BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1725

In the Matter of IDAHO POWER COMPANY Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination.	STAFF REPLY BRIEF

I. Introduction.

This docket concerns the Commission's policies implementing the Public Utilities Regulatory Policy Act (PURPA). Idaho Power asks the Commission to (1) lower the eligibility cap for standard contracts ("Eligibility Cap") for solar and wind qualifying facilities from 10 MW to 100 kW, (2) shorten the term of all non-standard (negotiated) contracts to no more than two years, and (3) authorize Idaho Power to update avoided cost prices to take into account a new start date for Idaho Power's next resource deficiency period. Staff supports Idaho Power's request to lower the Eligibility Cap for standard contracts and its request to update avoided cost prices to take into account a new start date for its next deficiency period. Staff opposes Idaho Power's request to shorten the term of non-standard contracts to no more than two years.

II. Argument.

A. The Commission should not shorten the period of non-standard contracts.

1. A 20-year contract is appropriate because it balances interests of ratepayers and QFs.

As noted in Staff's prehearing brief, the Commission decided in Order No. 07-360 that QFs entering into non-standard contracts have the unilateral right to select a contract term of up to 20 years.[1] The Commission's decision regarding the contract term was based on a

[1] Order No. 07-360 at 11-12.

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stipulation entered into by the three investor-owned utilities, Staff, and other parties.[2] The Commission did not discuss the rationale underlying its decision to adopt the stipulation in Order No. 07-360.[3] However, the Commission discussed the balancing of interests that underlies its decision to provide eligible QFs with the option of a 20-year standard contract in Order No. 05-584.[4]

In Order No. 05-584, the Commission noted that the "fundamental objective" when establishing the maximum term of a standard contract is to find a "term that enables eligible QFs to obtain adequate financing, but limits the possible divergence of standard contract rates from actual avoided costs."[5] The Commission concluded that a 20-year contract with fixed costs for the first 15 years balanced the interests of QFs in obtaining adequate financing and the risk to ratepayers associated with actual avoided costs diverging from forecasted avoided costs.[6]

Although not expressly stated by the Commission, Staff assumes that the Commission's objective when establishing the term of non-standard contracts for which QFs are automatically eligible is the same as it is for QFs entering into standard contracts – to balance between the QFs' need to obtain financing and a contract term that limits the potential for actual avoided costs to diverge from forecasted avoided costs.

Idaho Power presents information regarding the potential harm of non-standard contracts with terms of 20 years. However, there is little if any evidence in the record to show that a term less than 20 years would be sufficient to allow QFs to obtain adequate financing. In other words, the Commission concluded in 2005 that guaranteeing QFs the option of a 20-year

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[2] Order No. 07-360 at 11-12.

[3] Order No. 07-360 at 11-12.

[4] Order No. 05-584 at 17.

[5] Order No. 05-584 at 17.

[6] Order No. 05-584 at 17.

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contract term should allow QFs to obtain financing.[7] No persuasive evidence shows that the option for a 20-year contract term is no longer needed for this purpose.

2. A 20-year non-standard contract is an appropriate policy choice, but is not required by statute.

The Community Renewable Energy Association ("CREA"), the Renewable Energy Coalition ("REC"), the Northwest Energy Coalition ("NWEC"), and Renewable Northwest argue the Commission does not have authority to grant Idaho Power's request to shorten the term of non-standard contracts to two years because ORS 758.525 requires that utilities offer non-standard contracts with a fixed-price term of at least 20 years.[8]

Although Staff agrees with these parties that the Commission should reject Idaho Power's request to shorten the term of non-standard contracts, Staff disagrees that the Commission is compelled to do so by statute. Instead, Staff concludes that the policy reasons for allowing QFs to unilaterally select a non-standard contract with a term of 20 years have not changed since the Commission adopted the requirement in 2007 and that keeping the length of non-standard contracts at 20 years, with a fixed-price term of 15-years, is an appropriate exercise of the Commission's discretion.

The assertion of CREA, REC, NWEC, and Renewable Northwest that the Commission must require contracts with a fixed-price term of at least 20 years is based on their interpretation of ORS 758.525. ORS 758.525(1) provides that every two years, "electric utilities shall prepare, publish and file with the Public Utility Commission a schedule of avoided costs equaling the utility's forecasted incremental cost of electric resources over at least the next 20 years." And, ORS 757.585(2) provides that "at the option of the qualifying facility" the prices for sales under PURPA will be "(a) The avoided costs calculated at the time of delivery; or (b) the projected avoided costs calculated at the time the legal obligation to purchase the energy or energy and

[7] Order No. 05-584 at 17.

[8] Renewable Northwest & NW Energy Coaliation Prehearing Brief 3-4, Pre-hearing Brief of the Community Renewable Energy Association 11-16, Renewable Energy Coalition Brief 8-10.

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capacity is incurred." CREA, et al., extrapolate from these two provisions the requirement that QFs choosing to enter into a contract with avoided costs prices based on the utility's projected avoided costs are statutorily entitled to fixed avoided cost prices for a term that is as long as the utilities' avoided cost projections.[9]

The statutory construction argument presented by CREA, et al., is not persuasive. ORS 758.525 is silent as to the length of PURPA contracts. Inserting a limitation on the Commission's authority to determine contract length would require the Commission to insert language into the statute that is not there. The Oregon legislature has prohibited reviewing courts from inserting language into a statute when determining the meaning of the statute. ORS 174.010 provides that "[i]n the construction of a statute, the office of a judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted or to omit what has been inserted[.]"[10] The Commission should also follow this statutory prohibition.

CREA, et al., recognize that ORS 758.525 does not include an express requirement regarding contract length and therefore rely on select legislative history regarding the 1983 legislation codified as ORS 758.525 (House Bill 2320) to shore up their argument that ORS 758.525 requires a fixed-price term of at least 20 years for PURPA contracts. However, the legislative history does not offer convincing evidence the legislature intended to limit the Commission's authority to determine the length of PURPA contracts.

