BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER OF PACIFICORP, dba PACIFIC POWER's Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap	)	CASE NO. UM 1734 POST-HEARING REPLY BRIEF OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION

I. INTRODUCTION AND SUMMARY

The Community Renewable Energy Association ("CREA") hereby submits its post-hearing reply brief to the Public Utility Commission of Oregon ("OPUC or "Commission") in the above-captioned case. CREA's position in this docket remains the same as in its prior filings: (1) the Commission should maintain the eligibility cap at 10 megawatts ("MW") for all qualifying facility ("QF") resource types under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), and (2) the Commission should *increase* the length of the contract term for fixed avoided cost rates to 20 years. Nothing in other parties' briefs has changed CREA's position.

PURPA is a valuable competitive benchmark against PacifiCorp's monopoly over the generation of electricity serving its customers. It is therefore not surprising that PacifiCorp is actively engaging on multiple fronts to eliminate its PURPA obligation. PacifiCorp claims that eliminating long-term PURPA contracts serves the "public interest" because PacifiCorp is resource sufficient for at least a decade. *PacifiCorp's Post-Hearing Opening Brief* at 19. Yet at the same time PacifiCorp is actively seeking to increase Oregon's renewable portfolio standard

and to create competitive advantages for itself in the ownership of new renewable resources through the introduction of House Bill 4036.[1] Eliminating PURPA at this time would be misguided because PacifiCorp is itself arguing for the need for additional renewable energy resources. Even if PacifiCorp's proposed legislation fails, a ballot initiative may require acquisition of additional renewable resources even sooner. The Commission should reject PacifiCorp's concerted campaign to eliminate one of the very few elements of competition in its generation supply.

The Commission should maintain its reasonable PURPA policies because they are the only way for small generators to meaningfully contribute to Oregon's renewable energy needs. *See* CREA/100, Skeahan/3. Regardless of whether new renewable standards are enacted, Oregon law already requires that the Commission "shall establish policies and procedures promoting the goal" that eight percent of Oregon's retail load will be served by community-scale renewable generators of 20 MW or smaller by 2025. ORS 469A.210. PURPA is the only existing policy with any chance of enabling Oregon to achieve this goal. PacifiCorp's proposals largely fail on legal grounds (as demonstrated below), but PacifiCorp's proposals also separately obstruct existing legislative policies to promote small renewable generators.

II. ARGUMENT

A. The Commission Should Maintain the 10 MW Eligibility Cap for All QF Resources.

Lowering the eligibility cap will effectively eliminate the option to sell under PURPA in

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[1] *See* H.B. 4036-A Engrossed, § 15 (amended February 11, 2016), available online at https://olis.leg.state.or.us/liz/2016R1/Measures/Overview/HB4036 (containing a requirement that PacifiCorp's rate-based renewable facilities receive a higher score than independently-owned facilities in resource solicitations due to the alleged value of long-term use of the site).

Oregon for projects sized below the cap – particularly for a project developed by a relatively inexperienced developer without the resources to engage on equal footing with PacifiCorp. *See CREA's Pre-Hearing Brief* at 7. The proposals by PacifiCorp and Staff to lower the cap for wind and solar projects are therefore movement in the opposite direction of Oregon law that specifically promotes projects up to 20 MW in capacity. ORS 469A.210. If the Commission lowers the cap for wind and solar QFs, it will eliminate the most viable mechanism to achieve the eight percent goal by 2025, and ensure that meaningful progress towards that goal ceases. Even if Staff is correct that some QFs will be able to engage in the dispute resolution and complaint processes to obtain non-standard contracts, *see Staff's Post-Hearing Opening Brief* at 7, those projects will likely need to be larger than 20 MW to justify the added expense of negotiating rates and litigating against PacifiCorp. The Commission should therefore maintain the eligibility cap at 10 MW for all resource types.

B. The Commission Should Reject the Proposal to Shorten Contract Terms.

PacifiCorp presents a welter of misguided arguments and legal citations in its attempt to overcome the inescapable legal conclusion that shortening the contract term to three years is inconsistent with federal and state law. *See CREA's Pre-Hearing Brief* at 8-21. PacifiCorp's arguments in its post-hearing opening brief either misconstrue the relevant law or rely on off-point precedent. The Commission should soundly reject the proposal for three-year contract terms.

1. PacifiCorp's Proposal for Three-Year Contracts Violates Federal Law.

PacifiCorp is unable overcome the Federal Energy Regulatory Commission's ("FERC")

consistent statements regarding the purpose of the QF's right to a legally enforceable obligation ("LEO") over a specified term. FERC has consistently explained the purpose of the rule is to provide QFs with the option to receive certainty with regard to return on investment and to prevent the utility from depriving the QF of the right to supply capacity and be compensated for avoided capacity additions. *Small Power Prod. and Cogeneration Facilities; Regulations Implementing Sec. 210 of the Pub. Util. Reg. Pol. Act of 1978*, FERC Order No. 69, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980). PacifiCorp's three-year contract proposal plainly evades the requirement to provide a capacity credit to the QF "merely by refusing to enter into a contract" of sufficient length to provide such credit to the QF. *Id.* PacifiCorp presents several incorrect arguments in response.

First, PacifiCorp faults CREA for pointing out that the structure and unambiguous language of 18 C.F.R. § 292.304(d) provides each QF the option to elect to sell pursuant to a contract over a specified term, and that it is therefore reasonable to infer that the QF has the option to elect the length of the specified term. *See PacifiCorp's Post-Hearing Opening Brief* at 3-4. The regulation indeed states that each QF "shall have the option" to provide energy or capacity "over a specified term," and that the rates "shall, at the option of the qualifying facility[,]" be based on either the rates calculated at the time of delivery or at the time the obligation is incurred. 18 C.F.R. § 292.304(d)(2)(ii). The regulation does not state that the utility or the state regulatory authority have any "option" to impose on the QF. Yet PacifiCorp faults CREA for inferring that the QF has unilateral authority to select the length of the specified term. To the contrary, in light of the fact that all other options in the regulation are expressly

provided to the QF, it is reasonable to infer that the QF also has the right to choose the length of the specified term. It is further reasonable to infer that the QF is entitled to select a term of sufficient duration to allow the QF to be fully compensated for both its energy *and* its capacity.

Next, PacifiCorp relies on off-point precedent from the Fifth Circuit, to argue that FERC's LEO rule actually does not require a contract at all. *See PacifiCorp's Post-Hearing Opening Brief* at 4 (citing *Exelon Wind I, LLC v. Nelson*, 766 F.3d 380 (5th Cir. 2014)). In *Exelon Wind I, LLC*, the Fifth Circuit affirmed the Texas commission's rule that a QF may only obtain a non-contractual LEO if that QF is able to make "firm" power deliveries. *Id.* at 396. The court did so even though FERC had determined that Texas's firm power requirement was inconsistent with FERC's LEO rule. *See id.* at 387 n.5 (citing *J.D. Wind 1, LLC,* 129 FERC ¶ 61,148 (2009)). According to PacifiCorp, the *Exelon Wind I, LLC* decision provides the OPUC with wide discretion to eliminate long-term contracts for Oregon QFs. But the *Exelon Wind I, LLC* decision has no applicability here for multiple reasons.

First, although the *Exelon Wind I, LLC* majority opinion essentially ignored a FERC declaratory ruling interpreting FERC's own rule, the decision has no applicability here because Oregon is not located in the Fifth Circuit. Oregon is located in the Ninth Circuit, where the federal courts accord great deference to a federal agency's interpretation of its own regulations. *See, e.g., Public Lands for the People, Inc. v. U.S. Dept. of Agric.,* 697 F.3d 1192, 1199 (9th Cir.2012) (according "wide deference" to the Forest Service Manual's interpretation of a regulation); *Barboza v. Cal. Ass'n of Prof'l Firefighters,* 651 F.3d 1073, 1076, 1079 (9th Cir. 2011) (deferring to the interpretation of a regulation advanced in an *amicus* brief by the

Department of Labor); *Siskiyou Reg'l Educ. Project v. U.S. Forest Serv.*, 565 F.3d 545, 548, 554-57 (9th Cir. 2009) (deferring to the interpretation of a "mining-related directive" set forth in a "Memorandum to Regional Foresters" issued by the Forest Service); *Silvas v. E*Trade Mortg. Corp.*, 514 F.3d 1001, 1005 n. 1 (9th Cir. 2008) (deferring to an Office of Thrift Supervision legal opinion interpreting a regulation); *L.A. Closeout, Inc. v. Dep't of Homeland Sec.*, 513 F.3d 940, 941-42 (9th Cir.2008) (deferring to an internal memorandum used by the Department of Homeland Security in interpreting a regulation).

Second, the *Exelon Wind I, LLC* majority opinion ignored FERC's declaratory order (which it referred to as "FERC's letter") only after concluding that the QFs' attorney "conceded at oral argument that FERC's Letter is not entitled to deference." 766 F.3d at 397.[2] No QF parties to this case have conceded the binding nature of FERC's repeated declarations that its regulation entitles each QF to a long-term contract containing forecasted avoided cost rates for energy and capacity. *See CREA's Pre-Hearing Brief* at 9-10.

Moreover, consistent with Ninth Circuit precedent, the Eighth Circuit has held that FERC's orders interpreting its PURPA regulations are entitled to substantial deference. *Swecker v. Midland Power Co-op.*, 807 F.3d 883, 888 (8th Cir. 2015) *cert. denied*, 84 USLW 3344 (U.S. Jan. 25, 2016). Accordingly, FERC's consistent statements since 1980 are binding, and each QF is entitled to forecasted avoided cost rates for energy and capacity. *See Hydrodynamics Inc.*, 146

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[2] Indeed, deference to an agency's interpretation of its own regulation is so strong that the concurring and dissenting opinion in *Exelon Wind I, LLC* would have deferred to FERC's interpretation even in spite of this concession by counsel. *Exelon Wind 1, LLC*, 766 F.3d at 404-13 (Prado, J., concurring and dissenting) (explaining, "if 18 C.F.R. § 292.304(d) really were ambiguous, FERC's interpretation of that regulation in its 2009 Declaratory Order would ordinarily control our court's interpretation 'unless it is plainly erroneous or inconsistent with the regulation.'"). This concurring and dissenting opinion also persuasively points out a number of other flaws in the majority opinion.

FERC ¶ 61,193, PP 31-34 (2014) (QFs entitled to "long-term avoided cost rates").

