

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

LC 33

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC	)	ORDER
COMPANY	)	
	)	
2004 Integrated Resource Plan.	)	

**DISPOSITION: APPLICATION FOR WAIVER GRANTED**

On May 5, 2006, Portland General Electric Company (PGE) filed an application for a waiver of OAR 860-038-0080(1)(b), commonly referred to as the “Market Price Rule.” If granted, the waiver will allow PGE to seek inclusion of the acquisition of the Biglow Wind Project in its rate base at cost, rather than in its revenue requirement at market price. The Northwest Independent Power Producers Coalition (NIPPC) and Staff submitted comments on PGE’s application on March 22 and 24, 2006. PGE filed a reply to comments on May 31, 2006.

**Background**

On March 15, 2006, PGE entered into an Asset Purchase and Development Agreement (Agreement) with Orion Energy, LLP and Orion Sherman Wind Farm, LLC for the acquisition of wind project development assets and rights in Sherman County, Oregon. Acquisition of the Biglow Wind Project (Biglow or Project) is pursuant to PGE’s Integrated Resource Plan (IRP) Final Action Plan acknowledged by the Commission in Order No. 04-375. The permit for Biglow will support an expected aggregate installed capacity of up to 450 MW and PGE plans to construct the project in phases.

**Applicable Administrative Rules**

OAR 860-038-0080(1)(b) states, in pertinent part:

Electric companies must include new generating resources in revenue requirement at market prices, and not at cost, and such new generating resources will not be added to an electric company’s rate base even if owned by the electric company.

OAR 860-038-0001(4) provides, in pertinent part:

Upon application by an entity subject to these rules and for good cause shown, the Commission may relieve [the entity] of any obligations under these rules.

### **PGE's Request for Waiver**

PGE contends that it is in the best interest of its customers to allow the acquisition of Biglow as a cost-based resource because it will provide customers with the best combination of price and rate stability, as demonstrated in its Final Action Plan.

PGE also explains that the waiver is appropriate because the environment for which the Division 38 rules were drafted no longer exists. Under the Division 38 rules, utilities would only acquire new generating resources to serve residential and small non-residential consumers. Larger-load customers would be served by the market and not the utilities. However, in 2001, HB 3633 fundamentally changed Direct Access by requiring electric utilities to provide a cost of service rate option to all customers. Therefore, PGE contends, a waiver is necessary in order for it to meet its cost of service obligations with a resource portfolio that provides stable costs and rates for its customers.

Due to the foregoing, PGE contends that it has established good cause for a waiver of OAR 860-038-0080(1)(b).

### **Participant's Positions**

Staff supports the waiver, and first points out that Biglow is consistent with PGE's acknowledged least cost plan and PGE's Final Action Plan. Second, Staff finds that customers may benefit if the resource is recovered in rates at cost, rather than at market prices, because this way it may capture the benefits of fuel diversity. Staff also points out that Commission and PGE will have a dialogue before any action is taken between phases of the project, allowing opportunity to revisit these issues.

NIPPC objects to the waiver on a number of grounds. NIPPC argues that a waiver may not benefit customers because: 1) utility-owned cost-based resources are not necessarily lowest-cost because they may cost customers more over the life of the project; 2) PGE is not an experienced wind developer, and therefore its costs may be higher than anticipated; and 3) Biglow will be subjected to periodic economic analysis, indicating PGE's recognition that Biglow may not be cost-effective in the long run.

NIPPC goes on to suggest that PGE should offer Biglow for a refreshed bid prior to the Commission's determination regarding the waiver. It argues that a renewed bid will ensure that ratepayers will receive the best value from the Biglow Project.

Staff disagrees with NIPPC's contention that the waiver should not be granted due to PGE's supposed inexperience in wind development projects. Staff points out that PGE's partnership with Orion, an experienced wind developer, will eliminate any potential problems of inexperience. Further, Staff finds that NIPPC's comments that Biglow may not be the least-cost resource over the long term are not pertinent to the waiver, but rather to ratemaking.

Staff also contends that requiring a new bid process is unnecessary and will cause detrimental delay. Staff points out that the original bid was professionally conducted and approved by the Commission. In addition, a new bid is likely to take several months at minimum. PGE's agreement with Orion is time-sensitive, and the current schedule must be followed in order to receive funding from the Energy Trust of Oregon, and to qualify for the federal tax credit prior to its expiration in December 2007.

