

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

December 14, 2009

Filing Center
Public Utility Commission of Oregon
550 Capitol St. NE – Suite 215
PO Box 2148
Salem, OR 97308-2148

Re: *Investigation Into If Avoided Cost Rate Is Consistent With Order 05-584*
PUC Docket No.: UM 1442
DOJ File No.: 330-030-GN0402-09

Dear Filing Center:

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

Sincerely,

Janet L. Prewitt
Assistant Attorney General
Natural Resources Section

Enclosure
JLP:mme/#1771699
c: UM 1442 Service List

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1442

In the Matter of the)
Investigation Into If Avoided Cost) OREGON DEPARTMENT OF
Rate Is Consistent With Order 05-584) ENERGY'S OPENING BRIEF
_____)

The Oregon Department of Energy ("ODOE") submits these comments as our Opening Brief in Oregon Public Utility Commission (PUC) Docket Number UM 1442. These comments support the State of Oregon's policy and ODOE's mission to ensure the supply of reliable and affordable sources of renewable energy. ODOE recognizes that Pacific Power & Light complied with the existing process for Avoided Cost rate filing (as set forth in UM 1129 docket); the outcome of that filing was appropriate and duly followed the identified process. We also recognize that recent market events may require a fresh look at the methodology to assure current and future Qualifying Facilities ("QFs") of a stable and predictable financial environment.

The recent economic downturn and crisis in the financial markets, coupled with fuel price volatility, and financial uncertainty, are impacting current and future QFs financial planning. Should Oregon PUC initiate a separate and generic investigation into the current Avoided Cost rate determination process (inputs used and methodology), ODOE would support such an effort for reasons set forth below.

1. Review of the Methodology

ODOE suggests that in light of increased market volatility that tends to impact rate setting, and alternative suggestions from other intervenors on how to determine Avoided Costs, any future review of the current procedure of Avoided Cost rate setting (inputs and methodology) should at least examine the following issues:

///

A) Integrated Resource Plan (IRP) Based Rate Setting

A review of the process, if undertaken, should assess whether a rate setting timeline based on the IRP process conflicts with a typical Avoided Cost rate filing (2-year) process and consequential impact to QF project development.

ODOE would support exploring other ways of pricing QF power that address the unintended effect of market volatility and the consequent conflict with the inherent time-lag associated with project development by QFs.

Of further interest to ODOE is the potential market uncertainties that affect prospective QF developments or expansions as they participate in ODOE's Business Energy Tax Credit ("BETC") program, ORS 469.185-.225, Small-Scale Loan Energy Program ("SELP"), ORS 470, and Community Renewable Energy Fund (CREF). In essence, issues of IRP-based rate setting, its timing versus the typical 2-year Avoided Cost rate filing and related impact on project development and contract setting are matters to assess, should a separate investigation occur.

B) Review of Other States' Methodologies

ODOE is also undertaking a review of other states' efforts to deal with similar issues and evaluate if any other approaches deserve assessment from Oregon's perspective. We would support any similar efforts if undertaken by the PUC Staff.

C) Renewable Portfolio Standard (RPS) Based Avoided Cost Setting For QFs

ODOE also believes that any investigation of RPS based Avoided Cost setting should explore the potential for a differentiated or tiered Avoided Cost rate under which a QF would have an option to sell Renewable Energy Certificates ("REC") that could be used by an electric company to comply with the Oregon RPS.

2. Reduced Financial Uncertainty for Current and Future QF Development

For ODOE to undertake its role as "facilitator and financier" for prospective QF developments or expansions – [Order 05-584, p. 20], resolution of the issues identified in

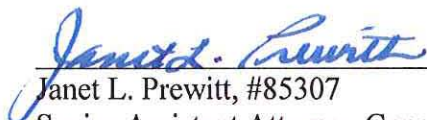
this brief that impact the planning and development process of contract setting and related financing plans (that typically vary between one and five years) are critical.

Any review should consider the impacts of financial assistance that the State of Oregon through ODOE provides through the SELP and other incentive measures to ensure the Avoided Cost methodology and rates will not negatively impact current and future financial planning process.