PacifiCorp concedes that *Hydrodynamics Inc.*, 146 FERC ¶ 61,193, "confirms that a QF is entitled a contract that includes forecasted avoided cost prices" but argues it creates no right to "long-term" contracts. *PacifiCorp's Post-Hearing Opening Brief* at 6. According to PacifiCorp, FERC held that any contract longer than 18 months is a long-term contract. *Id.* Not so. In fact, FERC described Montana's long-term contract option in that case ("Option 1(c)") as an option to select a term "ranging from 19 months to 25 years." 146 FERC ¶ 61,193, at P 14. The long-term contract option was the option to have a contract of up to 25 years. PacifiCorp is therefore wrong to suggest that *Hydrodynamics Inc.* endorses PacifiCorp's recommendation for three-year contracts.

PacifiCorp also argues that FERC "has never interpreted the rule to require a long-term contract." *PacifiCorp's Post-Hearing Opening Brief* at 7. Wrong again. FERC specifically rejected Montana's implementation of PURPA on the ground that it failed to provide all QFs with the long-term contract option. *Hydrodynamics Inc.*, 146 FERC ¶ 61,193 at PP 32-33. In fact, the Montana rule failed even though it provided the possibility that a QF could obtain a long-term contract through a competitive solicitation. *Id.* FERC has unambiguously interpreted its own regulation to require long-term contracts.

Next, PacifiCorp claims it is possible to receive compensation for deferred capacity additions with a three-year contract. *PacifiCorp's Post-Hearing Opening Brief* at 8. PacifiCorp appears to argue it is hypothetically possible it will one day have a sufficiency period of less than three years and therefore QFs would be compensated for deferred capacity additions in that

event. But it provides no such examples in the record. In any event, even under PacifiCorp's hypothetical, the QF will not obtain certainty with regard to return on its investment or any meaningful long-term compensation for deferred capacity additions with a three-year contract.

While Staff agrees with CREA's position on policy grounds, its brief incorrectly dismisses CREA's legal arguments by ignoring *Hydrodynamics Inc.* and related precedent, instead citing *City of Ketchikan*, 94 FERC ¶ 61,293 (2001). *See Staff's Post-Hearing Opening Brief* at 13 & n. 56. But *City of Ketchican* does not provide a state the authority to implement PURPA in a manner that arbitrarily and systematically ensures no QF will ever be compensated for capacity. As FERC has explained: "In *Ketchikan*, however, the Commission explained that avoided cost rates need not include the cost for capacity in the event that the utility's demand (or need) for capacity is zero." *Hydrodynamics Inc.*, 146 FERC ¶ 61,193 at P 35. FERC rejected reliance on *City of Ketchikan* in *Hydrodynamics Inc.* and instead ruled that Montana's arbitrary rules unlawfully failed to require "an electric utility to purchase any capacity which is made available from a QF, and at a rate that, at the QF's option, is a forecasted avoided cost rate." *Id.* Similarly, here, *City of Ketchican* provides no basis to erect a three-year contract term as an arbitrary barrier to the requirement that PacifiCorp purchase any capacity the QF elects to sell at a forecasted avoided cost rate.

2. State Law Requires Fixed Prices for At Least 20 Years.

PacifiCorp further asserts that Oregon's PURPA statute does not allow QFs to contract to sell under the 20-year price schedule that the statute requires the Commission to approve. PacifiCorp's arguments do not withstand scrutiny.

First, PacifiCorp argues that the plain meaning of ORS 758.525 does not require fixed prices be made available for at least 20 years. *PacifiCorp's Post-Hearing Opening Brief* at 9. But the statute plainly states the Commission must approve "prices" based on the projected avoided costs for a period of at least 20 years, ORS 758.525(1), and in the next subsection provides the QF with the option to sell at "prices" based on the projected avoided costs. ORS 758.525(2)(b).

PacifiCorp argues that Oregon's 20-year filing requirement merely provides QFs with "estimates" of what the prices might be over a 20-year period, analogizing to one of FERC's rules, 18 C.F.R. § 292.302. *PacifiCorp's Post-Hearing Opening Brief* at 10. But the referenced FERC rule merely requires the utility to "make available data from which avoided costs may be derived." 18 C.F.R. 292.302(b). The Oregon statute is materially different. It requires the filing of the "the utility's forecasted incremental cost of electric resources over at least the next 20 years" and further provides: "*Prices* contained in the schedules filed by public utilities shall be reviewed and approved by the commission." ORS 758.525(1) (emphasis added). It does not merely require 20 years of data from which prices may estimated; it requires at least 20 years of *prices* available to the QF. A "price" is "the sum or amount of money or its equivalent for which anything is bought, sold, or offered for sale."[3] It is very different from the data from which prices may be calculated, and therefore PacifiCorp's reliance on 18 C.F.R. § 292.302 fails.

Next, PacifiCorp argues that the statute grants the Commission the right to make prices available for some period shorter than 20 years. *PacifiCorp's Post-Hearing Opening Brief* at 10.

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[3] http://dictionary.reference.com/browse/price?s=t.

But no provision of Oregon law states that. The provision PacifiCorp cites, ORS 758.535, merely provides: "The terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall: (a) Be established by rule by the commission if the purchase is by a public utility." It does not state that the Commission can set whatever contract length it wants. That reading would make the requirement for 20 years of prices irrelevant. ORS 758.525.

PacifiCorp next claims that CREA misrepresented the Commission's 1984 order. According to PacifiCorp, because the order set the maximum term for "standard contracts" at one year, the order contradicts the requirement in the statute that each QF be allowed to sell at fixed prices for a period of at least 20 years. *PacifiCorp's Post-Hearing Opening Brief* at 13. But PacifiCorp completely ignores the relevant portion of the 1984 order. The 1984 order plainly stated that all QFs were entitled to forecasted prices for a period of 35 years and rejected PacifiCorp's policy arguments to the contrary. Order No. 84-720 at 6-8. The relevant portion of the order states:

> ORS 758.525(1) is a minimum requirement for the utility. There is nothing in the law to indicate the Commissioner cannot require the utility to file avoided costs for more than 20 years. Pacific's interpretation would prohibit the Commissioner from performing his statutory duty to establish a stable and reliable stream of payments upon which cogenerators may rely.
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> The Commissioner is well aware that a 35-year price schedule may put rate payers at risk. Without rate payers assuming this level of risk, however, there will be no alternatives to the large-scale thermal facilities of the past. Furthermore, the risks of making inaccurate assumptions about long-term needs for generation is addressed more appropriately through the avoided cost price and the degree of levelization than through the term of the payment schedule.

Id.

In arguing that CREA "misrepresents" the 1984 order, PacifiCorp cites a section of the order addressing the length of standard contracts with uniform terms. That section of the order merely ruled, without explanation, that "standard contracts" with standard terms and rates were too difficult to provide for a period of longer than one year. *Id.* at 23. However, that does not contradict the fact that the 1984 order provided each QF with the option to negotiate an individualized contract with fixed prices for a period well in excess of the 20-year minimum. *Id.* at 6-8. In any event, even if PacifiCorp's interpretation of the 1984 order is correct, ORS 758.525 is not "delegative," and therefore prior Commission determinations are not controlling. *Or. Occupational Safety & Health Div. v. CBI Services, Inc.*, 356 Or. 577, 585, 341 P.3d 701 (2014).

PacifiCorp also disputes the legislative history. The general thrust of PacifiCorp's argument is that the statute is unambiguous, and therefore the Commission should ignore the legislative history. The flaw in this argument is that the statute does not unambiguously grant the Commission authority to set whatever term for fixed prices that it wishes. No section of the statute states that. Furthermore, even if the language were "superficially clear" in support of PacifiCorp's position, the legislative history can be used to show that "there is a kind of latent ambiguity in the statute." *State v. Gaines*, 346 Or. 160, 172, 206 P.3d 1042 (2009). PacifiCorp simply ignores this holding in *Gaines*.

PacifiCorp and Staff attempt to dismiss the statements by Representative Bradbury and the Oregon Department of Energy's ("ODOE") witness as isolated colloquies. But the legislative history includes direct statements by the House sponsor of the bill, Representative

Bradbury, to the only Senate committee to consider the bill, that the purposes of the legislation included the intent to provide 20 years of prices. Audio Recording, Senate Committee on Energy and Environment, H.B. 2320, June 15, 1983, Tape 168, Side A (comments of Representative William Bradbury).[4]

In addition, the legislative history also contains statements by the vice chair of the Senate Committee on Energy and Environment, Senator Steven Starkovich, referring the committee members to the ODOE's written testimony for a section-by-section description of the final version House Bill 2320. *Id.* (comments of Senator Steven Starkovich). Even Staff agrees that written testimony by ODOE's David Philbrick unambiguously explained that the bill "*requires avoided costs to be forecasted and, if desired by the facility owner, obligated under contract for at least the next twenty years*." Testimony, Senate Committee on Energy and Environment, June 15, 1983, Ex. B at 3 (Statement of David Philbrick, ODOE) (emphasis added). Written testimony is more than a mere colloquy in passing in a committee. It is a written record available for review to understand the purpose of the proposed legislation.

Moreover, Mr. Philbrick was not a random witness to the meaning of the legislation. ODOE was the state agency that initially explained the need for the bill in the House. Minutes, House Committee on Energy and Environment, February 2, 1983; *see also* Testimony, House Committee on Energy and Environment, February 2, 1983, Ex. A at 1 (Statement of Lynn Frank, ODOE) (explaining the bill's intended purpose was "to maintain a favorable climate for

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[4] The relevant minutes and exhibits from the Senate proceedings are attached to CREA's pre-hearing brief.

development of private power production facilities in Oregon.").[5]

ODOE's David Philbrick became one of the bill's primary authors and was deeply engaged in editing it to final form in the House. *See* Audio Recording, Senate Committee on Energy and Environment, Subcommittee on H.B. 2320, H.B. 2320, March 17, 1983, Tape 104, Side A (Comments of Representative Bradbury, noting Mr. Philbrick assembled a decision matrix for the subcommittee on the bill's provisions). He proposed edits to the section at issue which were ultimately adopted. *See* Audio Recording, House Committee on Energy and Environment, Subcommittee on H.B. 2320, H.B. 2320, March 29, 1983, Tape 120, Side A (Comments of David Philbrick, proposing a change in the bill to require projection of avoided costs for "at least" 20 years, instead of a prior version that only required a projection of 20 years).

