

August 8, 2011

Oregon Public Utilities Commission
550 Capitol St NE #215
PO Box 2148
Salem, OR 97308-2148

RE: **EXPEDITED REQUEST** from Beaverton School District for waiver of 12-month installation requirement [OAR 860-084-0210 (1)]

To Whom It May Concern:

THIS IS AN EXPEDITED REQUEST. GIVEN THE NATURE OF THE REQUEST AND THE INCREDIBLY TIGHT TIMEFRAME WE HAVE AVAILABLE, WE ASK THAT YOU REVIEW AND WORK THROUGH THE APPROPRIATE PROCESS AS SOON AS POSSIBLE.

Portland General Electric (PGE) customers Beaverton School District (BSD) and Gladstone School District (GSD) have been working with Gerding Edlen Sustainable Solutions (GESS) for approximately two years to develop a third-party owned solar project at their respective schools. Because of the unique history and financing of these projects (detailed below), as well as the newness of PGE's Solar Payment Option (SPO), its branding of OAR 860-084 0100 through 860-084-0450's Solar Photovoltaic Pilot Programs, parties PGE, BSD, GSD, and GESS request a three-month extension for three medium-scale systems enrolled in October 2010 allotment period. Such an exception would ensure that the Districts' six PV systems are installed while denial of this exception puts these medium-scale systems (600 kW DC of SPO incentive allocation) for these schools at risk.

Background:

For the past several years, both Districts have been searching for a means to add solar on their roofs with no out-of-pocket expense. Over the past two years, the Districts have been working with GESS in an attempt to develop this third-party owned solar project whereby an investor installs, owns and maintains the solar array. In recent history, this type of financing structure was driven primarily by the state Business Energy Tax Credit (BETC) program. Unfortunately, the BETC program underwent changes and rollbacks making third-party transactions with outside investors nearly impossible. Third-party investing in solar projects came to a standstill and investors fled the state.

When SPO came into the market, GESS began discussing a new approach to solar and, potentially, a new way to entice solar investors back into the state. Understanding that third-party investors require a minimum 500 kW array size to proceed with a project, GESS/BSD/GSD entered into a public/private partnership whereby GESS would work with an investor to aggregate 99 kW projects across both Districts to meet the 500 kW threshold. This idea hinged on the ability to acquire at least five 99 kW projects between the July 2010 and October 2010 SPO allocations. If we were successful, the Districts would receive free electricity at their current PGE electricity rate, reducing their annual operating expenses, which is critical to the Districts during this time of public school cutbacks.

On July 1, 2010 GESS was able to secure two 99 kW incentive allocations for GSD. While GESS was in discussion with potential investors to fund the project at that point (and many investors were interested), none would engage further until we received enough allocations to hit their minimum 500 kW investment threshold. As such, GESS had to wait until October 2010 to continue our discussions

with potential investors. In October 2010, the Districts were able to secure four other allocations - one 99 kW for GSD and three 99 kW for BSD - bringing our total project to 600 kW. This was more than enough to entice an investor, and GESS was able to renew discussions with interested investment groups. Unfortunately, this also coincided with the federal Investment Tax Credit (ITC) grant expiration, an extremely significant driver for many solar investments here in the United States. This prompted investors to focus their energy and attention on those projects that could meet the safe harbor provision and remain eligible for the ITC grant. As such, investors asked that we wait to review the project until Q1 of 2011.

In January 2011, GESS worked almost exclusively with one investor, who claimed they were willing to invest under the negotiated parameters. By mid-February, GESS and the Districts had negotiated agreements with the investors and were nearing the point of signature when the investor changed the deal on all parties involved. The investor wanted to change the panel type, install cost, and electricity savings to the Districts. Given the significant material change and lack of trust at this point with the investor, GESS sought to secure a new investor for the project.

By mid-March 2011 GESS had secured another investor, and within weeks agreements had been renegotiated, the Districts had received Board approval, and the project was set to move forward. It was at this time that parties learned of a new Oregon Department of Revenue interpretation that third-party owned solar installations were not covered under the solar property tax exemption statute.