CREA, REC, Renewable Northwest and NWEC all rely on an excerpt of Representative Bill Bradbury's testimony to the 1983 Senate Committee on Energy and the Environment and on an exhibit presented by the Oregon Department of Energy to the House Committee on Energy

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[9] Pre-hearing Brief of the Community Renewable Energy Association 13, Renewable Energy Coalition Brief 8, and Renewable Northwest & NW Energy Coalition Prehearing Brief 3.

[10] *See also State v. Patton*, 237 Or App 46, 50-51, 238 P3d 439 (2010), *rev den*, 350 Or 131 (2011) ("We are prohibited, by statutory command and by constitutional principle, from adding words to a statute that the legislature has omitted.")

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and Environment to show that the legislature intended ORS 758.525 to require that utilities enter into 20-year contracts with QFs.[11] CREA, et al.'s reliance on these pieces of legislative history is misplaced.

First, Representative Bradbury's testimony to the Senate Committee on Energy and Environment regarding House Bill 2320 is similar to the text of ORS 757.525 in that it does not clearly establish a legislative intent to limit the Commission's authority over the term of PURPA contracts. Representative Bradbury described the requirement to submit forecasted avoided cost prices, and the requirement that utilities must be willing to enter into contracts based on those avoided cost prices, but did not say that the statute requires that length of any contracts executed by the utilities must precisely match their 20-year forecast of avoided cost prices. Representative Bradbury testified:

> Basically [House Bill 2320] requires two things of utilities that are not presently required under federal law. The first requirement is that utilities must make a good faith effort to wheel power if they are not willing to pay a price that is acceptable to the small power producer. * * *
>
> The other thing the bill requires that federal law does not require is that utilities, all utilities, must forecast their avoided costs over a 20 year period looking out into the future. And they have to be willing to enter contract with power producers based on those forecasted avoided costs.
>
> So those are the two things the bill does beyond federal law. You have to make a good faith effort to wheel and you have to forecast your avoided cost into the future and enter into contracts based on that forecast.[12]

Second, even if Representative Bradbury's testimony to the Senate Committee on Energy and Environment could be interpreted as a clear statement that House Bill 2320 prohibits the Commission from specifying a PURPA contract period less than 20 years, this testimony differed

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[11] Pre-hearing Brief of the Community Renewable Energy Association 14-15; Renewable Northwest and NW Energy Coalition Prehearing Brief 3-4, Renewable Energy Coalition Prehearing Brief 8-9.

[12] Audio Recording, Senate Committee on Energy and Environment, House Bill 2320, June 15, 1983, Tape 168, Side A.

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from statements Representative Bradbury made to the Chair and other members of the House Committee on Environment and Energy several weeks before. Representative Bradbury chaired a subcommittee appointed to resolve various issues relating to House Bill 2320. The subcommittee met several times during February, March, and April, 1983. When the full House Committee considered House Bill 2320 on April 29, 1983, Representative Bradbury described the bill as follows:

> Madame Chair, members of the committee have before them a draft of the bill numbered Legislative Counsel 2320-2, which has included in it some hand-engrossed amendments. The hand-engrossed amendments are the result of getting this draft back from counsel and simply wanting to conform the legislative counsel draft to the intent of the subcommittee.
>
> Essentially, what House Bill 2320 does is one thing beyond current federal law. And that is that it requires utilities, public and private, to make a good faith effort to wheel power to another utility if the qualifying facility so requests. Under present federal law, all utilities are required to pay the avoided cost to any qualifying facility for their power. The addition that this law makes to the federal law is that utilities are required to make a good faith effort to wheel that power to a utility that can provide a better price. That is basically, the only change this bill makes from federal law. It requires that the utilities, public and private, file their avoided cost rates and their wheeling rates with the public utility commissioner. The public utility commissioner would have authority to review the rates that are submitted by the investor-owned utilities and would simply be the repository for the rates filed by the publicly-owned utilities. [13]

The House Committee on Environment and Energy adopted the proposed hand-engrossed amendments on April 29, 1983, and passed the bill as amended out of the full committee on May 4, 2015.[14] The House of Representatives voted to pass House Bill 2320 on May 17, 1983.[15] Accordingly, the version of the bill described by Senator Bradbury in testimony to the Senate Committee on June 15, 1983, was the version of the bill he described to the House Committee on April 29, 1983.

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[13] Audio Recording, House Committee on Environment and Energy, April 29, 1983 (Tape 178, Side A, Counter Nos. 156-183).

[14] See Attachment 1; Minutes from House Committee on Environment & Energy meetings on April 29, 1983 (at p 3) and May 4, 1983 (at pp 1-2).

[15] See Attachment 2; Agenda for House Floor Session for May 17, 1983.

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Representative Bradbury's comments to the full House Committee on Environment and Energy contravene the suggestion that the legislature as a whole intended to mandate that utilities enter into 20-year PURPA contracts and to limit the Commission's discretion to specify another contract term. Even assuming *arguendo* that Representative Bradbury's testimony to the Senate Committee suggests utilities are required under House Bill 2320 to enter into contracts with at least 20-year terms, the Commission cannot be sure whether the legislature as a whole understood this is what House Bill 2320 required.

And more importantly, the Commission should not conclude that Representative Bradbury's testimony to the Senate Committee establishes that utilities are required to enter into PURPA contracts with terms of at least 20 years and that the Commission has no authority to authorize a shorter term. The statute does not expressly limit the Commission's authority. Representative Bradbury's testimony is not sufficient to show a legislative limitation on the Commission's authority when the legislature did not make the limitation express.[16]

The testimony of ODOE cited by CREA does state that House Bill 2320 imposes a requirement on utilities to enter into contracts with 20-year terms.[17] However, the Commission should not infer any particular legislative intent from the testimony of one committee witness. This is particularly true here when the representative chairing the subcommittee on House Bill 2320 did not explicitly testify regarding this requirement when describing the bill to the Senate and House Committees that considered the bill.