Staff argues there is a lack of evidence from the House proceedings. But that is not correct. The evidence from the House supports Mr. Philbrick's written description of the meaning of the bill to the Senate committee. At the March 29, 1983 subcommittee meeting in the House, Mr. Philbrick explained:

> The final change that [sic] proposing in Section 10 is a new subsection 4, which was to get at the issue, really identified by Mike Jacobs at the last subcommittee hearing in which there appeared to be no requirement for a utility to actually offer a projected avoided cost rate. If you recall back in Section 8, have [sic] made a requirement that the utilities forecast what their avoided costs would be over a twenty year period, but, did not, there was no place where the bill actually made a requirement that that be offered. And so the attempt, in section 4, subsection 4, here in 10, in terms of that language was, is to impose that requirement. The language chosen is consistent with language in the federal rules and seemed to do

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[5] The relevant minutes and exhibits from the House proceedings are attached to this brief.

what we felt necessary.

Audio Recording, House Committee on Energy and Environment, Subcommittee on H.B. 2320, H.B. 2320, March 29, 1983, Tape 121, Side A (Comments of David Philbrick, ODOE).

In response to questioning from Representative Liz VanLeeuwen, Mr. Philbrick further explained the language of FERC's LEO rule and stated: "The advantage of the being able to lock in under contract of projected avoided costs is that it does enable somebody to know what their cash stream is going to be; go to the bank and say, yes, I will be able to have a return to finance this project." *Id.* No party testified in opposition to this purpose.

Later in the editing process, the 20-year pricing requirement was further refined and moved into the subsection prior to the subsection that imported FERC's LEO rule into the bill, just as ORS 758.525 provides today. *See* Exhibit A, House Committee on Energy and Environment, Subcommittee on H.B. 2320, H.B. 2320, at p. 1, April 14, 1983 (requiring 20 years of projected "prices" in what was then section 4 of the bill); Exhibit A, House Committee on Energy and Environment, H.B. 2320, at p. 3, April 29, 1983 (containing both the requirement for 20-year prices and the LEO rule in section 3 of the bill); Exhibit A, House Committee on Energy and Environment, H.B. 2320, at p. 3, May 4, 1983 (containing further clarifying language to section 3, which was the 20-year pricing requirement's final location, *see* Oregon Laws 1993, Ch. 799, § 3).

The available evidence therefore demonstrates that the drafters of the bill in the House intended that the requirement to file at least 20 years of prices would result in the QF having the option to obligate itself to 20 years of prices. They sought to do so by simply stating in the next

subsection of the statute, consistent with 18 C.F.R. § 292.304(d)(2)(ii), that the QF could elect to sell under the projected avoided costs. *See* ORS 758.525(2)(b). Nothing contradicts this purpose or intent, which is entirely consistent with CREA's construction of the plain meaning of the statute.

PacifiCorp relies on precedent that pre-dates the *Gaines* decision to ignore this extensive legislative record. *See PacifiCorp's Post-Hearing Opening Brief* at 14 n. 54; *id.* at 15 nn. 57 & 58. But many of the cases cited by PacifiCorp actually support CREA's position. For example, in one misleading passage, PacifiCorp argues: "Moreover, 'isolated statements made in committee are not necessarily indicative of the intent of the entire legislature.'" *PacifiCorp's Post-Hearing Opening Brief* at 15 (quoting *Davis v. O'Brien*, 320 Or 729, 745, 891 P.2d 1307 (1995)). However, the full quotation is:

> *Although* isolated statements made in committee are not necessarily indicative of the intent of the entire legislature, *in view of the fact that we have found no suggestion, either by a legislator or any witness in committee, that SB 323 was intended to have the effect of allocating percentages of fault to anyone other than defendants and plaintiffs, those comments are significant. We conclude that the legislative history supports the proposition that the 1987 amendment did not overrule Mills or revise that portion of the statute that Mills interpreted.*

Davis, 320 Or at 745-746 (words omitted by PacifiCorp in italics). Thus, the Oregon courts treat even isolated statements in committee as "significant" if there is no other evidence to the contrary of those statements.

In another selective quotation, PacifiCorp argues: "Drawing conclusions as to legislative intent largely from colloquies in committee hearings always is risky business." *PacifiCorp's Post-Hearing Opening Brief* at 15 n. 57 (quoting *Matter of Marriage of Denton*, 145

Or App 381, 399, 930 P.2d 239 (1996), *aff'd in part, rev'd in part*, 326 Or 236 (1998)). But the full quotation by the Oregon Court of Appeals provides:

> Drawing conclusions as to legislative intent largely from colloquies in committee hearings always is risky business. *See, e.g., Davis v. O'Brien,* 320 Or. 729, 745, 891 P.2d 1307 (1995) ("isolated statements made in committee are not necessarily indicative of the intent of the entire legislature"). *Nevertheless, it clearly is the practice of the Oregon Supreme Court to rely on such materials as evidence of legislative intent, and we are in no position to disregard that practice. See, e.g., Errand v. Cascade Steel Rolling Mills, Inc.,* 320 Or. 509, 521–23, 888 P.2d 544 (1995) (statements of two witnesses and two legislators).

Matter of Marriage of Denton, 145 Or App at 399-400 (text omitted by PacifiCorp in italics). Thus, contrary to PacifiCorp's suggestion, the Oregon courts even consider isolated colloquies in committee meetings.

In sum, ODOE's written description of the requirement for at least 20-years of fixed prices in the final bill is conclusive evidence of the bill's intended meaning. Nothing in the legislative history contradicts the meaning put forth by ODOE. And that meaning is entirely consistent with the overall purpose of the legislation, which was clearly to promote development of QF resources. The statute therefore requires that QFs have the option to sell under prices fixed for a period of at least 20 years.

Finally, essentially acknowledging the merit to CREA's argument regarding the purpose of Oregon's PURPA statute, PacifiCorp argues that PURPA preempts Oregon's statutory requirement for 20 years of fixed prices. This argument is completely without merit. PURPA does not preempt 20-year contracts. To the contrary, FERC has specifically required states to provide long-term contracts, including contracts in duration of up to 25 years in *Hydrodynamics Inc.*, 146 FERC ¶ 61,193 at PP 32-33. The Commission should reject PacifiCorp's meritless

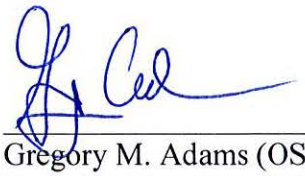
argument that PURPA preempts 20-year contracts.

III. CONCLUSION

For the reasons set forth above and CREA's prior filings, the Commission should maintain the eligibility cap at 10 MW for all resource types, and the Commission should increase the length of the contract term for fixed avoided cost rates to 20 years.

RESPECTFULLY SUBMITTED this 19th day of February, 2016.

RICHARDSON ADAMS, PLLC



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Of Attorneys for the Community Renewable Energy Association

ATTACHMENT 1
Excerpts of House Legislative History Minutes and Exhibits

HOUSE COMMITTEE ON

ENVIRONMENT & ENERGY

February 2, 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
Rep. Liz VanLeeuwen

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

Witnesses: William D. Hardwick, Energy Conservation Corp
Stephen Barrett, Oregon Solar Energy
Fred Heutte, Solar Oregon Lobby
Margot Beutler, Solar Oregon Lobby
Lynn Frank, Department of Energy
Carl Ertler, PPL
Thomas Nelson, Attorney, PPL
Libby Henry, Public Utilities
Michael Jacobs, Public Utilities
Larry Schwartz, Public Utilities

Measures: HB 2319 - Extends tax credits for alternative energy devices
HB 2320 - Modifies definition of public utility

TAPE H-83-EE-26, SIDE A

007 **CHAIR HOOLEY** called the meeting to order at 1:35 p.m. and stated that HB 2320 is dealing with what Oregon is going to do to encourage alternate energy or are we going to encourage private power development in this State.

031 **LYNN FRANK**, Director, Oregon Department of Energy, testified regarding HB 2320 which addresses the sale of electricity from private power producers, stated the region today is in a position of surplus and is likely to be in that postion through 1990. The question before us is if we ought to pursue the development of new energy resources in the interim and the answer is simply yes. **MR. FRANK** continued with his testimony and then went through language changes they recommended for the bill. There was much discussion between committee members

and **MR. FRANK** with several clarifying questions answered for the committee. (EXHIBITS A AND B)

TAPE H-83-EE-27, SIDE A

010 **MR. FRANK** continued his presentation on HB 2320 discussing meeting the need for power after 1990, the cash flow to pay for the building today at today's interest rates, Bonnville Power Administration, avoided costs and true costs.

225 **LYNN FRANK** continued going through the suggested language chances in the bill. (EXHIBIT B)

342 **CARL TALTON**, Pacific Power and Light Company introduced **CARL ERTLER**, Director of Research and Energy Use Development, Pacific Power and Light, making him responsible for Pacific's acquisition of renewable resources. **MR. ERTLER** gave testimony stating PPL is in opposition of the bill. (EXHIBIT C)

485 **CHAIR HOOLEY** asked what is different from this bill that would impact PP&L from Senate Bill 255.

459 **MR. FRANK** stated it was basically the exclusion of Bonneville's acquisition of energy.

025 **THOMAS NELSON**, Attorney, PPL, stated the major modifications from Senate Bill 255 is the elimination of the use of the Bonneville purchase rate as a method for calculating avoided costs. **MR NELSON** answered additional questions regarding avoided costs.

062 **REP. BRADBURY** asked if PPL would be more comfortable with this bill if in Section 10 the base rate provision were deleted and just required them to purchase power on an avoided costs basis.

065 **MR. ERTLER** stated yes that is their current policy today and they would be very comfortable with it.

085 **CHAIR HOOLEY** introduced **LIBBY HENRY**, and **MICHAEL JACOBS**, from the public utility districts and **LARRY SCHWARTZ** from the municipal utility districts.

089 **LIBBY HENRY**, EWEB gave testimony opposing the bill, primarily because the Northwest region is in a power surplus, also because BPA has in draft form a

transmission policy stating they will not purchase power from non-utility entities. With this policy in mind and avoided costs, it means they take the power whether they need it or not.

148 **MIKE JACOBS**, Clatskanie, Northern Wasco, and Tillamook People's Utility Districts, gave testimony opposing the bill and discussed the costs it would incur for the utility districts and feels that because of the present power surplus, by the time these plants were needed a large part of their useful life would be used up; as well as how to use the extra power would be a problem.

There was much discussion between committee members and the three witnesses.

