dispute resolution mechanism.”
4

5 **4. Arbitration Record**

6 The proposed rule does not contain a provision governing the record for the
7 Commission’s review of an arbitration award. The Commission should clarify that the
8 Commission’s review of the appeal of the arbitrator’s award will be based on the record
9 compiled by the arbitrator. The following language should be added to OAR 860-082-0080(4):

10 The record compiled by the arbitrator constitutes the record for the Commission appeal,
11 which may be supplemented only with the Commission’s permission.

12 **Liability Insurance**

13 The November 1, 2007, draft proposed rule, OAR 860-082-0035(1) Insurance, exempts
14 small generator facilities of 200 kW or smaller from liability insurance provisions. ODOE
15 supports staff’s proposed rule for liability insurance.
16

17 **Metering and Monitoring**

18 ODOE continues to receive reports from the field in which developers observe that
19 requirements for telemetry vary widely and that some utilities requirements are unduly costly
20 relative to the overall cost of the project. The staff’s draft proposed rule is similar to PGE’s
21 telemetry requirements and developers have reported no conflicts with these requirements to
22 ODOE. The draft proposed rule is similar to PGE’s current requirements.
23

24 ODOE supports staff’s November 1, 2007, draft proposed rule, OAR 860-082-0060
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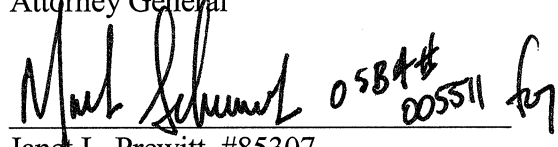
1 **Recordkeeping and Reporting**

2 ODOE also supports the November 1, 2007, draft proposed rule, OAR 860-082-0065
3 Metering and Monitoring.

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5 DATED this 9th day of November 2007.

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7 Respectfully submitted,

8 HARDY MYERS
9 Attorney General

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12 Assistant Attorney General
13 Of Attorneys for Oregon Department of Energy
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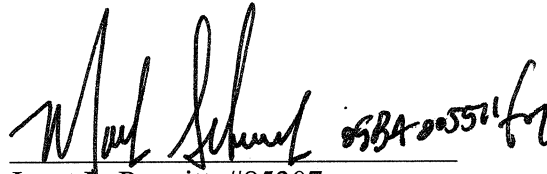
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of November, 2007, I served the foregoing OREGON DEPARTMENT OF ENERGY'S INITIAL COMMENTS, electronically on the parties named on the attached service list and by hardcopy via First Class, U.S. Mail for those parties that have not waived paper service.

DATED: This 9th day of November, 2007.



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