3. Idaho Power's proposal for serial two-year contracts would not facilitate financing for QFs and would diminish the QFs' opportunity to be paid for capacity.

As discussed above, Staff disagrees with any argument that ORS 758.525 limits the Commission's discretion to order a term for non-standard PURPA contracts that is less than 20

[16] *Cf. State v. Hess*, 342 Or 647, 661 (2007) ("We are reluctant to infer from the legislature's silence an intent to deprive the court of its traditional authority * * *.").

[17] See Pre-hearing Brief of the Community Renewable Energy Association at 14-15.

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years. Staff does not, however, agree with Idaho Power's proposal to shorten the term of non-standard contracts. First, Staff disagrees with Idaho Power that an ability to continually enter into two-year contracts is sufficient to facilitate financing for QFs. Second, Staff agrees with REC and CREA that two-year contracts would make it virtually impossible for QFs to receive payments for capacity because avoided cost prices would always be based on the assumption the utility is resource sufficient.[18]

B. Staff recommends that the Commission lower the Eligibility Cap for solar and wind QFs entering into a standard contract with Idaho Power.

1. The Eligibility Cap is intended to reduce market barriers for small QFs.

Federal Energy Regulatory Commission (FERC) rules implementing the Public Utility Regulatory Policy Act (PURPA) require utilities to offer "standard" avoided cost rates to QFs with a nameplate capacity of 100 kW and less, and allow state commissions to establish a higher Eligibility Cap for standard prices.[19]

In 2005, the Commission increased the Eligibility Cap for standard contracts to 10 MW.[20] The Commission "continue[d] to adhere to the policy, as articulated in [1991], that standard contract rates, terms and conditions are intended to be used as a means to remove transactions costs" as well as other market barriers such as asymmetric information associated with QF contract negotiation, when they impair QF development.[21] The Commission noted that the need to reduce market barriers must be balanced with the Commission's interest in ensuring that a utility pays a QF no more than its avoided costs for the purchase of energy. The Commission recognized that standard contracts do not take into account individual utility's cost characteristics that result in the utility's cost savings that differ from the standard avoided cost rates, and that

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[18] See Staff/200, Andrus/6.

[19] 18 C.F.R. 292.304(c)(1), (2).

[20] *Id.*

[21] Order No. 05-584 at 15.

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the risk that future costs may differ from the fixed prices in a PURPA contract is "greater" for a large QF than a small one. [22]

In Order No. 14-058 the Commission again concluded a 10 MW Eligibility Cap is appropriate:

> Standard contract rates, terms and conditions are intended to be used as a means to remove transaction costs associated with QF contract negotiation, when such costs act as a market barrier to QF development. If a QF is not eligible or a standard contract, a utility is still obligated to purchase a QF's net output at the utility's avoided cost, but the QF must negotiate the rates, terms and conditions of a power purchase contract with the purchasing utility. The eligibility cap of 10 MW is intended to address the challenges smaller QFs face in entering our market, including the transaction costs incurred in negotiating an agreement, and other market barriers such as asymmetric information and an unlevel playing field, all of which complicate the negotiation of non-standard QF contracts. These kinds of market barriers can render certain QF project uneconomic to get off the ground if an individual contract must be negotiated.[23]

2. Current circumstances support Idaho Power's request to lower the Eligibility Cap for standard contracts for wind and solar QFs.

Recent requests for multiple standard contracts for 10 MW wind and solar facilities in Idaho Power's territory by a few developers indicate that the 10 MW cap is not needed, or is not being used, for its intended purpose – to eliminate barriers to entry. For example, on April 7, 2015, Gardner Capital Solar Development, Inc. (Gardner Solar) submitted five different requests for QF contracts for five different solar projects, three of which are sized at 10 MW and the other two at 5 MW.[24] On April 27, 2015, another developer asked for standard contracts for five 10 MW solar facilities and two five MW solar facilities.[25] However, the Eligibility Cap is not

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[22] *Id.*, at 16.

[23] Order No. 14-058 at 7, *quoting* Order No. 05-584 at 16.

[24] Staff/100, Andrus/6-7.

[25] Idaho Power/106, Idaho Power/501.

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intended to reduce market barriers for developers with sufficient resources to develop multiple QF facilities with total nameplate capacity equivalent to one 40 or 70 MW project.[26]

Currently, wind QF development in Idaho Power territory is similar to the type of solar QF development described above. Idaho Power states that it recently executed standard contracts for five different 10 MW wind QFs by the same developer.[27] Staff is unaware of any developer contacting Idaho Power about a PURPA contract for a wind facility below 10 MW since the Commission issued Order No. 14-058.

Given the circumstances described above, Staff recommends lowering the Eligibility Cap for standard contracts for solar and wind QFs to re-balance the Commission's interest in reducing market barriers for QFs with limited resources and its interest in ensuring that avoided costs prices accurately reflect Idaho Power's actual avoided costs. As discussed above, standard avoided cost prices are not tailored for individual QFs, and therefore, may not reflect the characteristics of individual QFs.[28] The Commission has been willing to accept this risk for QFs as large as 10 MW in order to eliminate market barriers for these "smaller" QFs.[29] However, the 10 MW Eligibility Cap is being used by developers who do not need its protection.

The potential harm associated with the risk that avoided cost prices will differ from actual costs over the term of a contract is correlated to the amount of QF energy and capacity purchased under the contract: "[T]he risk customers face because avoided costs in the future may be different from the prices paid under the standard contract * * * is greater for a large QF than a small one."[30] At this time, the 10 MW Eligibility Cap does not appear to be used to eliminate market barriers for solar and wind QFs.

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[26] Idaho Power/501, Alphin/2.

[27] Idaho Power/400, Alphin/20.

[28] Order No. 05-584 at 15.

[29] See Order No. 14-058 at 15 ("The eligibility cap of 10 MW is intended to address the challenges smaller QFs face in entering our market[.]").

[30] Order No. 05-584 at 16.