TAPE H-83-EE-27, SIDE B

031 **LARRY SCHWARTZ** and **REP. THROOP** discussed **MR. SCHWARZ'S** statement that this bill would require that utilities purchase resources at a noneconomic price.

More discussion continued between committee members, **LIBBY HENRY, MIKE JACOBS,LARRY SCHWARTZ**, and **LYNN FRANK** regarding what happens if the bill does not pass, and the intent of the bill.

199 **CHAIR HOOLEY** stated the committee needed to decide if they believed in the policy that we should encourage alternative sources for the future, how to get there from here, and how to encourage private citizens to produce energy for the future and suggested forming a subcommittee with a few committee members, investor utilities, and Department of Energy to decide what to do.

411 **CHAIR HOOLLEY** appointed a subcommitte of **REP. BRADBURY** and **REP. VANLEEUWEN** to meet with a spokesperson from the PUD, investor utilities, and Department of Energy to work on this bill.

423 **REP. THROOP** stated the subcommittee should keep in mind this committee is very interested in the passage of this bill, therefore, the negotiators should work toward an agreement that is acceptable to them because it is likely that the committee will be interested in passing whatever that package happens to be.

436 **CHAIR HOOLEY** opened the hearing on HB 2319,.

HOUSE COMMITTEE ON
ENVIRONMENT & ENERGY
FEBRUARY 2, 1983 HB 2320
EXHIBIT A - 4 PAGES
TESTIMONY, LYNN FRANK

OREGON DEPARTMENT OF ENERGY
TESTIMONY

BEFORE THE HOUSE ENVIRONMENT AND ENERGY COMMITTEE

HB 2320
The Sale of Electricity from Private Power Producers

February 2, 1983

The purpose of this bill is to maintain a favorable climate for the development of private power production facilities in Oregon. Such facilities sell their output to utilities and typically have been fueled by solar, wind, geothermal, hydro or biomass energy resources.

Sponsors of such facilities need help if they are to operate in Oregon. Similarly, if Oregon seriously is interested in the development of these resources, private sponsorship is of major importance. This bill will provide that help. We strongly encourage you to consider these measures and to adopt legislation that carries out their intent.

History

In considering Senate Bill 255 the 1981 Legislature recognized the discrepancy between the prices offered for purchase of power by public and private utilities, the uncertain power purchase policies of the Bonneville Power Administration (BPA), and the need to encourage private power producers. Senate Bill 255 addressed the price discrepancy issue by establishing a minimum base rate that all utilities must pay for power purchased from small producers. Senate Bill 255 left open the opportunity for public utilities to transmit (wheel) the power through their service territory to that of the neighboring utility, and thereby avoid paying the legislatively mandated base price. Because of the aforementioned uncertainties and the time pressures under which the legislation was developed, a sunset date of July 1983 was incorporated in the measure. During this biennium, the base rate incorporated in SB 255 was implemented, and the attempts by BPA to develop programs and policies have been followed. The concept before you recognizes that experience.

Importance

Private power producers are important to the near term development of non-traditional power sources. For example, in California 217 MW of wind power is expected to be on line by the end of 1983. This capacity consists of 35 projects using small- to medium-sized turbines in clusters and are sponsored by private power producers. Similarly, most of the geothermal energy developed in California is produced by resource companies, not utilities, and the first geothermal generation on line in Oregon has been sponsored by a private power producer. A well-defined and understood climate for the sale of privately produced power is important if these resource developers are to find the risk of project development in Oregon acceptable.

Summary of Major Points in the Proposed Legislation

This bill accomplishes five major actions:

1) It makes it clear that State policy encourages private power development and that the State intends to create a climate in Oregon conducive to such development.

2) The legislation continues regulatory responsibility of PUC over municipal utilities, cooperatives, and peoples utility districts for the purpose of implementing the provisions of this act dealing with the purchase of privately produced power.

3) The bill provides greater clarity to the term "avoided cost." As defined, the avoided cost for utilities that purchase their power is the cost the purchaser would have incurred had it produced the power itself, not the wholesale power cost. We believe this is the true definition of avoided cost. It is, however, different from what some Oregon utilities have adopted. These utilities have construed their wholesale purchase price from BPA as their avoided cost.

   That purchase price is based on BPA's average system cost and does not reflect the cost of new generation resources on the system. Such new generation either displaces the most expensive existing facility, or the need for a more costly future facility. In either case, the value of such new generation is more than the average established in some wholesale purchase price. The appropriate standard for establishing the value of power produced by a private power producer to the utility is that associated with the incremental cost of the power generation that is displaced regardless of whether the utility generates that power, or purchases it from another utility.

4) The bill maintains the "base price" established by the 1981 Legislature for the purchase of private power. This is important because it provides price certainty throughout Oregon upon which private power producers can rely. The ability to estimate the value of their output is important as power producers seek private financing. In order for them to estimate the value of their project, sponsors must have some understanding of the market in which they will be selling and the ground rules under which its prices will change. This provision will provide some consistency in Oregon and a base level that a generator can understand and anticipate. Since the 1981 Legislative Session the need and the importance of this provision has changed. The market in Oregon for privately produced power is more uncertain now than it was in 1981. Near-term forecasts of power surplus have made the avoided cost on private utilities as well as public utilities extremely volatile. Inaction by the BPA has resulted in continued confusion. Private power producers on public and private utility systems have little knowledge of how they will be treated or the price they will be offered for power.

5) The bill suggests incorporating into the statutes many of the provisions which currently are in state and federal administrative rules with regards to the purchase of privately produced power by utilities. Many of these provisions are extremely important to the viability of privately produced power. It is suggested that they be incorporated into the Oregon Revised Statutes to provide a higher level of certainty and consistency to the industry.

A section-by-section summary of the bill is attached.

Conclusion

Adoption of this bill would provide a more stable marketplace for power from cogenerators and small power producers. This is important to Oregon if energy production from wood fired boilers, wind, and geothermal is to occur in the near term. Provisions in this concept, including a definition of avoided cost and the maintenance of the base rate established in 1981, will be controversial. We strongly encourage the adoption of legislation that successfully carries out the intent of this bill.

Summary of Substantive Sections - HB 2320

Section 2 is a statement of legislative intent: that the Legislature wishes to create in Oregon a climate conducive to the development of privately produced power.

Section 4. The significant change in section 4 is clarification of the definition of avoided cost. It ties the avoided cost to the incremental cost of the power generation regardless of whether or not the utility purchases its power from a supplier.

Definitions of Public Utility provided in this section will continue existing regulatory authority of PUC over Public Utilities for the purposes of carrying out the purposes of this legislation.

Section 6 introduces into statutes provisions which are in state and federal rules. The changes clarify the wheeling and/or purchase obligation of a utility regardless of whether the power involved is generated in the utility's service territory. Subsection 2 insures non-discriminatory utility sales practices to customers who also happen to be generators. Federal and state rules currently bar such practices. This provision is consistent with these rules.

Section 8 continues existing enforcement and rule making authority of PUC to carry out the provisions of this Act.

Section 10 establishes a base rate for the purchase of electric energy that is based on the cost of power from the highest cost permanent base load plant then serving Oregon consumers that is owned and operated by a public utility. This is the same base rate definition and process established by the 1981 Legislature.

Section 11 simply includes in the definition of "public utility" the exemption that now exists for private power producers. This section does nothing more than bring that exemption into the definition of public utility along with other exemptions to that definition.

Section 13 establishes an effective date for the legislation. It is important that this bill take effect when the existing provisions sunset July 1, 1983 to maintain continuity.

DP:ml
0271M

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

SUBCOMMITTEE ON HB 2320

March 17, 1983 3:00 p.m. Hearing Room 354

MEMBERS PRESENT: Rep. Bill Bradbury, Chairperson
Rep. Liz VanLeeuwen

STAFF: Elizabeth Samson, Committee Administrator
Joan Hosking, Committee Assistant

WITNESSES: David Filbrick, Dept. of Energy
Teace Adams, Energy Control Systems
Michael Jacobs, Northern Wasco County P.U.D.
Hal Burkitt, H. H. Burkitt Project Management
Thomas Nelson, Pacific Power & Light
Austin Collins, Independant Lobbyist

TAPE H-83-EE-104: SIDE A

007 CHAIRMAN BRADBURY called the meeting to order at 3:00 p.m.

018 CHAIRMAN BRADBURY advised the committee and people present that this meeting was not intended for testimony as a meeting would be scheduled for March 29th to recieve public testimony on the proposal. He stated the key thing was that the definition of avoided cost remains as it is defined by the PERPA legislation. The avoided cost is defined as the cost of generating or purchasing power, the public utility meaning would be avoided cost and the Bonneville power administration wholesale rate is not enough money to encourage anything. The base rate is defined at the request of the investor owned utilities to be the lowest stream cost of the investor owned utilities. The key part of the bill would require the purchase of power from a small power producer or co-generator and the power price would be either the utility avoided cost or if the utility fails to wheel the power then you would be required to pay the base rate. The committee is pre-empted by the federal government from requiring wheeling but, it can be required as a good faith effort to wheel. The point in that would be to prevent overloading of a small utility from a small producer but, still encouraging

the wheeling of that power to a utility that would want to purchase it.

He also, commented about the bill that the investor owned utilities remain under control of the public utility commissioner and the existing reporting requirements for the avoided costs. The non-regulated utilities would have to publically adopt policies and rate tarrifs relating to the sale of power by small power facilities and co-generators. It would require the avoided cost rate schedule to reflect the forecasted incremental cost to that utility of electricity resources over the next 20 years. The forecast would have to be filed with the PUC and a copy sent to Environment and Energy to see what kind of implementation there is and if people are adopting the rate schedule that is required under the law.

074 REP. VANLEEUWEN wondered what would result if no one wanted to purchase that power.

079 DAVID FILBRICK, Dept. of Energy, answered that under federal law and PERPA it is required that a utility purchase at its avoided cost or with the consent of the facility owner to wheel the power to another utility.

105 REP. VANLEEUWEN wondered if everyone had received a copy of the proposed bill and decision matrix and if Mr. Filbrick had put it together. (Exhibit A, HB 2320)

114 MR. FILBRICK stated that everyone should have received a copy of the proposal and matrix which, addressed all the various proposals made into one with the help of committee staff.

133 TEACE ADAMS, Dept. of Energy, felt that in looking over the documents (Exhibit A, HB 2320) it was unclear if there was a change in the way PUC is to operate.

136 CHAIRMAN BRADBURY replied that there is no change in the way PUC operates. PUC would have authority over the investor owned utilities which is present law but, it is a change in the proposal.

