JOHN R. KROGER Attorney General



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 <u>Puc.filingcenter@state.or.us</u>

 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,

Hergin a La Sustafra-

Janet L. Prewitt Senior Assistant Attorney General Natural Resources Section

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

| 1 | BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON |
|----------|---|
| 2 | UM 1396 |
| 3 | In the Matter of Public Utility Commission of Oregon Investigation into Determination of OREGON DEPARTMENT OF ENERGY'S |
| 4 | Resource Sufficiency, pursuant to Order No. OPENING COMMENTS 06-538. |
| 5 | |
| 6 | Deeleground |
| 7 | Background |
| 8 | The Oregon Department of Energy ("ODOE") appreciates the opportunity to file comments |
| 9 | in this docket, pursuant to Order 10-488 and a Decision Outline provided in Appendix A. |
| 10 | ODOE's focus in this docket is to encourage the development of clean renewable energy |
| 11 | resources in ways that are competitive, yet predictable. ODOE recognizes that Order 10-488 |
| 12 13 | examines how to determine resource sufficiency for Portland General Electric ("PGE") and |
| 13 | PacifiCorp, dba Pacific Power ("PAC"), for purposes of avoided cost assessments for payments |
| 15 | to Qualifying Facilities ("QFs") based on their respective Integrated Resource Planning ("IRPs") |
| 16 | proceedings. |
| 17 | I. Substantive Issues |
| 18 | ODOE supports the Decision framework that calls for avoided cost calculations to be |
| 19 | consistent with a utility's resource sufficiency/deficiency period. Provided below are responses |
| 20 21 | to the questions posed in Appendix A of Order 10-488. |
| 22 | A. Should the Commission require that each utility determine its avoided cost for a |
| 23 | renewable resource? If so, how should the Commission decide what renewable resource |
| 24 | should be avoided and at what cost? |
| 25 | While ODOE recognizes the evolution of the prior proceedings in this docket and the |
| 26 | effort of the current docket to address the interplay of an IRP and related Action Plan with |
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Renewable Portfolio Standard ("RPS") requirements, ODOE cannot respond in depth at this 1 stage. ODOE recognizes the value of aligning renewable QF avoided cost determination with 2 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 Should the IRP Action Plan be used to identify when a renewable resource 1. 10 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

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| 1 | Therefore, ODOE encourages the Commission to undertake future discussions to explore | | |
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| 2 | ways to use the RPS Implementation plan in conjunction with the IRP or IRP Action Plan to | | |
| 3 | ensure a utility's resource planning efforts accurately reflect the full avoided costs of integrating | | |
| 4 | an unplanned renewable QF into its system. | | |
| 5 | Regarding whether unbundled renewable credits can be a signal of a utility's resource | | |
| 6 | deficiency period, it is not yet clear what the acquisition of unbundled RECs signifies. ODOE | | |
| 7 | also seeks to highlight that the current REC market is not only fluid but the Commission has not | | |
| 8 9 | yet completed an RPS compliance proceeding which may better address this question. | | |
| 10 | ODOE reiterates its goal of a stable RPS compliance environment that preferably | | |
| 11 | promotes the use of bundled renewable energy credits by Oregon utilities. | | |
| 12 | 2. Should out of state RPS be taken into account when determining when a | | |
| 13 | renewable resource can be avoided by a purchase from an Oregon QF? | | |
| 14 | ODOE is unable to comment at this stage of the docket. | | |
| 15 | 3. Should the renewable avoided cost be based on the estimated cost of renewable | | |
| 16 | resources identified in IRP Action Plan, or should the Commission use a "proxy" | | |
| 17 18 | resource approach similar to the current approach used by PGE and PacifiCorp | | |
| 19 | for standard avoided costs? | | |
| 20 | ODOE supports methodologies that set an avoided cost that reflect the actual costs, | | |
| 21 | including the additional costs or environmental attributes that a renewable QF can bring to the | | |
| 22 | | | |
| 23 | electric system. These costs or values include energy, capacity, reliability, line losses, deferred | | |
| 24 | system upgrades and other environmental attributes. Using the resources identified in the IRP | | |
| 25 | Action Plan or identifying a proxy resource may not accurately reflect such a fuller range of | | |
| 26 | costs that are typically avoided by a renewable resource. | | |