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Idaho Power's Exhibit 501 includes a list of developers that contacted Idaho Power between later summer in 2013 and April 2015 indicating an interest in developing a solar QF in Oregon.[31] Of the 28 contacts regarding QF development that are listed, 22 are for QFs with nameplate capacity of 10 MW, one is for a 20 MW facility, three are for a 5 MW facility, and one is for a 4 MW facility.[32] The contacts regarding a 5 MW QF and a 4 MW QF were made by two different developers at the same time they asked for standard contracts for multiple 10 MW facilities.[33]

Staff believes the interests of administrative efficiency and consistency between jurisdictions warrant the Commission's imposition of the same Eligibility Cap currently in effect in Idaho, which is 100 kW. Staff acknowledges that a higher standard contract Eligibility Cap may eliminate barriers for QFs that have limited resources to negotiate a non-standard contract. However, a larger Eligibility Cap would likely capture QFs that are able to enter the Oregon QF market without the elimination of any barrier posed by negating a non-standard contract and may lead to developers disaggregating into more and smaller QFs. Staff believes the potential benefit of eliminating market barriers for QFs larger than 100 kW no longer outweighs the risk associated with standard avoided cost prices for these QFs.

C. The Commission should authorize Idaho Power's request to update its avoided cost prices to take into account the new start date for Idaho Power's next resource deficiency period.

Staff recommends that the Commission allow Idaho Power to update its avoided cost prices to take into account a new resource deficiency period for the reasons previously stated in testimony and in Staff's prehearing brief.[34]

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[31] Idaho Power/501, Alphin/2 (The contacts are not necessarily requests for contracts, but could be requests for indicative prices or interconnection agreements).

[32] Idaho Power/501, Alphin/2.

[33] Idaho Power/501, Alphin/2.

[34] Staff Prehearing Brief at 8-10, Staff/100, Andrus3-4, Staff/400, Andrus/8.

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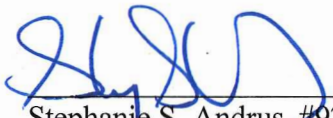
III. Conclusion.

Staff recommends that the Commission grant Idaho Power Company's request to lower the Eligibility Cap for solar and wind QFs to 100 kW and its request to change its avoided cost prices to take into account a new resource deficiency start date. Staff recommends that the Commission reject Idaho Power Company's request to shorten the term of non-standard contracts.

DATED this 10th day of December 2015.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General



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HOUSE COMMITTEE ON

ENVIRONMENT & ENERGY

April 29, 1983 1:30 p.m. Hearing Room "E"

Members Present: Rep. Darlene Hooley, Chair
Rep. Andy Anderson, Vice Chair
Rep. Bill Bradbury
Rep. Larry Hill
Rep. Fred Parkinson
Rep. Wally Priestley
Rep. Tom Throop
Rep. George Trahern

Member Absent: Rep. Liz VanLeeuwen

Staff Present: Elizabeth Samson, Committee Administrator
Carol Moyle, Committee Assistant

Witnesses: Rep. Chuck Bennett, District 38
Bill Roger, Board of Directors, Lane County Regional Air Quality Control Advisory Committee
Don Arcel, Lane County Regional Air Quality Control Advisory Committee
Rep. Andy Anderson, District 45
W. C. Harris, Oregon State Grange
William Davis, Citizen
Harley Brown, Citizen
Mike Hefner, Boise Cascade Corporation
Fred D. Ehlers, Citizen
Bill Miller, Citizen
Mike Jacobs, Utility District Lobby
Lon Topaz, Emerald Peoples Utility District
Jack Madison, People's Utility District
Tease Adams, Energy Control Systems
Stanley Rasmussen, Citizen
Lee Freeman, Vice Prsident, Pacific Hydropower Company, Commerce, California
Dick Webb, Citizen
Bessie Ridenour, Citizen
Larry Slotta, Citizen
Ellis Forrester, Citizen
James Noteboom, Attorney
Confederated Tribes of Warms Springs Reservation
Jan Bettcher, Tumalow Water District
Ron Nelson, Central Oregon Irrigation District
Frederick Plug, Citizen
Gary Marcus, Citizen
Hal Burkitt, Citizen
Jim Boyd, Citizen
Roy Rousch, Citizen
Michael Weinberg, Citizen
Jack Fuls, Citizen

Dick Brown, Portland Power & Light
Carl Talton, Portland Power & Light

Measures: HB 2320 - Relating to purchase of power from co-genators small power producers/Work Session
HB 2407 - Relating to PUD acquisition of hydro/thermal power projects/Public Hearing
HB 2952 - Relating to Regional Air Quality Control Authority Advisory Committee/Public Hearing, Work Session
HB 2406 - Relating to appropriation of hydro power projects/Public Hearing

TAPE H-83-EE-178, SIDE A

006 **CHAIR HOOLEY** called the hearing to order at 1:52 p.m. and opened the public hearing on **HB 2952.**

021 **MOTION** by **REP. PARKINSON** to untable HB 2406 and HB 2407. No committee objection; so moved.

022 **REP. CHUCK BENNETT** stated HB 2952 is essentially a housekeeping measure extending the length of the Advisory Committee terms from one to three years and allows for the establishment of staggered terms so there isn't an annual massive turn over on this Board.

040 **BILL ROGERS**, stated this is the only regional air quality authority in the State of Oregon, so the bill only affects Lane County. He further stated the Advisory Committee had asked that one of the mandated positions be added to the Committee, Fire Suppression Agency.

056 **MR. ROGERS** answered clarifying questions for committeemembers regarding the Board of the Advisory Committee.

076 MOTION by **REP. ANDERSON** to move the amendments asked by Mr. Rogers, inserting "Fire Suppression Agency" and renumbering the following items.

080 Motion passed 7 to 2 with Rep. Anderson, Bradbury, Hill, Parkinson, Priestley, Trahern, and Hooley voting Aye and Rep. Throop and VanLeeuwen absent.