143 REP. VANLEEUWEN commented that PUC has no real authority except that they would receive the projected cost from the non-regulated utility.

151 MICHAEL JACOBS, Clatskanie, Northern Wasco County Umatilla Peoples Utility Districts, questioned if the Regulation and Reporting Requirements on the Concetual Framework (Exhibit A, HB 2320) and the draft bill on page three of line 40 were the same. He interpretated it to mean that the PUD's use the projected Bonneville wholesale rate over the life of the facility that would mean the cost whatever the governing board adopts be frozen and that be the rate to be paid regardless of what the actual Bonneville rate turns out to be in the nineth year.

185 CHAIRMAN BRADBURY replied that he was not sure but, that would be a good question as to how would the posting of a rate schedule affect the reality of a rate schedule as time went on.

187 MR. JACOBS wondered if it would be more of a informational purpose for small hydo people coming on would the rate be frozen.

189 CHAIRMAN BRADBURY felt that the rate schedule as used in the contract when signed would be the rate in effect.

211 REP. VANLEEUWEN commented that she would appreciate some input from the people interested in this proposal before the committee comes to a final decision.

218 HAL BURKITT, H. H. Burkitt Management Project, raised a question on page four starting on line four for the avoided cost of the utility (Exhibit A, HB 2320) and wondered if that would include any utility, private or public. And on line ten, he wondered if that would mean in each case of the qualifying facility that the developer would come in and make a schedule of payments.

247 CHAIRMAN BRADBURY replied that it had not been distinquished between private or public except in the involvement with the PUC. It is understood that the schedule would be in the regular filings with the PUC by the investor owned utilities. The base rate is determined by the lowest avoided cost of the investor owned utilities which is the lowest stream of payments.

253 MR. BURKITT stated that there is a unique condition in Oregon the CP National who has no generating facilities but, only purchases power from Idaho power as a hydro-electric stream and in some events could

have a very low avoided cost because of the no generate capacity. But, Idaho power may not renew its contract with CP National then there could be a high stream. Mr. Burkitt's concern was what that lowest cost stream is and that it may inhibit the development of co-generators or small power producers at this time.

281 CHAIRMAN BRADBURY stated that to address Mr. Burkitt's concern would be to get the kind of figures that presently exist that would tell the committee what the lowest cost stream of payments for purchase of power is at this time.

286 THOMAS NELSON, Pacific Power & Light Company, stated that his understanding was that CP National is now using the Idaho avoided cost prices for purchases from co-generators and their contract is terminating in 1985, then the cost of power will be increased.

289 CHAIRMAN BRADBURY asked if Mr. Nelson would prepare a chart outlining what the definition of the base rates would mean today and from before.

324 AUSTIN COLLINS, Independant Lobbyist, stated his concerns at the good faith effort when it comes to co-op. He questioned the problem of establishing a transmission line if there is a need for added facilities how far would the co-op have to go in dealing with the financial community fund and additional wheeling facility.

352 CHAIRMAN BRADBURY stated that whenever wheeling is concerned the cost to the utility to wheel that power costs are paid by the power producer.

361 MR. COLLINS asked then who would establish the formula for those rates.

364 MR. FILBRICK replied that wheeling tarrifs could be defined many ways but, the proposed language in the bill is that the wheeling tarrifs be based on costs of service. He felt the rate relections and so on are not addressed in the bill and that should be a subject for the governing body of the utility in their process.

383 CHAIRMAN BRADBURY replied that the definition of the wheeling tarrif would be the cost of transmitting that power so, that any cost incurred by any utility in wheeling that power would be paid for by the small producer rather than the utilities rate payers.

418 CHAIRMAN BRADBURY adjourned the meeting at 4:00 p.m.

Respectfully Submitted,

Joan Hosking
Committee Assistant

EXHIBIT LOG:
Exhibit A, HB 2320 Conceptual Framework and Matrix

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY
SUBCOMMITTEE ON HB 2320

March 29, 1983 1:30 p.m. Hearing Room 454

MEMBERS PRESENT: Rep. Bill Bradbury, Chairperson
Rep. Liz VanLeeuwen

STAFF PRESENT: Beth Samson, Committee Administrator
Lindy Swanson, Education Committee Assistant

WITNESSES: Jack S. Wood, Wood and Associates, Auburn, California
David Philbrick, Oregon Department of Energy (ODOE)
Tom Nelson, Pacific Power and Light
Judith Miller, Central Lincoln People's Utility District (PUD)
Libby Henry, Eugene Water and Electric Board (EWEB)
Ted Sieckman, Publisher's Paper, Lake Oswego, Oregon
Kirk Rector, Coordinated Financial Services, Salt Lake City, UT
Teace Adams, Energy Control Systems of Lake Oswego

MEASURES: HB 2320

TAPE H-83-EE-120, SIDE A

006 CHAIRPERSON BRADBURY called the meeting to order at 1:45 p.m. He stated the purpose of the meeting -- to examine and determine the reactions to the Draft Engrossed HB 2320, dated March 17, 1983. (Exhibit A)

023 JACK WOOD, Wood and Associates, expressed favor with the scope, thrust and intent of the bill, but difficulty with the definitions of "avoided costs", "PURPA rate", "incremental costs". He elaborated on this.

098 REP. VANLEEUWEN asked what wording Mr. Wood recommended they use for avoided costs. MR. WOOD did not provide specific wording; he elaborated further on the need for a clear definition.

139 REP. VANLEEUWEN asked a question about the price they need to develop geothermal energy resources. MR. WOOD answered the question.

173 REP. BRADBURY asked for further help with defining the words that Mr. Wood had difficulty with. MR. WOOD, again, did not provide specific wording, but rather, elaborated on the need for clear definitions.

193 REP. BRADBURY commented that the bill does not require anything of the private industries that the federal government doesn't already require, to the best of his knowledge.

207 DAVID PHILBRICK, ODOE, commented that that was correct. The bill does provide some certainty in some areas that are now under litigation. REP. BRADBURY concluded that they are coming up with some state definition

that would provide some stability regardless of what the federal government does. JACK WOOD commented on the above.

229 DAVID PHILBRICK discussed their favor with the concept presented in the draft engrossed HB 2320 (Exhibit A). He explained their concerns and addressed some amendments to the bill. The most important amendments are discussed on page 2, number 8 and page 3, number 11 of the ODOE's proposed amendments. He discussed the need for these.

304 REP. BRADBURY asked when the other amendments would be addressed. MR. PHILBRICK explained why he had not addressed the other proposed amendments. Then he proceeded with his explanation of the amendments to section 10 of the draft engrossed HB 2320. Committee members asked questions to clarify the amendments.

H-83-EE-121, SIDE A

004 REP. BRADBURY noted the lack of a verb in the new subsection 2 created by ODOE's amendments to section 10 of the draft engrossed HB 2320. (refer to Exhibit B, page 3, number 11, amendments to line 10 and Exhibit A, page 4 line 10). MR. PHILBRICK continued with his explanation of the proposed amendments. (Exhibit B, page 3, number 11)

054 REP. VANLEEUWEN asked for clarification of the meaning of ODOE's proposed amendments that create a new subsection four under section 10 of the draft engrossed HB 2320. (Refer to page 4 of Exhibit B and page 4, section 10 of Exhibit A) MR. PHILBRICK explained then proceeded with his discussion of the remaining amendments on page 4 of Exhibit B.

104 REP. BRADBURY asked Mr. Philbrick if he was satisfied that ODOE's proposed wording on page 4 under "a" and "b" accomplishes what he wants it too. MR. PHILBRICK expressed discomfort with the accuracy of the language and welcomed additional help in clarifying that language. There was discussion on this.

131 REP. BRADBURY asked the utility representatives to examine that language and make suggestions. Next, he asked Mr. Philbrick to discuss the minor amendments contained in ODOE's proposed amendments. MR. PHILBRICK proceeded to do so. (Refer to page 1 of Exhibit B)

185 REP. VANLEEUWEN left the meeting at 2:30 p.m.

197 REP. BRADBURY asked questions regarding amendments to page 2, line 28 and 29 of the draft engrossed HB 2320. There was discussion on his concerns. (Refer to page 1, number 5 of Exhibit B) Rep. Bradbury continued his questioning with respect to amendments to section 6, subsection 1 of the draft engrossed HB 2320. MR. PHILBRICK explained how it should read and the policy concern that that amendment addresses.

262 DAVID PHILBRICK continued with a discussion of the proposed changes to section 8. (Refer to page 2, number 7 of Exhibit B and page 3, section 8 of Exhibit A)

316 REP. BRADBURY referred back to the proposed amendments to section 10, subsection 1b of the draft engrossed HB 2320, which limited the application of that subsection to non-regulated utilities, and asked if that limited application was a good idea or not in light of other amendments. (Refer to page 3, number 11, amendments to line 10 of Exhibit B) MR. PHILBRICK suggested that the scope should not be limited to non-regulated utilities, in spite of the indication of ODOE's desire for that change. There was discussion on this which involved a discussion of base rate.

360 TOM NELSON, attorney for Pacific Power and Light, discussed the differential between SB 255 rates and HB 2320 rates. (Exhibit C, page 6)

401 Next, he addressed PP&L's reactions to the draft engrossed HB 2320. (Exhibit C)

439 REP. VANLEEUWEN returned to the meeting at 2:43 p.m.

H-83-ED-120, SIDE B

084 REP. VANLEEUWEN asked Mr. Nelson to define interconnection as used in his testimony. MR. NELSON explained and then proceeded with his testimony.

171 REP. VANLEEUWEN asked if the Attorney General's opinion on the ODOE's proposed amendments and the draft engrossed HB 2320 had been obtained. DAVID PHILBRICK said the Attorney General's opinion has been requested but they have not received a reply yet.

199 JUDITH MILLER, Central Lincoln PUD, expressed favor with the intent of the draft engrossed HB 2320. However, the language in some areas is imprecise. She felt that Mr. Nelson and Mr. Philbrick had adequately addressed the need for clarity in those areas that she was concerned about.

240 REP. BRADBURY asked Ms. Miller to identify specifically those areas that she felt needed clarification. MS. MILLER proceeded to go through the bill section by section to identify those areas.

405 REP. BRADBURY asked Ms. Miller to respond to a suggestion regarding the requirement that rates be published at certain times.

