



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 27, 2007

VIA FACSIMILE AND HAND DELIVERY

Public Utility Commission of Oregon
Attention: Filing Center
550 Capitol Street NE, Suite 215
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Salem, OR 97301-2148
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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 Final
Comments 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/GENW0882.DOC

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 521

In the Matter of a Rulemaking to Adopt) **OREGON DEPARTMENT OF**
Rules Related to Small Generator) **ENERGY'S FINAL COMMENTS**
Connection)
_____)

The Oregon Department of Energy submits these final comments on the Rules Related to Small Generator Connection.

- 1. The use of third party contractors (860-082-0005 (3)(b)).** ODOE supports the Energy Trust of Oregon’s proposal to allow the use of third party contractors so as to meet the stated timelines and not allow unilateral waivers of such time lines. ODOE agrees with PGE’s oral comment during the November 13, 2007 Hearing (Hearing) that a review and inspection process by the Public Utility is desirable.
- 2. Modifications (860-082-0020 (5)):** Diane Broad (TriAxis) stated during the Hearing that the Interconnection Customer doesn’t always know what kind of generator will be installed until late in the project development process. This is currently particularly true for wind turbines, in part because of the shortage of turbines. While any such change from the original equipment proposed in good faith may require additional technical studies, a new application should not be required nor should the Interconnection Customer loose its queue position.
- 3. Isolation switch (860-082-0020 (9)):** ODOE supports Staff’s position that an isolation device should **not** be required for small systems with a total output of 30 amperes or less connected to secondary lines with inverter-based equipment. ODOE supports the use of

1 the meter base for such isolation device. ODOE also supports Staff's proposed rule that a
2 lockable draw-out type circuit breaker with provision for padlocking at the draw-out position
3 can be considered an isolation device.
4

5 **4. Cost Responsibility (860-082-0030 (4) Interconnection Equipment):**

6 (a) John Lowe suggested during the Hearing that the Interconnection Customer
7 should have the option to own and operate as many of the interconnection
8 facilities as possible provided safety and system reliability are not compromised.
9 Justification for such provision is that it will generally lead to lower cost to the
10 Interconnection Customer. ODOE supports Mr. Lowe's recommendation.

11 (b) ODOE also supports John Lowe's proposal that the Interconnection Customer
12 should pay the utility's **actual** operating and maintenance cost associated with the
13 interconnection facility. Mr. Lowe explained the justification for such rule in the
14 Hearing. Based on his extensive experience, Mr. Lowe predicts that such rule
15 will dramatically reduce the cost to the Interconnection Customer (at least for the
16 first 10 to 20 years) and he also mentioned that it would avoid having to deal with
17 the utility's basis for the average system cost methodology.
18

19 **5. Insurance (860-082-0035):** ODOE agrees with Staff's proposal to exclude systems of
20 200 kW or less from the liability insurance requirement. PacifiCorp argues that the
21 discussions under UM1129 were primarily focused on financial risk and not
22 electrocutions, etc. However, as shown in OPUC 1129 Order No. 05-584, bottom page
23 48, top of page 49, PacifiCorp did use the argument of fire, electrical surges and
24 electrocution:

25 "PacifiCorp asserts that indemnity clauses and insurance coverage are
26 complementary and should be mutually included in QF contracts. PacifiCorp
states that absent insurance coverage, QFs may lack the financial resources to
satisfy indemnity obligations which subjects ratepayers to inappropriate risk.

Observing that the risks of interconnection between a utility and a QF include fire, electrical surges and electrocution, ...”

Furthermore, the OPUC in its resolution statement on page 51 concludes:

“... We also encourage the electric utilities to work, in the coming months, with QFs that have a design capacity of 200 kW or less to determine whether reasonably priced general liability insurance is available. If the utilities find that such insurance is available, parties may raise the issue again in the second phase of this proceeding.”

ODOE is not aware of any utility that has come forward to date with such information on reasonable priced general liability insurance.

6. Record keeping and reporting (860-082-0060): As stated earlier, annual reporting in an easily accessible format will provide a record that can be used to monitor the effectiveness of these rules. While ODOE approves of Staff’s listing of the requirements for such reporting, ODOE supports the Energy Trust of Oregon’s justification to require additional information as listed in its November 8, 2007 written comments.

7. Metering and Monitoring (860-082-0065):

(a) Based on Diane Broad (TriAxis) and Paul Woodin’s (Community Renewable Energy Association) comments during the Hearing, as well as other comments received by ODOE, the **cost of telemetry** continues to be an important issue for developers of distributed electricity generation. If the rules on telemetry do not protect small business against gold plating by the utilities, the financial impact on these small businesses can be substantial. ODOE therefore objects to PacifiCorp’s comments dated November 8, 2007, in which it suggests to add “where practicable” and “generally” (Comments, page 8). This leaves too much flexibility in the control of the utilities. If the Staff’s proposed telemetry does not work in a specific location, the burden should be placed on the utility to petition the Commission to get a waiver and to get approval for the utility’s proposed

1 telemetry package from the Commission, upon a showing that the package proposed
2 by the utility is necessary to protect the utilities system.

