

ORDER NO. 12 006

ENTERED JAN 10 2012

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 278

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Application to Sell 1.75 MW Solar
Photovoltaic Facility.

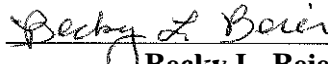
ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its Public Meeting on January 10, 2012, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter, attached as Appendix A.

BY THE COMMISSION:




Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ITEM NO. CA5

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: January 10, 2012

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A

DATE: January 3, 2012

TO: Public Utility Commission

FROM: Brian Bahr *BB*

THROUGH: *BC* Bryan Conway and *MH* Marc Hellman

SUBJECT: PORTLAND GENERAL ELECTRIC COMPANY: (Docket No. UP 278)
Requests approval of sale of 1.75 MW Solar Photovoltaic Facility to Banc
of America Leasing & Capital LLC as part of a sale/leaseback transaction.

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission (Commission) approve the application by Portland General Electric Company (PGE or Company) to sell the approximately 1.75 MW solar photovoltaic facility located on Oregon Department of Transportation (ODOT) property at the I-5 northbound Baldock rest area to Banc of America Leasing & Capital, LLC (BALC), subject to the following conditions:

1. PGE shall provide the Commission access to all books of account as well as all documents, data, and records that pertain to the transfer of properties.
2. PGE shall notify the Commission in advance of any substantive changes to the transfer of properties, including any material changes in price. Any changes to the agreement terms that alter the intent or extent of activities under the agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate form) in this docket.

And subject to the following conditions applicable subsequent to the date of sale¹:

3. The Commission may review for reasonableness all financial aspects of this transaction in any rate proceeding or earnings review under an alternative form of regulation.

¹ The sanctions for violating a condition subsequent to the sale will be determined by the Commission; however, such sanctions will not include revocation of the Commission's approval of the sale.

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4. PGE shall submit the final journal entry recording the transaction to the Commission with the appropriate semiannual report.
5. PGE shall submit to Staff three months prior to the lease buy-out option date the economic analysis used to determine whether the Company will exercise the buy-out option.

DISCUSSION:

This application was filed on December 7, 2011, pursuant to ORS 757.480 and OAR 860-027-0025.

PGE has nearly completed the development of a small solar photovoltaic power plant (Solar Facility) with a capacity of approximately 1.75 MW located on property owned by ODOT at the I-5 northbound Baldock rest area (24300 NE I-5, Aurora, Oregon 97002), which PGE occupies under a site license agreement with ODOT. Substantial completion of the Solar Facility is expected to be completed by January 29, 2012, and the close of sale is anticipated to occur by January 31, 2012.² PGE has contracted with Aadland Evans Constructors, Inc. (AEC) to engineer, design, and construct the Solar Facility, which includes the following:

Solar Plant and Equipment:

- Array: 6,994 SolarWorld 250-watt monocrystalline photovoltaic panels
- Ram-driven posts and aluminum support structure
- Five 260 kW and one 100 kW Advanced Energy inverters
- Haticon aluminum racking system
- Meter base for PGE ION 7600 meter
- Communications cabinet
- System main circuit breaker panel
- Security lighting, security fencing for the array
- Conduit and low voltage wiring between PV system and main circuit breaker panel

Interconnection Equipment:

- Interconnecting wiring and conduits, meter base, and 480V transformer
- Power conduit for Line Extension on ODOT property
- UPS, communication system (router and switches), ION 8600 meter, security cameras, DVR system

² See PGE's response to Staff Data Request No. 6, in which a complete timeline of the Solar Facility is provided.

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- The Solar Facility will also include a line extension from the Canby Substation, Canby-Butteville Feeder to the ODOT Property

PGE is seeking Commission approval to sell the Solar Plant and Equipment to BALC. The Company is not, however, selling the interconnection equipment or the line extension. Subject to certain conditions, BALC has made a commitment to the sale/leaseback of the Solar Plant and Equipment, which allows PGE to sell and then immediately lease the Solar Plant and Equipment from BALC, with an early buy-out option for PGE after year six. During the lease period, PGE will operate and maintain the solar facility under the lease structure. The facility will support PGE's renewable portfolio targets and provide cost-effective renewable energy to their customers.