H-83-EE-121, SIDE B

001 REP. BRADBURY asked a question about the definition of "a good faith effort". JUDITH MILLER answered.

008 REP. VANLEEUWEN asked Ms. Miller to respond to Tom Nelson's testimony (Exhibit C) some time in the near future.

019 LIBBY HENRY, EWEB, responded negatively to ODOE's proposed amendments to section 10 of the draft engrossed HB 2320 on the rate of purchase. She explained her objections. There was discussion on this.

046 She expressed EWEB's satisfaction with the draft engrossed HB 2320 as long as the concerns expressed in Ms. Miller's testimony were addressed.

048 REP. VANLEEUWEN expressed concern with a section of Mr. Philbrick's "March 25 draft" that requires IOU's to comply with certain regulations. REP. BRADBURY responded to Rep. VanLeeuwen's concern. He clarified that they are not requiring things of Investor Owned Utilities (IOU's) that they are not requiring of the non-regulated utilities.

078 TED SEICKMAN, Publisher Paper Company, expressed favor for legislation that encourages co-generation and small power production. He commented on two general concepts: wheeling and the means of requiring wheeling.

124 He said that though the bill's intent is to encourage co-generation, it does not. He discussed the possibility of determining a floor rate.

157 REP. VANLEEUWEN discussed previous suggestions regarding a floor rate. REP. BRADBURY discussed the problem they were seeking to solve in determining a floor rate.

188 REP. BRADBURY asked a question regarding amendments proposed by Ted Seickman. TED SEICKMAN responded. There was discussion on the amendment on wheeling.

223 REP. BRADBURY asked a question regarding the concept of the amendments dealing with the minimum purchase price. TED SEICKMAN answered the question. There was discussion on this proposed amendment.

359 KIRK RECTOR, Coordinated Financial Services, Salt Lake City, Utah, and attorney for certain small power producers, testified in favor of HB 2320. He illustrated the need for the bill with case histories of his clients.

069 TEACE ADAMS, Energy Control Systems, proposed amendments to the draft engrossed HB 2320. She presented the committee with written copy of her proposals. (Exhibit D)

127 REP. VANLEEUWEN asked a question regarding the proposed amendment to section 8, subsection 2. TEACE ADAMS discussed this amendment.

180 REP. BRADBURY asked about FERC requirements for being certified as a qualifying facility. TEACE ADAMS explained the procedure as she understood it. TOM NELSON explained the qualifying procedure. There was discussion on this.

280 REP. BRADBURY asked David Philbrick to respond to the suggestion that they work under the qualifying facility of FERC. DAVID PHILBRICK explained the ODOE's preference.

317 REP. VANLEEUWEN asked Tom Nelson to respond to ODOE's proposed amendments to subsection 4 of section 10. TOM NELSON explained their response to the proposed amendments.

362 REP. BRADBURY adjourned the meeting at 4:07 p.m.

Respectfully submitted,

Lindy Swanson

Lindy Swanson
Committee Assistant

TAPE LOG:

Tape H-83-EE-120
Tape H-83-EE-121
Tape H-83-EE-122

EXHIBIT LOG:

Exhibit A - Draft Engrossed HB 2320, March 17, 1983
Exhibit B - Amendments, David Philbrick
Exhibit C - Testimony and Amendments, Tom Nelson
Exhibit D - Testimony and Amendments, Teace Adams

HOUSE COMMITTEE ON ENVIRONMENT
AND ENERGY
SUBCOMMITTEE ON HB 2320
March 29, 1983
Exhibit A, 2 pages

Conceptual Framework
for HB 2320
March 17, 1983

Intent: The goal is to promote development of permanently sustainable energy resources and to protect both the utility ratepayer and the private generator over the life of the contract.

Definitions:

Defines "avoided cost" as the incremental cost to the purchasing utility of electricity that would otherwise have been purchased or generated.

Defines the base rate as the lowest "avoided cost" of the investor owned utilities.

Repeats definition of cogeneration and small power production facility.

Purchase/Wheeling Obligation:

A public utility shall purchase the output of a cogeneration or small power production facility, or with the consent of the owner, wheel the power to another utility.

Requires simultaneous purchase and sale, while protecting utility ratepayers.

Purchase Price:

Requires payment of the utility's avoided costs, or in cases where a utility fails to make a good faith effort to wheel, the higher of the avoided cost or a minimum rate.

Regulation and Reporting Requirements:

Keeps PUC regulation for only investor owned utilities. Adds a requirement on the governing body of each non-regulated utility to publicly adopt policies and rate tariffs relating to the sale of power by small power facilities and cogenerators. Requires that the avoided cost rate schedules reflect the forecasted incremental costs to that utility of electricity resources over the next 20 years. Requires the adopted rate schedules to be sent to the PUC and the House Interim Environment and Energy Committee.

Exemption:

Retains and reinforces existing exemption of private power producers and cogenerators from regulation as a utility.

Draft Engrossed Bill - HB 2320
Under Consideration by the Subcommittee
of the House Environment and Energy Committee
March 17, 1983

A BILL FOR AN ACT

Relating to energy; creating new provisions; amending ORS 757.005; repealing sections 6, 8, 9, 12 and 14, chapter 714, Oregon Laws 1981; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this Act is added to and made a part of ORS 758.500 to 758.550.

The Legislative Assembly finds and declares that:

(1) The State of Oregon has abundant renewable resources.

(2) It is the goal of the State of Oregon to:

(a) Promote the development of a diverse array of permanently sustainable energy resources using the private sector to the highest degree possible; and

(b) Ensure that rates for purchases by an electric utility from, and rates for sales to, a cogeneration facility or small power production facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the cogeneration facility or small power production facility, and in the public interest.

(3) It is, therefore, the policy of Oregon to:

(a) Increase the marketability of electric energy produced by cogeneration and small power production facilities located throughout the state; and

(b) Create a settled and uniform institutional climate for the cogeneration and small power production industry in Oregon.

SECTION 3. Section 6, chapter 714, Oregon Laws 1981, is repealed and section 4 of this Act is enacted in lieu thereof.

SECTION 4. As used in ORS 758.500 to 758.550:

(1) "Cogeneration facility" means a facility that:

(a) Produces energy as a by-product of its normal industrial process and the energy produced can be used for industrial, commercial, heating or cooling purposes; and

(b) Is more than 50 percent owned by a person who is not a electric utility, an electric utility holding company or an affiliated interest.

(2) "Small power production facility" means a facility that:

(a) Produces energy primarily by the use of biomass, waste, solar energy, wind power, water power, geothermal energy or any combination thereof;

(b) Is more than 50 percent owned by a person who is not a electric utility, an electric utility holding company or an affiliated interest; and

(c) Has a power production capacity that, together with any other small power production facility located at the same site and owned by the same person, is not greater than 80 megawatts.

(3) "Person" means an individual, firm, partnership, corporation, association, cooperative, municipality or their agent, lessee, or trustee, not primarily engaged in furnishing electric service to consumers.

(4) "Non-regulated utility" means any entity not regulated by the Public Utility Commissioner which provides electric power to Oregon consumers, including but not limited to municipalities, cooperatives and people's utility districts.

(5) "Public utility" means a utility regulated by the Public Utility Commissioner pursuant to ORS chapter 757, which provides electric power to consumers.

(6) "Avoided cost" means the incremental cost to an electric utility of electric energy or capacity, or both, which the electric utility would generate itself or purchase from another source but for the purchase from a cogeneration facility or a small power production facility.

(7) Electric Utility means both non-regulated and public utilities as defined in this section.

SECTION 5. Section 8, chapter 714, Oregon Laws 1981, is repealed and section 6 of this Act is enacted in lieu thereof.

SECTION 6. (1) Subject to sections 8 and 10 of this 1983 Act, an electric utility shall purchase or, with the consent of the owner of the cogeneration or small power production facility, may transmit to another electric utility or to the Bonneville Power Administration any energy

produced by a cogeneration or small power production facility, whether or not the energy generated originates within the utility's service area if the owner and all facilities and equipment operated by the owner meet all safety and operating requirements necessary to adequately protect electric utility consumers and all systems, facilities and equipment belonging to the electric utility.

(2) Upon request of the owner of a cogeneration or small power production facility, an electric utility shall provide power to meet the on-site electric demands, so long as the cogeneration or small power production facility meets all applicable safety and operating requirements.

(a) In such cases the rate for sale shall not discriminate against any cogeneration or small power production facility in comparison to rates for sales which apply to other electric consumers served by the electric utility, taking into account those other consumers' loads.

(3) Notwithstanding any other provision of law, a cogeneration or small power production facility shall not purchase power from an electric utility for the primary purpose of reselling the power."

SECTION 7. Section 9, chapter 714, Oregon Laws 1981, is repealed and section 8 of this Act is enacted in lieu thereof.

SECTION 8. The Public Utility Commissioner and the governing body of each non-regulated utility shall promulgate publicly available policies, tariffs, and rules relating to the terms and conditions of purchases to be made by the utility or utilities for which they have jurisdiction. The rules also shall:

(1) Establish safety and operating requirements necessary to adequately protect:

(a) Electric utility customers; and

(b) All systems, facilities and equipment of the electric utility; and

(2) Assure that rate schedules of avoided costs for each utility are available and reflect the forecasted incremental costs to that utility of electricity resources over the next 20 years; and

(3) Be substantially consistent with applicable standards required by the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

(4) Each non-regulated utility shall submit to the Public Utility Commissioner and the House Interim Environment and Energy Committee copies of rate schedules adopted to implement subsection 2 of this section.

SECTION 9. Section 12, chapter 714, Oregon Laws 1981, is repealed and section 10 of this Act is enacted in lieu thereof.

SECTION 10. (1) Purchases by an electric utility from a cogeneration facility or a small power production facility shall be at a rate that is no less than:

(a) The avoided cost of the utility; or

(b) In cases where a utility fails to make a good faith effort to transmit electricity from a cogeneration or small power production facility to another public utility or the Bonneville Power Administration, a rate set by the Public Utility Commission under subsection (2) of this section.

(2) The lowest-cost stream of payments for purchases of power of similar characteristics (including on-line date, duration of obligation, size of facility, and quality and degree of reliability) taken from the then-current prices for purchases filed by public utilities and approved by the Public Utility Commissioner for payment to cogenerators and small power production facilities.

"(3) A "good faith effort" to transmit electricity shall be demonstrated by pursuing, with due diligence, the development and publication of cost of service based wholesale wheeling tariffs."