090 **MOTION** by **REP. ANDERSON** to move HB 2952 to the Floor with a Do Pass Recommendatin.

095 Motion passed 7 to 2 with Rep. Anderson, Bradbury, Hill, Parkinson, Priestley, Trahern and Hooley voting Aye and Rep. Throop and VanLeeuwen absent.

100 **REP. TRAHERN** agreed to carry the bill. It was also placed on the consent calendar.

108 **CHAIR HOOLEY** opened the work session on **HB 2320** with **REP. BRADBURY** explaining what HB 2320 does with the amendments developed in subcommittee.

146 **REP. THROOP** asked how "good faith effort" is defined.

148 **REP. BRADBURY** stated the definition is on Page 4, Line 23. (Exhibit A).

155 Committee discussion ensued regarding the subcommittee amendments.

197 **MOTION** by **REP. BRADBURY** to adopt amendments to HB 2320. No objection; so moved.

206 **MOTION** by **REP. BRADBURY** to moved HB 2320 to the floor with a Do Pass recommendation.

218 **REP. TRAHERN** asked to hold a work session on this bill at the next hearing to vote it out of Committee, stating since they had just received the amendments, he would like additional time to read over them. **REP. BRADBURY** agreed to withdraw his motion.

228 **CHAIR HOOLEY** opened public hearings on **HB 2406** and **HB 2407.**

244 **REP. ANDERSON**, sponsor of the bills, stated there is an economic development problem in the State and feels the small hydro power electric plants are in jeopardy of being taken over by the larger investor owner projects and feels these bills will address the problem, recommending under HB 2406 repealing section 543.610 regarding comdemnation rights, deleting the provision on water rights at the request of the Water Resources Department and also 543.620 and the section that has to do with State ownership and how to dispose of leasing rights, etc., feeling they are not extremely important.

326 **W.C. HARRIS testified in opposition to both bills, seeing no use for them. Stating further, the Constitution of this State belongs to the public and would like to see it reamin that way.**

383 **WILLIAM C. DAVIS** testified in favor of both bills. (Exhibit B)

461 **HARLEY BROWN** testified regarding his own personal farm experience and why he is in favor the these two bills. (Exhibit C)

TAPE H-83-EE-179, SIDE A

033 **MR. BROWN** completed his testimony.

050 **MIKE HEFNER** testified in favor of both bills. (Exhibit D)

115 **FRED ELHERS** testified in favor of the bill stating that particular piece of legislation, 543.610, opens the way for cities like Klamath Falls to feather their nests at the expense of the private sector and continued with examples of how the City has benefited and feels it creates disincentives for the private production of power. He also answered clarifying questions for committee members.

189 **BILL MILLER** testified in favor of both bills stating they support HB 2406 and 2407, but their union does not favor public power in lieu of private power or visa versa. The feels the bill would enhance free enterprise in this company. They oppose condemnation on either side and feel once you build something, someone should not be allowed to take it away from you. He continued answering clarifying questions for committee members.

229 **REP. THROOP** asked if the bill deals with all condemnation or just a small segment.

232 **REP. ANDERSON** stated he believes the bill deals with hydroelectric power projects regardless of who the owner is or who the entity is that would like to condemn.

240 **REP THROOP** stated he would like to get an interpretation of that. **CHAIR HOOLEY** stated **BETH SAMSON**, Committee Administrator, would get one.

242 **MIKE JACOBS** testified in opposition to HB 2406 and answered clarifying questions for committee members. (Exhibit E)

346 **LON TOPAZ** testified in opposition to HB 2406 and 2407. (Exhibit F)

TAPE H-83-EE-178, SIDE B

026 **MR. TOPAZ** answered clarifying questions for committee members regarding public power vs. private power and customer rates.

091 **JACK MADISON** testified in opposition to the bills stating they will take away constitutional authority of P.U.D.'s to acquire from condemnation.

140 **TEASE ADAMS** testified in favor of HB 2406 and 2407 and answered clarifying questions for committee members. (Exhibit G)

285 **STANLEY RASMUSSEN** testified in oppostion to HB 2406 (Exhibit H)

359 **LEE FREEMAN** testified in favor of HB 2406 and 2407. (Exhibit I)

451 **DICK WEBB** testified in favor of HB 2406 and 2407. (Exhibit J)

TAPE H-83-EE-179, SIDE B

027 **MR. WEBB** continued answering clarifying questions for committee members.

061 **BESSIE RIDENOUR** testified in favor of HB 2406 and 2407 relating their own personal experience of building their own hydro power plant and her feelings about the possibility of them being taken away and also the laws preventing them from passing it on to their children. She also testified that a copy of the laws regarding private hydro power plants should be given to applicants when first applying for permits instead of when their license is sent to them, which is when it's too late to change your mind regarding building. She continued answering clarifying questions for committee members.

283 **LARRY SLOTTA** testified in favor of HB 2406 and 2407. (Exhibit K).

325 **ELLIS FORRESTER** testified in favor of HB 2406 and 2407 and his own experience of building a private hydro plant and his feelings regarding PUD's taking over smaller plants.

356 **JAMES NOTEBOOM** testified in favor of HB 2406 and 2407 and talked about the Warm Springs Tribal hydro power projects. (Exhibit L)

TAPE H-83-EE-180, SIDE A

035 **JAN BETTCHER** testified in favor of HB 2406 and 2407 and continued telling committee members about the irrigation district she works for in Bend regarding the projects they do, private funding they obtain, and the people they employ and feel bills not passing would jeopardize all of this. She continued answering clarifying questions for committee members.

124 **RON NELSON** testfied in favor of both bills stating the bills are a positive step to eliminate the conflict that will develop in the community since 543.610 imposes a threat to their utility district even though they are a quasi-municipality. He continued ansering clarifying questions for committee members regarding condemnation.

173 **FREDERICK PLUG** testified in favor of the bill stating his is in the process of completing a paper to set up a small project on the stream on his farm. He further stated private financing was refused to him because of possible state take over ordinance.