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| 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 4 | a renewable AC based on estimated costs of renewable resources in the IRP Action Plan may not | | | |
| 5 | provide an accurate sense of the value-added benefit of renewable resource acquisition | | | |
| 6 | 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 13 | renewable technologies. | | | |
| 15 | 4. When should the renewable avoided cost stream reflect an avoided purchase of | | | |
| 14 | 4. When should the renewable avoided cost stream reflect an avoided purchase of | | | |
| 14 15 | 4. When should the renewable avoided cost stream reflect an avoided purchase of unbundled REC? | | | |
| | unbundled REC? | | | |
| 15 | unbundled REC? ODOE does not have a comment on this issue at this time and requests the ability to | | | |
| 15 16 | unbundled REC? ODOE does not have a comment on this issue at this time and requests the ability to comment on this issue at a later phase in the docket. | | | |
| 15 16 17 | unbundled REC? ODOE does not have a comment on this issue at this time and requests the ability to comment on this issue at a later phase in the docket. B. Should the Commission require that a renewable QF be able to choose | | | |
| 15 16 17 18 | unbundled REC? ODOE does not have a comment on this issue at this time and requests the ability to comment on this issue at a later phase in the docket. | | | |
| 15 16 17 18 19 | unbundled REC? ODOE does not have a comment on this issue at this time and requests the ability to comment on this issue at a later phase in the docket. B. Should the Commission require that a renewable QF be able to choose | | | |
| 15 16 17 18 19 20 | unbundled REC? ODOE does not have a comment on this issue at this time and requests the ability to comment on this issue at a later phase in the docket. B. Should the Commission require that a renewable QF be able to choose among two avoided cost streams – the renewable avoided cost stream, and the non- | | | |
| 15 16 17 18 19 20 21 | unbundled REC? ODOE does not have a comment on this issue at this time and requests the ability to comment on this issue at a later phase in the docket. B. Should the Commission require that a renewable QF be able to choose among two avoided cost streams – the renewable avoided cost stream, and the non-renewable avoided cost stream? | | | |
| 15 16 17 18 19 20 21 22 | unbundled REC? ODOE does not have a comment on this issue at this time and requests the ability to comment on this issue at a later phase in the docket. B. Should the Commission require that a renewable QF be able to choose among two avoided cost streams – the renewable avoided cost stream, and the non-renewable avoided cost stream? ODOE supports the concept of choice and that a decision by a renewable QF to enter into | | | |
| 15 16 17 18 19 20 21 22 23 | unbundled REC? ODOE does not have a comment on this issue at this time and requests the ability to comment on this issue at a later phase in the docket. B. Should the Commission require that a renewable QF be able to choose among two avoided cost streams – the renewable avoided cost stream, and the non-renewable avoided cost stream? ODOE supports the concept of choice and that a decision by a renewable QF to enter into a power purchase agreement (that uses a specific avoided cost rate) be ideally long-term. | | | |

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| 1 | compatible with PURPA. Therefore, ODOE requests the Commission to consider legal briefings | | |
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| 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 12 | 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 | | |
| 14 | docket. | | |
| 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 | DATED this 13 th day of May 2011. | | |
| 21 22 | Respectfully submitted, | | |
| 22 | JOHN R. KROGER | | |
| 23 24 | Attorney General | | |
| 25 | Janet L. Prewitt, #853070 | | |
| 26 | Janet L. Prewitt, #853070 Senior Assistant Attorney General Of Attorneys for Oregon Department of Energy | | |

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2 W=Waive Paper service

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| | | | |

- 25 26
- Page 6 –SERVICE LIST #2771131

UM 1396 Service List (continued)

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| | Dage 7 SEDVICE LIST | | |

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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 5 | service list, by mailing a full, true and correct copy thereof and to such persons waiving such | | |
| 6 | service by mail who were served at their e-mail address as listed on the service list. | | |
| 7 | DATED: May 13, 2011 | | |
| 8 | Ungenia R. Suste for " 85001 | | |
| 9 | Janet L. Prewitt, OSB #853070 | | |
| 10 | Senior Assistant Attorney General | | |
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