SECTION 11. ORS 757.005 is amended to read:

757.005. (1) As used in this chapter, except as provided in subsection (2) of this section, the term "public utility" means:

(a) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates manages or controls all or a part of any plant or equipment in this state for the conveyance of telephone messages, with or without wires, for the transportation of persons or property by street railroads or other street transportation as common carriers, or for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

(b) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with said public utility.

(2) As used in this chapter, the term "public utility" does not include:

(a) Any plant owned or operated by a municipality.

(b) Any railroad, as defined in ORS 760.005, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is not municipal or public utility plant to furnish the same.

(c) Any telephone corporation not providing intrastate telephone service to the public in this state, whether or not such corporation has an office in this state or has an affiliated interest with a public utility as defined in this chapter.

(d) Any corporation, company, individual or association of individuals providing heat, light or power to less than 20 customers.

(e) A cogeneration facility or a small power production facility under ORS 758.500 to 758.550.

(3) This section does not apply to street transportation in cities of less than 50,000 population.

SECTION 12. Section 14, chapter 714, Oregon Laws 1981, is repealed.

SECTION 13. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on July 1, 1983.

HOUSE COMMITTEE ON ENVIRONMENT
AND ENERGY
SUBCOMMITTEE ON HB 2320
March 29, 1983
Exhibit B, 4 pages
David Philbrick

Amendments (DOE)

1. On page 1, line 12, insert "Section 2." before "The".

   Justification: drafting error.

2. On page 2, delete lines 1, 2, and 3 and insert:

   "(a) Produces electric energy and forms of useful thermal energy (such as heat or steam) used for industrial, commercial heating, or cooling purposes, through the sequential use of energy; and"

   Justification: editorial, the previous definition was extremely ambiguous.

3. On page 2, line 5, after "not" delete "a" and insert "an".

   In line 6, after the first "utility" insert "or utilities".

   In line 6, after "interest" insert "or any combination thereof".

   In line 14, after "not" delete "a" and insert "an".

   In line 15, after the first "utility" insert "or utilities".

   In line 15, after "interest" insert "or any combination thereof".

   Justification: editing changes and clarification to definitions.

4. On page 2, delete lines 22 through 25.

   In line 27, delete "(4)" and insert "(3)".

   In line 32, delete "(5)" and insert "(4)".

   In line 36, delete "(6)" and insert "(5)".

   In line 41, delete "(7)" and insert "(6)".

   Justification: the term "person" is never used.

5. On page 2, line 27, after "utility" insert "includes but is not limited to municipalities, cooperatives, and peoples utility districts and".

   In line 28, after "to" insert "more than 20".

   In line 29, after "consumers" insert "but does not include a small power production facility or cogenerator." and delete the rest of the line.

Delete line 30.

Justification: clarifies non-regulated utility's definition and provides some limits consistent with ORS 757.005. Without these changes, it could be construed to include master-metered apartments or small power producers.

6. On page 2 in line 50, after "energy" insert "or energy and capacity".

Justification: clarifies what is meant by energy.

7. On page 3 in line 3, delete "all" and insert "as determined in Section 8 of this Act."

Delete lines 4, 5, and 6.

In line 9, delete "power" and insert "electricity".

In line 11, delete "applicable".

In line 12, after "requirements" insert "applicable to other customers of a similar class and size of demand."

In line 14, delete "(a)".

In line 37, after "(b)" insert "Insure reliability of interconnected operations" and delete the rest of the line.

Justification: eliminates duplicative language and eliminates suggestion that there should be additional standards.

This is potentially a major issue. Is the small power production facility responsible for all equipment on the utility's system? The proposed language is an attempt to state that the facility owner is responsible for equipment on their side of the interconnection and the utility is responsible for the equipment on its side of the interconnection. This is consistent with the current PUC order. The existing language in the bill seems to imply that the facility owner is responsible for all the utility's equipment. If enforced, this liability will be difficult for a facility to accept and we believe is unreasonable.

8. On page 3 in line 28, after "the" insert "rates," and after "terms" insert ",".

Delete line 30 and insert "Implementation shall also:".

In line 41, delete "reflect" and insert "equal".

In line 42, insert "at least" before "the".

Justification: this is an important change. The PUC currently requires these projections for 30 years or longer for investor-owned utilities. The longer time period is important for justifying rates sufficiently high for project viability. This should not be precluded. Language should indicate that the schedules are to equal the projected incremental costs; not simply reflect them.

9. On page 3, in line 45, after "by" insert "Sections 201 and 210 of" and after "(P.L. 95-617)" insert "in effect as of January 11, 1983."

Justification: limits attention to the applicable sections of the federal law and provides certainty as to the policies referenced.

10. On page 3, line 49, insert "and wheeling" after "rate" and after "schedules" insert ", policies, rules, and forecasted incremental costs" and delete "subsection 2" and insert "sections 8 and 10".

In line 50, delete "section" and insert "Act."

After line 50, insert:

"(5) Not later than one year after this Act takes effect and not less than every two years thereafter, the Public Utility Commissioner and the governing body of each non-regulated utility shall review and adopt updated policies, rules, forecasted incremental costs, and rate schedules required to implement subsection (1), (2), and (3) of this section and section 10 of this Act."

Justification: provides more fully the ability to review progress and sincerity of efforts to comply with this Act, and provides a timeframe for reconsideration as changes occur.

11. On page 4, in line 6, delete ":".

In line 8, delete "(a) The" and insert "the" and insert "purchasing electric" before "utility" and delete "; or" and insert ".".

In line 10, delete "(b) In cases where a" and insert "(2) Purchases from a cogenerator or small power production facility by a non-regulated", and after "utility" insert "that".

In line 13, after "," insert "shall be at a rate that is the higher of the utility's avoided cost or".

In line 14, delete "(2)" and insert "(3)".

In line 16, delete "(2)" and insert "(3)".

In line 19 after "utilities" insert "that own and operate their own generating facilities".

In line 22, insert:

037 "(4) Whenever a cogeneration or small power production facility provides electricity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, the rates for such purchases shall, at the option of the cogenerator or the small power production facility exercised prior to the beginning of the specified term, be based on either:

A-83-CE-121, SIDE A

(a) The avoided costs calculated at the time of delivery; or

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(b) The avoided costs calculated at the time the obligation is incurred."

In line 23, delete "(3)" and insert "(5)". In line 24, delete "pursuing, with due diligence, the developments" and insert "developing". In line 25, delete "publication of" and insert "publishing". In line 25, delete "tariffs" and insert "schedules".

Justification: Changes in lines 8 and 10 through 16 clarifies the purchase obligation, as requiring the greater of the avoided cost or if a utility fails to wheel a minimum rate. The minimum rate is set such that it only applies to non-regulated utilities.

Changes proposed in line 19 are an attempt to be sure that the base rate would be set equivalent to the lowest avoided cost for a utility that generates to meet its load requirements. Currently, this would include PGE, PP&L, and Idaho Power, but would exclude CP National.

Changes in line 22 clarify that the utility purchase obligation includes a commitment at the beginning to pay the projected avoided costs over the life of the contract.

Changes in line 24 makes the definition of "good faith effort" much less ambiguous.

Changes in line 25 are to avoid use of the word "tariff" which has in some utility court cases taken on broader implications relating to utilities serving as common carriers.

DP:kg
0366J(D1/F2)
03/25/83

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY
April 14, 1983 2 Page Exhibit
Exhibit A, HB 2320
Presented by Tom Nelson

REVISED PROPOSED AMENDMENT HB 2320

ODOE Draft dated April 8, 1983

Amendment No. 1:

Amend Section 4, subsection 1, as follows:

(1) Not less often than once every two years electric utilities shall prepare, [and] publish, and file with the Commissioner schedules of avoided costs equaling the forecasted incremental cost to that utility of electric resources over at least the next 20 years. Prices contained in schedules filed by public utilities shall [file such schedules for approval] be reviewed and approved by the Commissioner for payment to qualifying facilities.

Amendment No. 2:

Amend Section 6 by renumbering subsection (2) as new subsection 3, and inserting new subsection (2) as follows:

(2) An electric utility may request to be relieved from the obligation to pay the index rate under the preceding subsection by filing an application therefor with the Commissioner. Upon receipt of such application and after notice and opportunity for hearing as provided under ORS 756.518 through 756.610, the Commissioner shall require the electric utility to pay the index rate if the qualifying facility demonstrates that payment of the electric utility's avoided-cost prices is insufficient to develop the qualifying facility.

Amendment No. 3:

A. Delete subsections (2) and (9) of Section 3, renumber subsections accordingly, and modify new subsection (7) (definition of "qualifying facility") as follows:

"(8) 'Qualifying facility' means [a cogeneration facility or a small power production facility] an electric power production facility certified by or to the Federal Energy Regulatory Commission as meeting the criteria for qualification set forth in the Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, as implemented by regulations adopted by the Federal Energy Regulatory Commission."

B. Delete sub-subsection (a) of Section 5(3) and re-alphabetize accordingly.

HOUSE COMMITTEE ON
ENVIRONMENT & ENERGY
APRIL 29, 1983
EXHIBIT A, 6 PAGES
HB 2320 PROPOSED AMENDMENTS

4/29/83 (s3)

PROPOSED AMENDMENTS TO HOUSE BILL 2320

On page 1 of the printed bill, line 2, after "repealing" delete the rest of the line and insert "ORS 758.500, 758.510, 758.520, 758.530, 758.550 and sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15,".

Delete line 5 and insert:

"SECTION 1. As used in sections 1 to 6 of this Act:

"(1) 'Avoided cost' means the incremental cost to an electric utility of electric energy or energy and capacity that the utility would generate itself or purchase from another source but for the purchase from a qualifying facility.

"(2) 'Cogeneration facility' means a facility that:

"(a) Produces, through the sequential use of energy, electric energy and useful thermal energy including but not limited to heat or steam, used for industrial, commercial, heating or cooling purposes; and

"(b) Is more than 50 percent owned by a person who is not an electric utility, an electric holding company, an affiliated interest or any combination thereof.

"(3) 'Commissioner' means the Public Utility Commissioner.

"(4) 'Electric utility' means a nonregulated utility or a public utility.

"(5) 'Index rate' means a generating public utility's lowest avoided cost approved by the commissioner for the purchase of energy or energy and capacity of similar characteristics including on-line date, duration of obligation and quality and degree of reliability.

"(6) 'Nonregulated utility' means an entity providing retail electric utility service to Oregon consumers that is a people's utility district organized under ORS chapter 261, a municipal utility operating under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

"(7) 'Public utility' means a utility regulated by the commissioner under ORS chapter 757, that provides electric power to consumers.