The sale price of the property reflects primarily design and build costs, as well as other related costs, such as legal fees, administration costs, and a developer's fee. The final purchase price will be determined in January 2012 by BALC and PGE based on the fair market value of the Solar Plant and Equipment, which takes into account the related tax credits and is expected to be less than \$10 million. The payment will be made upon closure of the sale to BALC and lease to PGE.

For accounting purposes, there will be no recognized gain or loss on the sale of the Solar Facility to BALC. Rather, PGE's gain will be deferred and incorporated as a reduction to the revenue requirement when PGE seeks recovery of costs in a Renewable Resource Automatic Adjustment Clause (RAC) filing with the Commission.

In analyzing this application, Staff made 19 Data Requests and held informal discussions with representatives of the Company on several occasions. Staff notes that this application seeks only approval of the sale of the Solar Facility to BALC, not the approval of the agreements between PGE and the Energy Trust of Oregon (ETO) or between PGE and ODOT, which are generally independent of the sale/leaseback transaction between PGE and BALC.

Issues

Staff investigated the following issues:

1. Scope and Terms of the Asset Purchase Agreement
2. Allocation of Gain
3. Public Interest Compliance
4. Records Availability, Audit Provisions, and Reporting Requirements

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Scope and Terms of the Asset Purchase Agreement

There do not appear to be any unusual or restrictive terms to the agreement. The purchase price of the Solar Facility, estimated to be approximately \$ [REDACTED], is based on the cost to develop the Solar Facility plus a developer's fee of \$ [REDACTED]. The Company's gain on sale would be \$ [REDACTED], which includes the aforementioned developer's fee and the funds received from the ETO and Clean Wind Development Fund (CWDF) of \$ [REDACTED]. The table below shows the calculation of the purchase price. The stated amounts are estimates as construction of the Solar Facility is not yet fully completed, as stated in the Company's application.

Estimated Cost to Construct Solar Facility		\$ [REDACTED]
Developer's Fee	+	\$ [REDACTED]
Funds received from ETO and CWDF	+	\$ [REDACTED]
Estimated Selling Price	=	\$ [REDACTED]

According to the agreement between PGE and BALC, PGE would lease the Solar Facility from BALC beginning immediately following the sale, with a buy-out option available to PGE after six years. The primary purpose of this financial structure is to allow BALC to realize the available tax credits associated with the Solar Facility. Because PGE does not currently have the capacity to take advantage of the tax credits, allowing BALC to claim the tax credits enables PGE to provide power to customers at less than the expected market cost and less than the cost were PGE to retain ownership.³

The term length before the buy-out option (six years) was determined as a result of negotiation between the two companies as an amount of time in which BALC would be able to capture the benefits of depreciation and tax credits, while ensuring that the Solar Facility remains economically viable for PGE.⁴ According to PGE, the buy-out option is part of the overall agreement, and as such, there would be no fees charged to PGE directly attributable to the buy-out option.⁵

According to the Company's response to Staff Data Request No. 7, PGE does not expect to make any leasehold or tenant improvements during the term of the lease. In the event that PGE were to incur the cost associated with an improvement, the related journal entry would be a debit to Account 101 Electric Plant in Service and a credit to Account 131 Cash. At the time of the buy-out option, if PGE chooses to exercise it, the amount PGE would book to Plant would be the amount paid by PGE to BALC (fair market value).

³ See PGE's response to Staff Data Requests No. 18 and No. 19.

⁴ See PGE's response to Staff Data Request No. 15.

⁵ See PGE's response to Staff Data Request No. 13.

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As part of the arrangement, PGE is to pay an annual site license fee to ODOT. This expense will be booked to Account 557 Other Expense and deferred for future recovery through the RAC filing.⁶

Section 3.5 of Exhibit H of the Solar Site License Agreement # 28497 between PGE and ODOT (ODOT Agreement) specifies that "PGE shall pay any real property taxes and other taxes (including transfer taxes) imposed on PGE in connection with this Sublicense, or, subject to the lease imposed on BALC." PGE's response to Staff Data Request No. 11 addresses the estimated amount of annual taxes and states, "...PGE does not expect to incur property taxes related to the Baldock facility until 2018." For the purpose of conducting its economic evaluation of the feasibility of the Solar Facility, however, property taxes were calculated beginning in 2018 as the product of the estimated net plant basis and a property tax rate of approximately 1.28 percent.

