

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 15, 2003**

REGULAR X **CONSENT** **EFFECTIVE DATE** October 16, 2002

DATE: October 7, 2002

TO: John Savage through Lee Sparling and Jack Breen III

FROM: Janet Fairchild

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UE 140/Advice No. 02-12) Adds Schedule 54, a new service rider for tradable renewable credits available to qualifying large nonresidential customers.

STAFF RECOMMENDATION:

Staff recommends the Commission grant Portland General Electric's request for a waiver of OAR 860-038-0540 and approve Advice No. 02-12, as filed on June 21, 2002, and amended on July 15, 2002, September 19, 2002, and October 7, 2002, to become effective October 16, 2002.

DISCUSSION:

On June 21, 2002, Portland General Electric (PGE) filed Advice No. 02-12 to become effective August 7, 2002. The filing was made in accordance with ORS 757.205, *Filing Rate Schedules with the Commission*. As described in PGE's advice letter, the purpose of the filing was to offer large nonresidential customers a new service rider for Tradable Renewable Credits (TRCs or green tags).¹

PGE amended its filing on July 15, 2002 to clarify that the proposed rate schedule supports the development of New Renewable Energy Resources as defined in ORS 757.600.² On September 19, and October 7, 2002, PGE further amended its filing to

¹ TRCs are commonly called "Green Tags." They represent the non-power attributes resulting from the generation of energy from a renewable resource. Examples of such attributes include avoided emission of pollutants.

² ORS 767.600(21) states "New renewable energy resource" means a renewable energy resource project, or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that is not in operation on July 23, 1999. "New renewable energy resource" does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

include provisions addressing competitive issues. It also requested that the Commission waive the requirements of OAR 860-038-0540 for the purposes of this tariff.³

PGE granted four extensions of the effective date to allow Staff more time to confer with counsel and to consider the implications of the filing. It first extended the filing's effective date to August 21, 2002, then to September 4, 2002, then to October 2, 2002 and most recently extended the effective date to October 16, 2002.

Staff and PGE have come to agreement on the following issues.

- The offering of green tags to large nonresidential customers should be tariffed pursuant to ORS 757.205(1).
- The revenues and costs associated with offering green tags to large nonresidential customers should not be included in PGE's regulated operations.
- Ratepayers should not subsidize the program. In other words, PGE should bear the risk of under- or over-recovery for the program.

Staff is supportive of PGE offering green tags to large nonresidential customers,^{4,5} but there is still some disagreement between Staff and PGE on the following issues. Proposed tariff language, as amended on September 19, and October 7, 2002, provides adequate customer protections to allow Staff to recommend approval of PGE's filing despite these areas of disagreement.

Issue 1: Barriers to entry into the green tag market: PGE intends to offer green tags purchased under exclusive contract from Bonneville Environmental Foundation (BEF). PGE does not intend to hold a competitive bid prior to contracting with BEF.⁶ Other green tag suppliers are not precluded from offering their product in PGE's territory, but BEF's market share combined with PGE's name recognition seems to constitute a barrier, or at least the appearance of a barrier, to entry into the green tag market in

³ OAR 860-038-0540 prohibits companies from allowing proprietary customer information to be given to employees of its competitive operations or to third parties without the written consent of the customer.

⁴ Large nonresidential customers are nonresidential customers whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.

⁵ PGE offers renewable options through the portfolio of options offered to residential and small nonresidential customers.

⁶ PGE has represented to Staff that at this time no other green tag suppliers are interested in contracting with PGE to provide this offering.

PGE's territory. The Commission is charged with implementing policies to eliminate barriers to entry under ORS 757.646.⁷

This is a particularly difficult issue because the green tag market is not mature. On one hand, the partnership between BEF and PGE may be difficult to compete against. On the other hand, the partnership may increase industrial customer recognition of, and demand for green tags, thus stimulating the market and leading to more interest from other suppliers.

The large industrial and commercial customers addressed under this tariff are generally sophisticated consumers. The purchase of green tags under the proposed tariff is strictly optional and as stated previously, competitors are not precluded from marketing to customers in PGE's service territory. No harm will come to customers if the Commission approves PGE's proposed tariff, provided it is subject to the conditions discussed in the next section of this memo. Therefore, Staff is willing to recommend approval of the proposed tariff, despite concerns that the BEF/ PGE partnership might deter other green tag suppliers from entering the market.