"(8) 'Qualifying facility' means a cogeneration facility or a small power production facility.

"(9) 'Small power production facility' means a facility that:

"(a) Produces energy primarily by the use of biomass, waste, solar energy, wind power, water power, geothermal energy or any combination thereof;

"(b) Is more than 50 percent owned by a person who is not an electric utility, an electric utility holding company, an affiliated interest or any combination thereof; and

"(c) Has a power production capacity that, together with any other small power production facility located at the same site and owned by the same person, is not greater than 80 megawatts.".

In line 8, after "to" insert a colon and begin a new paragraph and insert "(a)".

In line 9, delete "private sector" and insert "public and private sectors" and after "possible" delete the rest of the line and line 10 and insert "; and

"(b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest.

"(3) It is, therefore, the policy of the State of Oregon to:".

In line 11, after "by" delete the rest of the line and insert "qualifying".

In line 12, after "state" insert "for the benefit of Oregon's citizens".

In line 13, after "the" delete the rest of the line and insert "qualifying facilities".

In line 14, delete "industry".

Delete lines 15 through 27 and pages 2 and 3 and insert:

"SECTION 3. (1) At least once every two years each electric utility shall prepare, publish and file with the commissioner a schedule of avoided costs equaling the utility's forecasted incremetal cost of electric resources over at least the next 20 years. Prices contained in the schedules shall be reviewed and approved by the commissioner.

"(2) An electric utility shall offer to purchase energy or energy and capacity whether delivered directly or indirectly from a qualifying facility. Except as provided in subsection (3) of this section, the price for such a purchase shall not be less than the uitlity's avoided costs. At the option of the qualifying facility, exercised before beginning delivery of the energy or energy and capacity, such prices may be structured as follows:

"(a) The avoided costs calculated at the time of delivery; or

"(b) The projected avoided costs calculated at the time the electric utility incurs the obligation.

"(3) Nothing contained in this Act shall be construed to require a public utility to pay full avoided-cost prices for a purchase from a qualifying facility on which construction began before November 8, 1978. The price for a purchase from such a facility shall be sufficient to encourage production of energy or energy and capacity.

"(4) The rates of an electric utility for the sale of electricity shall not discriminate against qualifying facilities.

"SECTION 4. (1) 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.

"(2) The terms and conditions for the purchase of energy or energy and capacity from a qualifying utility shall:

"(a) Be established by rule by the commissioner if the purchase is by a public utility;

"(b) Be adopted by an electric cooperative or people's utility district according to the applicable provision of ORS chapter 62 or 261; and

"(c) Be established by a municipal utility according to the requirements of the municipality's charter and ordinance.

"(3) The rules or policies adopted under subsection (2) of this section also shall:

"(a) Establish safety and operating requirements necessary to adequately protect all systems, facilities and equipment of the electric utility and qualifying facility;

"(b) Be consistent with applicable standards required by the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617); and

"(c) Be made available to the public at the commissioner's office.

"SECTION 5. (1) If an electric utility fails to make a good faith effort to comply with a request from a qualifying facility to transmit energy or energy and capacity produced by the qualifying facility to another electric utility or to the Bonnevile Power Administration, the electric utility shall purchase the qualifying facility's energy or energy and capacity at a price which is the higher of:

"(a) The electric utility's avoided cost; or

"(b) The index rate.

"(2) As used in this section, 'good faith effort' shall be demonstrated by the electric utility's publication of a generally applicable policy of the electric utility to allow a qualifying facility to use the electric utility's transmission facilities on a cost-related basis.

"SECTION 6. A qualifying facility shall not become a public utility within the meaning of ORS 757.005 on account of sales made under this Act.

"SECTION 7. ORS 757.005 is amended to read:

"757.005. (1) As used in this chapter, except as provided in subsection (2) of this section, the term 'public utility' means:

"(a) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the conveyance of telephone messages, with or without wires, for the transportation of persons or property by street railroads or other street transportation as common carriers, or for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

"(b) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with said public utility.

"(2) As used in this chapter, the term 'public utility' does not include:

"(a) Any plant owned or operated by a municipality.

"(b) Any railroad, as defined in ORS 760.005, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same.

"(c) Any telephone corporation not providing intrastate telephone service to the public in this state, whether or not such corporation has an office in this state or has an affiliated interest with a public utility as defined in this chapter.

"(d) Any corporation, company, individual or association of individuals providing heat, light or power to less than 20 customers.

"(e) A qualifying facility on account of sales made under the provisions of sections 1 to 6 of this 1983 Act.

"(3) This section does not apply to street transportation in cities of less than 50,000 population.

"SECTION 8. ORS 758.500, 758.510, 758.520, 758.530, 758.550 and sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, chapter 714, Oregon Laws 1981, are repealed.

"SECTION 9. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.".

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PROPOSED AMENDMENTS TO HOUSE BILL 2320

On page 1 of the printed bill, line 2, after "repealing" delete the rest of the line and insert "ORS 758.500, 758.510, 758.520, 758.530, 758.550 and sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15,".

Delete line 5 and insert:

"SECTION 1. As used in sections 1 to 6 of this Act:

"(1) 'Avoided cost' means the incremental cost to an electric utility of electric energy or energy and capacity that the utility would generate itself or purchase from another source but for the purchase from a qualifying facility.

"(2) 'Cogeneration facility' means a facility that:

"(a) Produces, through the sequential use of energy, electric energy and useful thermal energy including but not limited to heat or steam, used for industrial, commercial, heating or cooling purposes; and

"(b) Is more than 50 percent owned by a person who is not an electric utility, an electric holding company, an affiliated interest or any combination thereof.

"(3) 'Commissioner' means the Public Utility Commissioner.

"(4) 'Electric utility' means a nonregulated utility or a public utility.

"(5) 'Index rate' means the lowest avoided cost approved by the commissioner for a generating utility for the purchase of energy or energy and capacity of similar characteristics including on-line date, duration of obligation and quality and degree of reliability.

"(6) 'Nonregulated utility' means an entity providing retail electric utility service to Oregon consumers that is a people's utility district organized under ORS chapter 261, a municipal utility operating under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

"(7) 'Public utility' means a utility regulated by the commissioner under ORS chapter 757, that provides electric power to consumers.

"(8) 'Qualifying facility' means a cogeneration facility or a small power production facility.

"(9) 'Small power production facility' means a facility that:

"(a) Produces energy primarily by the use of biomass, waste, solar energy, wind power, water power, geothermal energy or any combination thereof;

"(b) Is more than 50 percent owned by a person who is not an electric utility, an electric utility holding company, an affiliated interest or any combination thereof; and

"(c) Has a power production capacity that, together with any other small power production facility located at the same site and owned by the same person, is not greater than 80 megawatts.".

In line 8, after "to" insert a colon and begin a new paragraph and insert "(a)".

In line 9, delete "private sector" and insert "public and private sectors" and after "possible" delete the rest of the line and line 10 and insert "; and

"(b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest.

"(3) It is, therefore, the policy of the State of Oregon to:".

In line 11, after "by" delete the rest of the line and insert "qualifying".

In line 12, after "state" insert "for the benefit of Oregon's citizens".

In line 13, after "the" delete the rest of the line and insert "qualifying facilities".

In line 14, delete "industry".

Delete lines 15 through 27 and pages 2 and 3 and insert:

"SECTION 3. (1) At least once every two years each electric utility shall prepare, publish and file with the commissioner a schedule of avoided costs equaling the utility's forecasted incremetal cost of electric resources over at least the next 20 years. Prices contained in the schedules filed by public utilities shall be reviewed and approved by the commissioner.

"(2) An electric utility shall offer to purchase energy or energy and capacity whether delivered directly or indirectly from a qualifying facility. Except as provided in subsection (3) of this section, the price for such a purchase shall not be less than the utility's avoided costs. At the option of the qualifying facility, exercised before beginning delivery of the energy or energy and capacity, such prices may be based on:

"(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 capacity is incurred.

"(3) Nothing contained in this Act shall be construed to require a public utility to pay full avoided-cost prices for a purchase from a qualifying facility on which construction began before November 8, 1978, but the price for a purchase from such a facility shall be sufficient to encourage production of energy or energy and capacity.

"(4) The rates of an electric utility for the sale of electricity shall not discriminate against qualifying facilities.

"SECTION 4. (1) 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.

"(2) The terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall:

"(a) Be established by rule by the commissioner if the purchase is by a public utility;

"(b) Be adopted by an electric cooperative or people's utility district according to the applicable provision of ORS chapter 62 or 261; and

"(c) Be established by a municipal utility according to the requirements of the municipality's charter and ordinance.

"(3) The rules or policies adopted under subsection (2) of this section also shall:

"(a) Establish safety and operating requirements necessary to adequately protect all systems, facilities and equipment of the electric utility and qualifying facility;

"(b) Be consistent with applicable standards required by the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617); and

"(c) Be made available to the public at the commissioner's office.

"SECTION 5. (1) If an electric utility fails to make a good faith effort to comply with a request from a qualifying facility to transmit energy or energy and capacity produced by the qualifying facility to another electric utility or to the Bonneville Power Administration, the electric utility shall purchase the qualifying facility's energy or energy and capacity at a price which is the higher of:

"(a) The electric utility's avoided cost; or

"(b) The index rate.

"(2) As used in this section, 'good faith effort' shall be demonstrated by the electric utility's publication of a generally applicable, reasonable policy of the electric utility to allow a qualifying facility to use the electric utility's transmission facilities on a cost-related basis.

"SECTION 6. A qualifying facility shall not become a public utility within the meaning of ORS 757.005 on account of sales made under this Act.

"SECTION 7. ORS 757.005 is amended to read:

"757.005. (1) As used in this chapter, except as provided in subsection (2) of this section, the term 'public utility' means:

"(a) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the conveyance of telephone messages, with or without wires, for the transportation of persons or property by street railroads or other street transportation as common carriers, or for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

"(b) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with said public utility.

"(2) As used in this chapter, the term 'public utility' does not include:

"(a) Any plant owned or operated by a municipality.

"(b) Any railroad, as defined in ORS 760.005, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same.

"(c) Any telephone corporation not providing intrastate telephone service to the public in this state, whether or not such corporation has an office in this state or has an affiliated interest with a public utility as defined in this chapter.

"(d) Any corporation, company, individual or association of individuals providing heat, light or power to less than 20 customers.

"(e) A qualifying facility on account of sales made under the provisions of sections 1 to 6 of this 1983 Act.

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"SECTION 9. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.".

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