229 **GRAY MARCUS** testified in favor of HB 2406. (Exhibit M)

299 **HAL BURKITT** testified in favor of HG 2406 and 2407 talking about the similarity of these bills and HB 2320 and states these two bills are diametrically opposed to HB 2320, which the committee expressed support of, therefore, does not see how any of the committee members can vote against HB 2406 or HB 2407. He feels without its passage it would bring to a stop the development of another very viable resource in Oregon, which is hydro electric power.

382 **JIM BOYD** testified in favor HB 2406 and 2407 regarding the difficulty in securing private financing for small hydro projects because of the condemnation ordinance. He further stated the size of the project should not make any difference, its not right to be able to take a lucrative project away from a person or company. He continued answering clarifying questions for committee members.

TAPE H-83-EE-181, SIDE A

053 **JIM BOYD** continued his discussion regarding the policy of condemnation five years depreciation of the project, and the fact that the statute needs to be changed.

091 **MAURICE BAKER** testified in favor of 2406 and 2407 supporting previous testimony.

101 **ROY ROUSH** tetified regarding his own personal experiences in building his own hydro project and that it won't be taken away from him easily.

121 **MIKE WINEBERG** testified in favor of HB 2406 stating he does not want to take anyone's project away from them and his company is building two projects for their water control district users. He stated further the argument that some people are using that the water of the State of Oregon belongs to the public is a completely ridiculous argument and is not an argument in favor of the State taking over a hydroelectric project that uses that water.

159 **AUSTIN COLLINS** testified in opposition to HB 2406 and 2407.

224 **JACK FULS** testified in favor of both bills and talked about his own experience of starting a small hydro project in Bend and the loss of revenue to State from these small projects if they are taken over by P.U.D.s.

293 **CARL TALTON** testified in favor of HB 2406. (Exhibit N)

TAPE H-83-EE-180, SIDE B

081 **DICK BROWN** testified briefly in favor of HB 2406 and stated he would finish his testimony at the next public hearing on this bill.

088 Meeting adjourned at 4:50 p.m.

Respectfully Submitted

Carol Moyle
Committee Assistant

TAPE LOG:
H-83-EE-178
H-83-EE-179
H-83-EE-180
H-83-EE-181

TAPE LOG:

Exhibit A - HB 2320 Proposed Amendments
Exhibit B - HB 2406 & 2407 Testimony, William C. Davis*
Exhibit C - HB 2406 & 2407 Testimony, Harley Brown*
Exhibit D - HB 2406 & 2407 Testimony, Mike Hefner*
Exhibit E - HB 2406 Testimony, Michael Jacobs
Exhibit F - HB 2406 & 2407 Testimony, Lon Topaz *
Exhibit G - HB 2406 & 2407 Testimony, Teace Adams*
Exhibit H - HB 2406 Testimony, CP National Corporation
Exhibit I - HB 2406 & 2407 Testimony, Lee Freeman*
Exhibit J - HB 2406 & 2407 Testimony, Richard G. Webb*
Exhibit K - HB 2406 & 2407 Testimony, Larry S. Slotta*
Exhibit L - HB 2406 & 2407 Testimony, James Noteboom *
Exhibit M - HB 2406 Testimony, Gary Marcus
Exhibit N - HB 2406 Testimony, Carl Talton

*See HB 2406 for all of the above testimony that includes HB 2407

SEE HB 2406 Exhibits B, C, D, F, G, I, J, K, & L dated April 29 for testimony on HB 2407.

HOUSE COMMITTEE ON

ENVIRONMENT & ENERGY

May 4, 1983 1:30 p.m. Hearing Room "E"

Members Present: Rep. Darlene Hooley, Chair
Rep. Andy Anderson, Vice Chair
Rep. Bill Bradbury
Rep. Larry Hill
Rep. Fred Parkinson, Arrived 1:45 p.m. Rep. Wally Priestley
Rep. Tom Throop
Rep. George Trahern, Arrived 1:45 p.m. Rep. Liz VanLeeuwen

Staff Present: Elizabeth Samson, Committee Administrator
Carol Moyle, Committee Assistant
Elizabeth Norman, Legislative Counsel

Witnesses: Pat Amadeo, Assistant to the Governor
Jim Ross, LCDC
Craig Greenleaf, LCDC
Bob Stacey, 1000 Friends of Oregon

Measures: HB 2295 - Relating to land use planning/Work Session
HB 2320 - Relating to purchase of power from cogenators/small power producers-Work Session

TAPE H-83-EE-191, SIDE A

004 **CHAIR HOOLEY** called the hearing to order at 1:37 p.m. and opened the work session on **HB 2320.**

008 **REP. BRADBURY** discussed the word changes made in the hand engrossed bill that came from the subcommittee stating on Line 16, Page 3 changing public to electric and on Line 27 changing utility to facility. (Ehxhibit A).

045 **BETH SAMSON** asked regarding Page 3, Line 14 and 15, deleting of the wording "electric utility", leaves the meaning unclear as to whose obligation is being talked about.

051 **REP. BRADBURY** stated (a) allows for the avoided cost schedule to be based to go up or down as the avoided cost rises over a period of time; (b) allows for the contract to provide that they would pay the projected avoided cost calculated at the time the obligation between the qualifying facility and the utility is entered into. This applies to all utilities so there is no intention to apply it to only investor owned or public.

076 **REP. BRADBURY** stated he wanted to imply clear legislative intent regarding Section 4, Page 3. The

language states "The commissioner shall establish minimum criteria that a cogeneration facility or small power production facility must meet to qualify as a qualifying facility under this Act." The subcommittee's intent that the Public Utilities Commissioner adopt standards which whould apply statewide to all facilities that would be used to judge all qualifying facilities. It is not the intent of the subcommittee to have the Public Utility Commissioner reviewing every facility to see whether they think it qualifies.

119 **MOTION** by **REP. BRADBURY** to move HB 2320 as amended to the floor with a Do Pass Recommendation.