Dated this 14th day of December 2009

Respectfully submitted,

JOHN R. KROGER
Attorney General

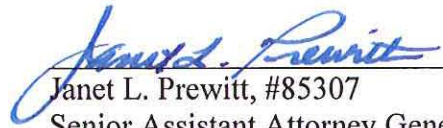
A handwritten signature in blue ink, reading "Janet L. Prewitt", is written over a horizontal line.

Janet L. Prewitt, #85307
Senior Assistant Attorney General
Of Attorneys for Oregon
Department of Energy

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December 2009, I served the foregoing OREGON DEPARTMENT OF ENERGY'S OPENING BRIEF upon the persons named on the service list, by mailing a full, true and correct copy thereof to such persons waiving such service by mail who were served at their e-mail address as listed on the service list.

DATED: December 14, 2009


Janet L. Prewitt, #85307
Senior Assistant Attorney General

UM 1442 Service List

<p>Randy Crockett D R Johnson Lumber Company PO Box 66 Riddle, OR 97469 randyc@drjlumber.com</p>	<p>Melinda J. Davison (Confidential) Davison Van Cleve PC 333 SW Taylor – Ste. 400 Portland, OR 97204 mail@dvclaw.com</p>
<p>Ed Durrenberger (Confidential) Oregon Public Utility Commission PO Box 2148 Salem, OR 97308-2148 ed.durrenberger@state.or.us</p>	<p>Tom Elliott (Confidential) Oregon Department of Energy 625 Marion Street NE Salem, OR 97301-3737 tom.elliott@state.or.us</p>
<p>J. Richard George Portland General Electric Company 121 SW Salmon St. 1WTC1301 Portland, OR 97204 richard.george@pgn.com</p>	<p>Thomas M. Grim Cable Huston Benedict et al 1001 SW Fifth Ave. Ste. 2000 Portland, OR 97204-1136 tgrim@cablehuston.com</p>
<p>Doug Kuns Portland General Electric 121 SW Salmon St., 1WTC0702 Portland, OR 97204 doug.kuns@pgn.com</p>	<p>David A. Lokting Stoll Berne 209 SW Oak St., Ste. 500 Portland, OR 97204 dlokting@stollberne.com</p>
<p>Jeffrey S. Lovinger Lovinger Kaufmann LLP 825 NE Multnomah Ste. 925 Portland, OR 97232-2150 lovinger@lklaw.com</p>	<p>Thomas H. Nelson (Confidential) Thomas H. Nelson Attorney at Law PO Box 1211 Welches, OR 97067-1211 nelson@thnelson.com</p>
<p>Oregon Dockets PacifiCorp Oregon Dockets 825 NE Multnomah Ste. 2000 Portland, OR 97232 oregondockets@pacificorp.com</p>	<p>Renewable Energy Coalition jravensanmarcos@yahoo.com</p>
<p>Renewable Energy Coalition renerco@thnelson.com</p>	<p>Peter J. Richardson (Confidential) Richardson & O'Leary PLLC PO Box 7218 Boise, ID 83707 peter@richardsonandoleary.com</p>

<p>Irion A. Sanger (Confidential) Davison Van Cleve 333 SW Taylor – Ste. 400 Portland, OR 97204 ias@dvclaw.com</p>	<p>Vijay A. Satyal (Confidential) Oregon Department of Energy 625 Marion Street NE Salem, OR 97301-3737 vijay.a.satyal@state.or.us</p>
<p>Michael T. Weirich (Confidential) Department of Justice Regulated Utility & Business Section 1162 Court St. NE Salem, OR 97301-4096 michael.weirich@doj.state.or.us</p>	<p>Jordan A. White Pacific Power & Light 825 NE Multnomah Ste. 1800 Portland, OR 97232 jordan.white@pacificorp.com</p>
<p>Paul R. Woodin Community Renewable Energy Association 1113 Kelly Ave. The Dalles, OR 97058 pwoodin@communityrenewables.org</p>	