Section 3D of the Photovoltaic Project Agreement Contract No. 1454 between the ETO and PGE (ETO Agreement) states that "PGE will use an Energy Trust Solar Electric Program Trade Ally Contractor to install the PV [photovoltaic] System..." In its response to Staff Data Request No. 2, the Company states that although AEC, a general contractor, is not an Energy Trust Solar Electric Program Trade Ally Contractor, the company AEC subcontracted to design and install the Solar Facility, Advanced Energy Systems, is.

According to Section 5.3 of the ODOT Agreement and Section 15 of the ETO Agreement, for the first three years of operation of the Solar Facility, the environmental attributes, including Renewable Energy Certificates (RECs), will be distributed as follows:

- ETO: five percent (5%)
- ODOT: five percent (5%)
- CWDF: ninety percent (90%)

The RECs generated during year four of operation of the Solar Facility will be distributed as follows:

- ETO: sixty-five percent (65%)
- ODOT: twenty percent (20%)
- CWDF: fifteen percent (15%)

⁶ See PGE's response to Staff Data Request No. 9.

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The RECs generated during years five through 25 of operation of the Solar Facility will be distributed as follows:

- ETO: seventy-four percent (74%)
- ODOT: twenty-six percent (26%)
- CWDF: zero percent (0%)

Any RECs generated by the Solar Facility following the first twenty-five years will be distributed as follows:

- ODOT: fifty percent (50%)
- Licensee: fifty percent (50%)

The RECs distributed to the ETO will be retired to Western Renewable Energy Generation Information System on behalf of PGE for RPS compliance. In determining the amount of RECs produced by the Solar Facility, it is estimated that the Solar Facility will produce [REDACTED] kWh in its first year of production, with a [REDACTED] annual degradation rate. Per the ETO Agreement, "PGE shall be responsible for all costs associated with registering, transferring, and retiring the environmental attributes."

Allocation of Gain

The property's estimated gross proceeds and gain on sale are approximately \$[REDACTED] and \$[REDACTED], respectively. The calculation of the estimated gain on sale is shown in the table below. The property's estimated selling price is based on the estimated cost to construct the Solar Facility plus a development fee of \$[REDACTED]. The final price will be determined when construction is completed. According to PGE, this fee was determined based on PGE's estimates of the incremental indirect costs that would be incurred in order to execute the project, such as the estimated cost of services provided by PGE's corporate finance and business decision support groups.⁷

Estimated Selling Price		\$	[REDACTED]
Estimated Cost to Construct Solar Facility	-	\$	[REDACTED]
Estimated Gain on Sale	=	\$	[REDACTED]

The estimated basis of the property is \$[REDACTED] and reflects a reduction related to the receipt of funds from the ETO and CWDF of \$[REDACTED]. The gain on sale of \$[REDACTED] will be deferred and incorporated as a reduction to the deferred 2012 revenue requirement associated with the Solar Facility when PGE seeks recovery of costs in a RAC filing pursuant to PGE's Schedule 122. To record the gain on sale

⁷ See PGE's response to Staff Data Request No. 14.

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initially, Account 102 Electric Plant Sold would be debited, and Account 254 Regulatory Liabilities would be credited. Then, as lease payments are made over the term of the lease, Account 254 Regulatory Liabilities would be debited as the gain is amortized and Account 557 Other Expense – Production would be credited.

According to the Company's response to Staff Data Request No. 10, the gain on sale will be deferred and used to offset the deferred 2012 revenue requirement associated with the Solar Facility when the Company seeks recovery in a RAC filing. PGE intends for the gain to be amortized in its entirety in Schedule 122 in 2013. The Company further states that no costs associated with the Solar Facility were included in PGE's 2012 power cost forecast as filed in Docket No. UE 228. Rather, the revenue requirement incorporating all 2012 costs and benefits associated with the Solar Facility and expected to be incurred subsequent to PGE's deferral filing will be deferred and recovered through the RAC.⁸

Staff analyzed whether it would be more advantageous to customers for the Company to amortize the gain on sale over the term of the lease rather than deferring it in a RAC filing. If amortized over the term of the lease, customers would receive the benefit sooner; however, as the deferral account earns interest at market rates, Staff is not opposed to the Company's proposal to defer the gain in a RAC filing.