3
4 (b) For the same reason as stated above, ODOE objects to PacifiCorp’s proposal to
5 allow the Public Utility to require that metering equipment be capable of being
6 interrogated telephonically (Comments, page 7). The burden should be placed on
7 the utility to petition the Commission to get approval for such more expensive
8 metering equipment.

9
10 (c) ODOE supports the proposal that the Interconnection Customer should pay the
11 utility’s **actual** operating and maintenance cost associated with the metering and
12 telemetry equipment. In its November 8 Comments, PacifiCorp proposed that the
13 Interconnection Customer should pay “the actual cost of such metering and its
14 maintenance” (Comments, page 6). John Lowe, as expressed during the Hearing,
15 also supports such rule.

16
17 (d) Sorensen Engineering, in its recommendations to be filed today, argues that the
18 threshold for the requirement for telemetry should be eliminated for all
19 distribution line interconnections or raised from 3 MW to 5 MW. ODOE supports
20 this recommendation.

21
22 **8. Dispute resolution (860-082-0080):** In previous comments ODOE has strongly
23 supported the adoption of a dispute resolution mechanism as an alternative to the
24 Commission’s complaint process. ODOE does not have any additional comments on the
25 arbitration process contained in the proposed rules. However, ODOE has also requested
26 that the Commission clarify its complaint process so that a small generator can

1 adequately judge the cost of participating in that process. See Oregon Department of Energy
2 Comments on Proposed Rules, page 2. ODOE remains concerned that the Commission’s
3 complaint process could have a disproportionate impact on small generating facilities, which
4 generally are “small businesses” as defined in ORS 183.310(10). ODOE believes that the
5 costs of participating in the complaint process, as well as the length of the process, could be a
6 disincentive for the small generators to pursue legitimate interconnection issues. In light of
7 this ODOE requests that the Commission consider adopting a specific complaint process
8 applicable only to small generator interconnections, modeled on the Commission’s rules for
9 mediation and arbitration under the Telecommunications Act, OAR 860-016-0050. A draft
10 of proposed rules is attached as Appendix 1.

11 In summary, ODOE proposes adoption of rules as outlined below. ODOE believes
12 that these proposed changes will likely result in a decrease in the financial impacts of these
13 rules for small businesses that develop distributed renewable energy projects.


- 14 • Either party may file a complaint, but only after a good faith attempt to resolve the
15 dispute, and only after notice of intent to file a complaint to defendant at least 10 days
16 before filing complaint.
- 17 • The complaint must demonstrate the good faith attempt to resolve the dispute and
18 include a copy of the notice of intent.
- 19 • The complaint must include a statement of facts or law supporting position in dispute,
20 including either written testimony or affidavits supporting the facts and citations
21 supporting legal position, and a statement of the specific resolution sought.
- 22 • An answer responding to allegations in the complaint must be filed within 10
23 business days, also including either written testimony and affidavits and any
24 applicable defenses.
- 25 • The Complainant can file a reply within 5 business days.

- The ALJ holds pre-hearing conference and determines further proceedings, including whether a technical master is needed to resolve the issues; whether to permit additional discovery, and the schedule for the proceeding.
- Additional discovery is available only upon request to the ALJ on a demonstration that the request is relevant to the discovery and that the requesting party cannot obtain the information in any other way.
- Either party can request an expedited schedule.
- Intervention by third parties is discouraged and is allowed only by request to the ALJ.

DATED this 27th day of November 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of November, 2007, I copied the foregoing OREGON DEPARTMENT OF ENERGY'S FINAL COMMENTS, electronically to 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 27th day of November, 2007.

 #05511
Janet L. Prewitt, #85307 *for* ✓
Assistant Attorney General

Appendix 1 – Proposed Special Complaint Process Rules for Small Generator Interconnection:

(1) The Public Utility, Interconnection Customer or Applicant may file a complaint with the Commission as provided in OAR 860-013-0015 at any time during the negotiation process or for enforcement of an interconnection agreement, subject to the following process:

(a) At least ten days prior to filing a complaint pursuant to these rules with the Commission, complainant must give written notice to defendant and the Commission that complainant intends to file a complaint. The notice must identify the specific issues in dispute. The notice must be served as specified in (c) and (d) below.

(b) The Complaint must contain the following:

(i) A statement of specific facts demonstrating that the complainant conferred with the other party in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

(ii) A copy of a written notice to the other party indicating that the complainant intends to file a complaint to resolve disputed issues or for enforcement of the interconnection agreement, as described in subsection (1)(a);

(iii) If applicable, a copy of the interconnection agreement or the portion of the interconnection agreement that the complainant contends was or is being violated. If a copy of the entire interconnection agreement is provided, complainant must specify provisions at issue;

(iv) A statement of the facts or a statement of the law supporting the complainant's position on the disputed issues or demonstrating the failure to comply with the agreement and stating complainant's entitlement to relief. Statements of facts must be supported by written testimony or one or more affidavits, made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits;

(c) Complainant must serve a copy of the complaint on defendant the same day the complaint is filed with the Commission. Service may be by fax or overnight mail, provided the complaint arrives at defendant's location on the same day the complaint is filed with the Commission. Service by fax must be followed by a hard copy the next day in overnight mail; and

(d) Complainant must serve a copy of the complaint for enforcement on defendant's authorized representative, attorney of record, or designated agent for service of process.

