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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 13, 2011

Attention: Filing Center
Oregon Public Utility Commission
550 Capitol Street N.E., Suite 215
P.O. Box 2148
Salem, Oregon 97308-2148
Puc.filingcenter@state.or.us

Re: In the Matter of an Investigation into Determination of Resource Sufficiency Pursuant to
Order No. 06-538
Docket No. UM 1396
DOJ File No. 330-050-GN0604-08

Enclosed are an original and five copies of Oregon Department of Energy's OPENING
COMMENTS in the above-captioned matter for filing with the PUC today.

Sincerely,

for Janet L. Prewitt
Senior Assistant Attorney General
Natural Resources Section

Enclosures
JLP:jrs/#2771087
c: UM 1396 Service List

1 Renewable Portfolio Standard (“RPS”) requirements, ODOE cannot respond in depth at this
2 stage. ODOE recognizes the value of aligning renewable QF avoided cost determination with
3 avoidable renewable resources.

4 However, ODOE believes that before any firm conclusion can be reached in this docket, the
5 Oregon Public Utility Commission (“Commission”) should clarify the applicability of the
6 Federal Energy Regulatory Commission (“FERC”) ruling, 133 FERC ¶ 61,059 at ¶¶ 21-31
7 (2010) and its implementation, when determining an Oregon utility's avoided cost setting process
8 and compliance with PURPA.”
9

10 **1. Should the IRP Action Plan be used to identify when a renewable resource**
11 **acquisition would be avoided, or should a utility purchase of unbundled**
12 **renewable energy credits be the signal of Resource Deficiency period?**

13 Developing an avoided cost for renewable resources calls for a clear understanding of
14 what can constitute “renewable avoided costs.” Order 10-488 cites in the Party Comments on
15 Page 4, Oregon Public Utility Commission Staff (“Staff”)’s proposed definition for renewable
16 avoided costs (“renewable AC”) to include the “incremental costs to an electricity utility
17 associated with the *“renewable energy under consideration and the associated energy credits.”*”

18
19 While in concept ODOE supports the option for each utility to determine their own
20 avoided cost for a renewable resource (given the above proposed definition), ODOE questions
21 the ability of a utility’s IRP process or the IRP Action Plan to adequately capture all of the
22 essential components of the proposed definition of renewable AC. Furthermore, ODOE
23 questions whether a utility’s IRP or IRP Action Plan adequately reflects the progress of banking
24 bundled renewable energy credits (“RECs”) that also reflect the “incremental costs, type and
25 quantity” of renewable energy resources being currently acquired.
26

1 ODOE recognizes the merit of utility-based review to use the IRP Action Plan to assist
2 with estimation of the renewable AC. However, as explained above in I) A.1, determination of
3 a renewable AC based on estimated costs of renewable resources in the IRP Action Plan may not
4 provide an accurate sense of the value-added benefit of renewable resource acquisition
5 undertaken to comply with RPS goals.

7 The alternative option – using a “proxy” approach – is an equally compelling argument,
8 given the need to benchmark a large renewable resource even though resource-specific values
9 lost in adopting this singular approach. If however, large wind is considered as a proxy
10 renewable resource, the FERC ruling again, supports the need for detailed discussion on
11 determining the options, scope and means of assessing a benchmark scale for compensating other
12 renewable technologies.

14 **4. When should the renewable avoided cost stream reflect an avoided purchase of**
15 **unbundled REC?**

16 ODOE does not have a comment on this issue at this time and requests the ability to
17 comment on this issue at a later phase in the docket.

18 **B. Should the Commission require that a renewable QF be able to choose**
19 **among two avoided cost streams – the renewable avoided cost stream, and the non-**
20 **renewable avoided cost stream?**

22 ODOE supports the concept of choice and that a decision by a renewable QF to enter into
23 a power purchase agreement (that uses a specific avoided cost rate) be ideally long-term.
24 However, ODOE reiterates that the FERC ruling presents a legal issue about whether the
25 adoption of the requirement that allows the QF to choose between two avoided cost streams is
26

1 compatible with PURPA. Therefore, ODOE requests the Commission to consider legal briefings
2 on this issue as part of this docket proceeding.

3 **C. When is a planned resource acquisition avoidable?**

4 A planned resource acquisition should be considered avoidable up to the point the
5 resource is commissioned and in operation.

6 **II. Procedural Issues**

7
8 **A. Which of these issues should be the subject of evidentiary proceedings?**

9 Since most issues under consideration appear to be legal and policy considerations at this phase
10 in the docket, ODOE recommends the current proceedings to be generic or not subject to
11 evidentiary proceedings. ODOE supports an evidentiary proceeding if the details of how to
12 implement an actual renewable avoided cost rate or related mechanisms become the focus of this
13 docket.
14

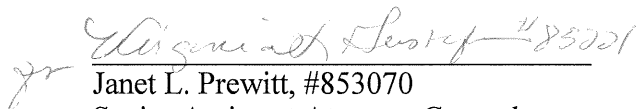
15 **B. Should the evidentiary proceedings be generic, or conducted on a utility-by-
16 utility basis?**

17 Depending on the issues, ODOE would support evidentiary proceedings to be generic or
18 utility-by-utility based. As noted in II A., ODOE would support a utility-by-utility evidentiary
19 proceeding, if the issues are relevant to each utility.
20

21 DATED this 13th day of May 2011.

22 Respectfully submitted,

23 JOHN R. KROGER
24 Attorney General

25  Janet L. Prewitt, #853070

26 Senior Assistant Attorney General
Of Attorneys for Oregon Department of Energy

UM 1396 Service List

W=Waive Paper service

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UM 1396 Service List (continued)


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1 CERTIFICATE OF SERVICE

2 I hereby certify that on May 13, 2011, I served the foregoing OREGON
3 DEPARTMENT OF ENERGY'S OPENING COMMENTS upon the persons named on the
4 service list, by mailing a full, true and correct copy thereof and to such persons waiving such
5 service by mail who were served at their e-mail address as listed on the service list.
6

7 DATED: May 13, 2011

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10 Senior Assistant Attorney General
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