Public Interest Compliance

ORS 469A details the Renewable Portfolio Standards (RPS) that utilities in Oregon are required to meet. Per the Company's response to Staff Data Request No. 16 and illustrated in its 2011 Integrated Resource Plan Update (IRP Update) filed on November 23, 2011, in docket No. LC 48, "...PGE is in compliance with the current RPS target, and intends to be physically compliant with the upcoming 2015 target. As a long-term strategy, PGE intends to maintain RPS compliance primarily through the addition of renewable resources, such as Baldock..." The approval by the Commission of this application to proceed with the buy/leaseback transaction of the Solar Facility allows PGE to be compliant with the state's RPS at a more economical cost to customers than without the agreement.

In addition to the RPS requirements set forth by ORS 469A, Oregon also has a Solar Photovoltaic Capacity Standard (SPCS) as set forth in ORS 757.370 and ORS 860-084-0020. The SPCS requires PGE to meet a minimum of 10.9 MW of solar photovoltaic capacity by 2020. The Baldock project will contribute approximately

⁸ See PGE's response to Staff Data Request No. 10.

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1.48 MW (AC) of solar photovoltaic capacity towards PGE's requirement.⁹ In order for PGE to be in compliance with the 2020 standard, the Company will need to continue to find opportunities to develop solar energy.

Section 2f of Commission Order No. 09-398, entered on October 5, 2009, as part of Dockets UE 209 and UM 1407, states the following:

The Parties agree that PGE should attempt to minimize the cost to customers of complying with both the Renewable Portfolio Standard and the Solar Photovoltaic Capacity Standard. Except as required to meet the Solar Photovoltaic Capacity Standard, the costs to customers of any new solar resources acquired to meet the Renewable Portfolio Standard must be economically justifiable as compared to the costs of other qualifying renewable resources available at the time. Once PGE has met both the Solar Photovoltaic Capacity Standard and the Renewable Portfolio Standard, the costs to customers of any additional solar resources must be at or below the risk-adjusted market value of the delivered energy at the time the decision to invest was made.¹⁰

Staff has reviewed the analysis conducted by the Company and provided in response to Staff Data Request No. 1. In determining whether the Solar Facility is currently a relatively low cost method of addressing RPS and SPCS requirements, Staff is satisfied that the cost of energy from the Solar Facility is less than the forward market rate on a levelized \$/MWh basis. According to the Company's comprehensive estimates reviewed and analyzed by Staff, the levelized cost of the Solar Facility's energy production is approximately \$[REDACTED]/MWh. The estimated market rate over the same period is \$[REDACTED]. Overall, the net present value revenue requirement of the Solar Facility is \$[REDACTED] compared to \$[REDACTED] at market.¹¹ PGE's customers benefit through the lower cost of the Solar Facility made possible by the sale/leaseback structure in which BALC takes advantage of the available tax credits associated with the Solar Facility.

In addition to reviewing the Company's economic analysis discussed above, Staff also reviewed the revenue requirement analysis provided by PGE in response to Staff Data Request No. 19. Based on Staff's review of this analysis, customers will pay less for

⁹ See PGE's response to Staff Data Request No. 16.

¹⁰ See Commission Order No. 09-398, Appendix A, Page 3 of 10, Term of Stipulation 2f.

¹¹ See PGE's response to Staff Data Request No. 1.

energy under the sale/leaseback structure than if the Company retained ownership of the Solar Facility.

Pursuant to ORS 757.480, the Commission customarily applies a "no harm" standard when reviewing property sale applications. In forming a conclusion on the public interest of this sale, Staff concluded that Oregon customers are not harmed by this transaction, as:

1. There is an estimated net gain on sale of \$ [REDACTED] that will be passed to Oregon customers through a reduction to revenue requirement in the Company's next RAC filing,
2. The Solar Facility will be used by PGE to maintain compliance with RPS and SPCS requirements, and
3. The cost to customers is lower through the sale/leaseback structure than absent the sale.

Staff concludes that the sale is consistent with the public interest.

Records Availability, Audit Provisions, and Reporting Requirements

Order Conditions Numbers 1, 4, and 5, listed in Staff's recommendations, afford the Commission necessary examination of PGE's books and records concerning the sale.

PROPOSED COMMISSION MOTION:

PGE's application be approved subject to the five conditions stated in Staff's recommendations in this memorandum.

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