Solar equipment has been property tax exempt since 1976, and in 2007 amendments were made to the statute to ensure third-party-owned systems were indeed exempt from such property taxes. However, due to some poor verbiage in the statute, DOR now disagrees with the long held understanding of the statute and the amendment. There are a large set of problems surrounding this issue, but the result is that because of the change in interpretation and lack of understanding of how GESS/BSD/GSD's project would be assessed, our second investor walked away from the project. Like the issues with the BETC, the DOR interpretation scared away our investor. As such, GESS had to look for a new investor.

By mid-April 2011, Kenyon Energy was willing to invest in the project. However, before committing design funding for the sites, Kenyon wanted the property tax exemption issue resolved. As such, in April 2011, GSD requested an extension on two SPO allocations, which were set to expire on July 15, 2011, to provide us with adequate time to "fix" DOR's interpretation of the solar property tax exemption and install the projects. OPUC awarded Gladstone the extension and the projects continued to be on hold until the solar property tax exemption issue was resolved. After working closely with the legislature, House Bill 2563 was amended to remedy DOR's interpretation. The bill passed on June 29, 2011 and Governor signed it on August 2, 2011. Following the Legislature's action, work began in earnest to complete the design work for both school districts in July. The Gladstone School District projects were the first to be design and construction is beginning this month. We believe we have adequate time to meet the October 15, 2011 deadline for the GSD projects. The BSD project design process, having started slightly after GSD, causes some timing concerns. We are targeting construction start in September for the BSD projects, which leaves little room for potential delays that are out of our control such as weather and permitting. At this point in time BSD has signed agreements with the investor, the installer has placed orders for the equipment, and we are finalizing design. The project will be completed, but there is some concern about how long the local jurisdiction will take to review the plans and issue permits to complete construction. Also, these projects are thin-film solar projects, which cannot be installed in the rain. As such, there is concern we will hit rain as we near the end of September/beginning of October. Again, there is no question these projects will be placed in service, there is simply a concern related to potential delays that are out of our control such as weather and the local jurisdictions' permitting process.

Waiver Request:

The parties signed below request in conformance with OAR 860-084-000 (3), which states that "OPUC commission may issue a waiver of any of the rules governing the SPO for good cause," (emphasis added) that the Commission waive the 12-month requirement for the project's three October 2011 SPO allocations – Springville K-8, Capital Center, Elmonica Elementary - and allow PGE to provide an

extension to compensate for the time lost during pursuit of the legislative remedy. This will allow us to complete the design work, obtain building permits, and complete the installations prior to expiration of the SPO allocations for Beaverton School District.

On behalf of Beaverton School District, Kenyon Energy (the investor), and GESS (the developer), we request that OPUC utilize OAR 860-084-000 (3) to waive the 12-month requirement for the PGE's Solar Photovoltaic Pilot Program (a.k.a. SPO), granting these three reservations (Springville K-8, Capital Center, Elmonica Elementary) an extension until November 15, 2011. We, the undersigned, need help from OPUC to complete these important projects. Please let us know as soon as possible if this is something OPUC can consider.

It is our understanding that there can only be three individuals on the "service list". It is request that the following three people be part of the "service list" and be given updates whenever possible.

1. Richard Steinbrugge, Executive Administrator for Facilities, Beaverton School District, richard_steinbrugge@beaverton.k12.or.us, 503-591-4449
2. Christina Skellenger, Development Manager, Gerding Edlen Sustainable Solutions, christina.skellenger@gerdingedlen.com, 503-802-6616
3. Dennis Odden, Senior Vice President, Kenyon Energy, dennis.odden@kenyonenergy.com, 303-942-0901

Thank you for your consideration.

Sincerely,



Richard Steinbrugge, P.E.
Executive Administrator for Facilities
Beaverton School District



Christina Skellenger
Development Manager
Gerding Edlen Sustainable Solutions



Dennis Odden
Senior Vice President
Kenyon Energy