122 Motion passed 7 to 0 with Rep. Anderson, Bradbury, Hill, Priestley, Throop, VanLeeuwen, and Hooley voting Aye and Rep. Parkinson and Trahern absent. **REP. BRADBURY** will carry the bill on the floor.

129 **CHAIR HOOLEY** opened work session on HB 2295 and discussed the legislative counsel draft No. 4 and stated the consensus group that went through it and marked policy decisions that needed to be discussed yet by the committee. She also introduced the 5-4-83 memo of proposed amendments/corrections to **HB 2295** completed by **BETH SAMSON.** (Exhibit B)

198 The first item discussed was Page 15, Line 17, relating to Notice by LCDC of plan amendment. (Exhibit B)

214 **MOTION** by **REP. THROOP** that LCDC continue to provide notice of plan amendments. No committee objection; so ordered.

222 Page 14, Line 4 (Exhibit B) was explained by **CHAIR HOOLEY** and discussed by committee members.

303 **MOTION** by **REP. THROOP** to reinstate lines 4-9, page 14, the original concept which provided that when the plan amendment or regulation differs from the proposal and notice to such a degree that the notice did not reasonably describe the nature of the local government action, any person may appeal. No committee objection; so ordered.

317 Page 22, Line 16 -(Exhibit B) was explained by **CHAIR HOOLEY.** Committee discussed the word changes and the impact this change would have on the whole bill. No committee objection; so ordered.

458 **Page 27, Line 16 (Exhibit B) was explained by CHAIR HOOLEY** and discussed by the committee.

TAPE H-83-EE-192, SIDE A

037 **MOTION** by **REP. THROOP**to delete "found" and insert "deemed" throughout the entire bill. No committee objection; so ordered.

047 Page 32 (Exhibit B) discussed by **CHAIR HOOLEY.**

052 **MOTION** by **REP. THROOP** to move that language to allow the LDRP to travel to various jurisdictions be added to Page 32. No Committee objection; so ordered.

085 Page 40 (Exhibit B) **CHAIR HOOLEY** discussed "escape hatch" and stated on Line 13 delete "or other problems" because it is presumed to be too broad for the intent of the committee. **BETH SAMSON" stated the language for this section came from the Federal speedy trial act, which governs Federal criminal cases. Cases that are very unusual or complex LDRP does not need to make a decision within that 77 days. On Page 40 Line 16 there is a provision that none of these delays shall take place because of general conjestion on the Panel calendar or lack of diligent preparation or attention to the case by any member of the Panel or any party.**

144 **MOTION** by **REP. THROOP** to adopt LDRP escape hatch language. No committee objection; so ordered.

163 CHAIR HOOLEY discussed substantial compliance and the definition as stated in Exhibit B.

206 Committee discussion ensued with **JIM ROSS** regarding LCDC's process in relation to technical or minor in nature.

336 **MOTION** by **REP. TRAHERN** to delete the fact that a failure to meet goal requirement affecting a small land use area does not in itself render a defect minor in nature.

340 Committee discussion took place regarding Rep. Trahern's motion.

455 Motion passed 9 to 0 with Rep. Anderson, Bradbury, Hill, Parkinson, Priestley, Trahern, Throop, VanLeeuwen, and Hooley voting Aye.

460 **CHAIR HOOLEY** stated the next issue for discussion is periodic review and continued to explain it.

TAPE H-83-EE-191, SIDE B

026 **CHAIR HOOLEY** continued discussing small cities and counties where no growth or major changes are occurring stating they should not have to be involved in hiring planners to do a regular periodic review.

081 **PAT AMADEO** continued discussing the small cities.

099 **JIM ROSS** stated the Commission feels that by Administrative Rule they can create an abbreviated review for state jurisdictions.

136 **MOTION** by **REP. BRADBURY** to adopt amendments proposed related to periodic review (Exhibit B) that the Commission shall adopt by Rule procedures to expedite the periodic review of the communities identified in this admendment and that unless requested by local government and the Commission shall coordinate their review with the local review process in doing the scheduling.

150 Committee discussion with **JIM ROSS** ensued regarding periodic review.

195 **Rep. HILL** asked about cities that has substantial urban population outside the city limits that would bring it to the 2500 level. Should the committee use urban growth boundry, instead of City.

198 **JIM ROSS** stated in the draft language, they have used urban growth boundry population of 2500 and felt it could be taken care of through Administrative Rule. He feels this would affect less than 10 percent of the communities in Oregon.

205 Committee discussion continued regarding using city limits or urban growth boundry to determine the size of a city to be able to use an abbreviated periodic review.

401 **BURTON WEAST** stated on Page 23 there is a definition dealing with the requirement of having an urban growth plan that has 2500 people. He strongly urges that there be a consistant definition for those cities that are required to have a capital improvement program as in periodic review since periodic review triggers the capital improvement program.

473 **MOTION** by **REP. HILL** to delete "cities" in the conceptual amendment and replace it with "urban growth boundries containing a population under 2,500."

TAPE H-83-EE-192, SIDE B

025 Committee discussion regarding this motion took place.

056 **ELIZABETH NORMAN** pointed out that on Line 15 on Page 23 should read "a city within an urban growth boundry containing a population grater than 2500 persons or a county containing a population of more than 2500 persons." She continued discussing this issue with committee members.

100 Motion failed 6 to 3 with Rep. Anderson, Bradbury, Parkinson, Trahern, VanLeeuwen and Hooley voting Nay and Rep. Hill, Priestley, and Throop voting Aye.

112 **MOTION** by **REP. ANDERSON** to adopt periodic review amendment in Exhibit B with the provisions that added that local government can request an earlier periodic review and that periodic review should be coorindated between the Commission and the local government. No committee objection; so ordered.

143 **CHAIR HOOLEY** stated sanctions is the next issue for discussion in Exhibit B and explained counties and cities lobbyists felt the enforcement order did not fit the crime. Also, there was some argument on the withholding of State shared revenues in connection with Goal plans.