(2) The Defendant may file an answer to the complaint no later than 10 business days after the complaint is filed. The answer must comply with the following:

- (a) The answer must contain a statement of specific facts demonstrating that the defendant conferred with complainant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;
- (b) The answer must respond to each allegation set forth in the complaint and must set forth all affirmative defenses;
- (c) The answer must contain a statement of the facts or a statement of the law supporting defendant's position. Statements of facts must be supported by written testimony or one or more affidavits, made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits;
- (d) The answer may designate one additional person to receive copies of other pleadings and documents;
- (e) Any allegations raised in the complaint and not addressed in the answer are deemed admitted; and
- (f) Defendant shall file with the answer, as a separate document, a response to any motion filed by complainant, and any motion defendant wishes to file that seeks affirmative relief. Nothing in this subsection shall preclude defendant from filing a motion subsequent to the filing of the answer if the motion is based upon facts or circumstances unknown or unavailable to defendant at the time the answer was filed.

(3) Service of the answer. The answer must be served as follows:

- (a) Defendant must file a copy of the answer with the Commission within ten business days after service of the complaint for enforcement;
- (b) Defendant must deliver a copy of the answer to complainant the same day the answer is filed with the Commission, in the manner set forth in subsections (3)(b) and (3)(c) above;
- (c) Defendant must serve a copy of the answer on the complainant's attorney, as listed in the complaint, or the person who signed the complaint, if complainant has no attorney.

(4) The reply. Complainant must file a reply to an answer that contains affirmative defenses within five business days after the answer is filed. The reply must be served in the manner set forth in subsections (1)(c) and (1)(d) above. If the reply contains new facts or legal issues not raised in the complaint, the reply must also comply with

subsection (1)(b)(iv) above. If new legal issues are raised in a reply the defendant may respond to those new issues within 5 days after the reply is filed.

(5) Cross-complaints or counterclaims. A cross-complaint or counterclaim shall be answered within the ten-day time frame allowed for answers to complaints.

(6) Conference. The Commission will conduct a conference regarding each complaint for enforcement of an interconnection agreement.

(a) The Administrative Law Judge (ALJ) will, within five business days after the answer is filed, schedule a conference, to be held as soon thereafter as is practicable. At the discretion of the ALJ, the conference may be conducted by telephone;

(b) Based on the complaint and the answer, all supporting documents filed by the parties, and the parties' oral statements at the conference, the ALJ will determine whether the issues raised in the complaint can be determined on the pleadings and submissions without further proceedings or whether further proceedings are necessary. If further proceedings are necessary, the ALJ will establish a procedural schedule. The procedural schedule may include a mandatory mediation session. Either party may request that a person other than the ALJ preside over the mediation. Nothing in this subsection is intended to prohibit the bifurcation of issues where appropriate;

(c) In determining whether further proceedings are necessary, the ALJ will consider, but is not limited to, the positions of the parties; the need to clarify evidence through the examination of witnesses; the complexity of the issues; the need for prompt resolution; and the completeness of the information presented;

(d) The ALJ may make oral rulings on the record during the conference on all matters relevant to the conduct of the proceeding.

(7) Discovery. A party may file with the complaint or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue.

(8) Expedited procedure. When warranted by the facts, the complainant or defendant may file a motion requesting that an expedited procedure be used. The moving party shall file a proposed expedited procedural schedule along with its motion. The ALJ will schedule a conference to be held as soon after the motion is filed as is practicable, to determine whether an expedited schedule is warranted. If a determination is made that an expedited procedure is warranted, the ALJ shall establish a procedure that ensures a prompt resolution of the merits of the dispute, consistent with due process and other relevant considerations. The ALJ shall consider, but is not bound by, the moving party's proposed expedited procedural schedule;

(9) Formal discovery procedures will be allowed only to the extent deemed necessary by the ALJ. Parties will be required to cooperate in good faith in voluntary, prompt, and informal exchanges of information relevant to the matter. Unresolved discovery disputes

will be resolved by the ALJ upon request of a party. The arbitrator will order a party to provide information if he/she determines the requesting party has a reasonable need for the requested information and that the request is not overly burdensome.

(10) Only the two negotiating parties will have full party status. The arbitrator may confer with Staff for assistance throughout the arbitration process. If Staff assistance is desired, the arbitrator will notify (by telephone or other means) the parties at least 24 hours before the consultation with Staff. The parties may attend or listen to the consultation and may respond in a manner allowed by the arbitrator.

(11) For disputes that raise primarily technical interconnection issues, and on request of either party or on the ALJ's own motion, the ALJ may designate a technical master to assist in resolution of such disputes. The findings and recommendations of the technical master shall be included in the record of the complaint.