PGE basically agrees with Staff adding that arguments made by NIPPC are irrelevant, speculative, and unsubstantiated, and if followed, will jeopardize the entire Project. Furthermore, PGE states that NIPPC will have the opportunity to voice its current concerns in a future rate case.

### **Commission Discussion**

In our decision last year to hold docket UM 1066 in abeyance and keep the Market Price Rule, OAR 860-038-0080(1)(b), in effect, we expressed our concern that allowing new resources to be included in rates at cost would "cause a utility to favor its own proposed resources." *See* Order No. 05-133 at 2. We will waive the market rule if, based on current information, customers are likely to be better served by a utility-owned resource, included in rates at cost, instead of comparable market alternatives.

Many of the arguments by PGE and Staff in support of the waiver do not address this issue. PGE's contention that the market rule is no longer necessary should be raised in UM 1066, not here. The fact that we acknowledged acquisition of wind resources in PGE's last least-cost plan does not mean that Biglow is better for customers than other wind projects offered as power sales. Biglow was not specifically identified and acknowledged in PGE's least-cost plan. Staff's argument that the market rule must be waived in order to obtain the benefits of fuel diversity and optionality in project expansion presumes that Biglow's output would be included in rates at short-term wholesale market prices under the market rule. That is not necessarily true.

Other information provided, however, does directly address how PGE evaluated Biglow as a cost-based resource vis-à-vis other projects offered in response to the company's 2003 Request for Proposals. The independent observer retained to evaluate the process found no inherent bias between ownership and contract options. *See* Attachment to Staff Comments at 2. In addition, PGE did not consider debt imputation in scoring offers to sell project output to the company. *See* PGE Final Action Plan, March 2004, at 55. We

believe this evidence on the fairness of the evaluation of different resource options is sufficient to conclude that there is good cause for a waiver of OAR 860-038-0080(1)(b).

This waiver does not implicate ratemaking treatment for Biglow. In a future rate proceeding, PGE will be required to establish that its acquisition of the project was prudent. Such a demonstration will include, but not be limited to, showing that Biglow was a better choice for customers as an owned resource, with potential cost risk, than a fixed price power purchase. We will closely examine PGE's assumptions and costs and, if we conclude that it would have been prudent for PGE to select one of the contract offers instead of Biglow, we may cap PGE's costs at the level it would have incurred under the contract. Moreover, PGE will be required to establish that it acted reasonably in taking action at this time on the results of an RFP that was completed in 2004.

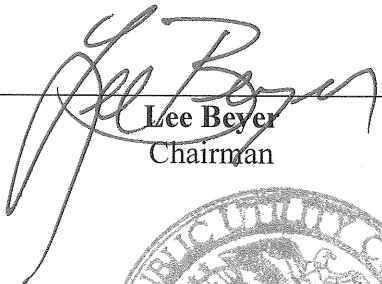
We are not convinced by NIPPC's objections to the waiver. As discussed above, any claims that it is imprudent for PGE to commit to and develop Biglow, either because the project is cost-based or because PGE is inexperienced as a wind developer, will be assessed at a later date when PGE requests cost recovery. Furthermore, we do not interpret the plan to conduct an economic assessment of each subsequent phase before proceeding with development as recognition by PGE that the project may not be cost-effective. Rather, we think it is to ensure going forward that the project remains beneficial to PGE customers. As to NIPPC's recommendation that PGE refresh the Biglow bid, we find that this is likely to create a serious risk of delay, and we decline to impose this requirement on PGE when a valid and approved bid has already been conducted.

For the foregoing reasons, PGE's request for a waiver of OAR 860-038-0080(1)(b) should be granted.

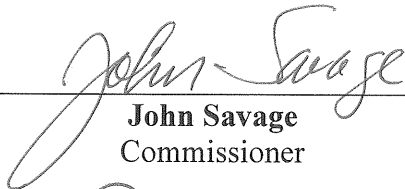
**ORDER**

IT IS ORDERED that Portland General Electric Company has shown good cause for waiver of OAR 860-038-0080(1)(b) as to the Biglow Wind Project.

Made, entered, and effective JUL 20 2006.

  
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**Lee Beyer**  
Chairman



  
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**John Savage**  
Commissioner

  
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**Ray Baum**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.