200 **JIM ROSS** discussed LCDC standards for issuing enformcent orders with **PAT AMADEO** and committee members.

343 MOTION by **REP. BRADBURY** to move the provisions on sanctions contained in Exhibit B.

348 **REP. HILL** requested the motion be divided into enforcement and State share revenue.

355 Motion on enforcement order passed 9 to 0 with Rep. Anderson, Bradbury, Hill, Parkinson, Priestley, Trahern, Throop, VanLeeuwen, and Hooley voting Aye.

365 Motion on State shared withholding passed 8 to 1 with Rep. Anderson, Bardbury, Parkinson, Priestley,

Trahern, Throop, VanLeeuwen, and Hooley voting Aye and Rep. Hill voting Nay.

395 **CHAIR HOOLEY** stated the next issue is standing, Exhibit A, explaining they only added under "was entitled to notice", the lines "and shows good cause for failure to appear" so the decision can be appealed only for abuse of descretion.

421 Committee discussion ensued regarding this change and other possible word changes.

TAPE H-83-EE-193, SIDE A

044 **MOTION by REP. HILL** to adopt the language "shows good cause for failure to appear" in standing. No committee objection; so ordered.

056 **CHAIR HOOLEY** stated the next issue for discussion is Court of Appeals (Exhibit B) and stated the consensus committee felt the present language on Page 43, Lines 13 - 15 regarding the Court reaching a final decision within 91 days after or agrument is still too loose, so they discussed putting the language back in and giving them the same escape hatch that was given to LDRP.

068 **MOTION** by **REP. THROOP** to adopt the language for the Court of Appeals and the escape hatch.

072 Committee discussion with **BOB STACEY** ensued regarding deadline for the Court of Appeals.

156 Motion passed 7 to 2 with Rep. Anderson, Bradbury, Hill, Priestley, Trahern, VanLeeuwen, and Hooley voting Aye and Rep. Parkinson and Throop absent.

246 Hearing adjourned 3:55 p.m.

Respectfully Submitted,

Carol Moyle
Committee Assistant

TAPE LOG:
Tape H-83-EE-191
Tape H-83-EE-192
Tape H-83-EE-193
Tape H-83-EE-194

SIXTY - SECOND OREGON LEGISLATIVE ASSEMBLY

Regular Session, 1983

HOUSE

Third Reading

TAPE 12

TRACK II

TUESDAY, MAY 17, 1983

HOUSE CONVENES AT 10:45 A.M.

PROPOSITIONS AND MOTIONS:

Consideration of Committee Report:

677

HB 2579 By Representatives FAWBUSH, BAUMAN, BRADBURY, BROGOITTI, BURROWS, CEASE, MARKHAM, MASON, MYERS, OTTO, Senators BROWN, COHEN, HANLON, MCCOY, MCFARLAND, TROW, Representatives B. ROBERTS, SPRINGER, Senators GARDNER, POTTS, RIPPER, ROBERTS, RYLES — Relating to compensation of certain public officers; creating new provisions; repealing ORS 292.313, 292.405, 292.410, 292.415 and section 2, chapter 816, Oregon Laws 1981; and prescribing an effective date.

2-14(H) First reading. Referred to Speaker's desk. adopted
2-18 Referred to Legislative Rules and Operations.
4-18 Tabled in committee pursuant to House Rule 8.20.
5-10 Taken from table in committee.
5-13 Recommendation: Do pass with amendments, be referred to Ways and Means.

This measure has a fiscal impact.

HB 2579

Establishes Public Officials Compensation Commission. Requires commission to review salaries of certain elected officials and to make recommendations to Legislative Assembly. Specifies methods by which Legislative Assembly fixes salaries.

Effective July 1, 1985, repeals certain statutory salaries.

HOUSE MEASURES:

694

HB 2010 By Representative KERANS — Relating to the Governor's budget; amending ORS 291.216, 291.232 and 291.254.

2-10(H) First reading. Referred to Speaker's desk.
2-17 Referred to Legislative Rules and Operations.
4-18 Tabled in committee pursuant to House Rule 8.20.
5-10 Taken from table in committee.
5-12 Recommendation: Do pass with amendments, be printed engrossed.
5-16 Second Reading.

A-Eng. HB 2010

Requires Governor's biennial budget submitted to Legislative Assembly to rely on estimated revenues. Prohibits use of as yet unenacted tax sources to balance Governor's plan. **Prohibits reduction by Governor or Executive Department of agency budgets except on uniform percentage basis.**

878

HB 2320 Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed. (at the request of Department of Energy) — Relating to energy; creating new provisions; amending ORS 757.005; repealing ORS 758.500, 758.510, 758.520 and others; and declaring an emergency.

1-11(H) First reading. Referred to Speaker's desk. Passed
Referred to Environment and Energy.
5-12 Recommendation: Do pass with amendments, be printed engrossed.
5-16 Second Reading.

A-Eng. HB 2320

Modifies definition of public utility to exclude cogeneration facility and small power production facility.

Requires public utility to **offer to** purchase, **and to make good faith effort to** [*or*] transmit, energy produced by cogeneration facility or small power production facility. **Establishes criteria for determining price.** [*Requires electric utility to offer to supply onsite power demands of cogeneration or small power production facility.*] **Prohibits electric utility from discriminating against cogeneration or small power production facility in rates for sale of electricity to facility.**

Declares emergency, effective [*July 1, 1983*] **on passage.**

HB 2972 By COMMITTEE ON HOUSING AND URBAN DEVELOPMENT — Relating to investments; amending ORS 293.726.

4-25(H) First reading. Referred to Speaker's desk.
4-28 Referred to Housing and Urban Development.
5-12 Recommendation: Do pass with amendments.
5-16 Second Reading.

HA to HB 2972

[*Deletes 35*] **Raises to 50** percent **the** limit on common stock investment of moneys in Public Employes' Retirement Fund and

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