Issue 2: Applicability of the Code of Conduct Rules: Pursuant to ORS 757.646, the Commission has implemented OAR 860-038-0500 through 0640 (Code of Conduct Rules). Staff and PGE disagree on whether this statute and the associated rules apply to this offering. PGE has stated, *"The Company believes that restrictions other than the prevention of cross-subsidization by charging costs to proper accounting strings are unnecessary. PGE believes that the market in TRCs was not one that the Legislature intended the Commission to police through SB 1149."*

Staff believes that the statute and related administrative rules do apply to this offering. OAR 860-038-0005(8) defines competitive operations as "any activity related to the provision of electricity services conducted by the electric company's nonregulated operation or the electric company's affiliate." In Staff's opinion, green tags are clearly related to the provisioning of energy. Other green tag suppliers include Bonneville Environmental Foundation and Commonwealth Energy Co., thus, a competitive, albeit weak market, for green tags does exist. Competitive operations are subject to the Code of Conduct requirements set out in OAR 860-038-0500 through 860-038-0640.

⁷ ORS 757.646 states, in part, "The duties functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market structure. The polices shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies, prohibit preferential treatment, or the appearance of such treatment, of generation or market affiliates and determine the electricity services likely to be competitive."

Staff and PGE have compromised on this issue by including tariff provisions to address code of conduct requirements.

In its September 19, and October 7, 2002, filings, PGE adds the following Special Conditions to its filing.

Special Condition No. 6:

All incremental costs and revenues associated with the provision of services under this schedule shall be appropriately charged or credited to nonutility accounts.

Special Condition No. 7:

The Company may use Consumer proprietary information gathered for the provision of Electricity service upon Consumer written or verbal permission as long as it provides the same information under the same terms and conditions to alternative TRC providers upon Consumer written or verbal request.

Special Condition No. 8:

The Company will communicate to Consumers or potential Consumers, both in its verbal conversations and in its written materials that: the Consumer may buy TRCs from other providers; and Consumers are not required to buy TRCs from the Company in order to continue to receive the Company's safe and reliable Electricity Service.

Special Condition No. 9:

If the Company chooses to use bill inserts to market this schedule to Consumers, it will allow other TRC providers access to place inserts in the Company's bills under the same prices, terms and conditions that apply to the Company's Large Nonresidential TRC program.

Staff believes these provisions afford the customer and competitors with essentially the same protections afforded by the Code of Conduct regulations.

OAR 860-038-0500 explains that the Code of Conduct is meant to avoid market power abuses and cross-subsidization between regulated and unregulated activities. Staff believes that Special Condition Nos. 6 through 9 meet that goal.

OAR 860-038-0520 prohibits use of the electric company's corporate name, trademark, brand, or logo by nonregulated affiliates without an accompanying disclaimer. Since PGE is offering the Large Nonresidential TRC program through an internal unregulated department as opposed to a separate affiliate, this rule is not applicable. Staff believes that the competitive advantage gained through use of the PGE name and logo are offset by the customer notice required under Special Condition No. 8.

OAR 860-038-0540 prohibits the Company from providing a customer's proprietary information to employees of its competitive operations without the customer's written consent. PGE applied for a waiver of this rule in its October 7, 2002, filing. OAR 860-038-0001(4) states that ". . . Upon application by an entity subject to these rules and for good cause shown, the Commission may relieve it of any obligation under these rules." Staff believes that Special Condition No. 7 provides adequate protection of customer information and ensures PGE's handling of customer information will not afford its Large Nonresidential TRC program a competitive advantage over other TRC providers. Therefore, good cause is shown and Staff supports PGE's request for a waiver of OAR 860-038-0540.

OAR 860-038-0560 requires an electric company to treat its competitors fairly in all respects and in a manner consistent with its treatment of its own competitive operations, such as the Large Nonresidential TRC program. Staff believes that Special Condition Nos. 6 through 9 afford reasonable assurance that this requirement will be met.

OAR 860-038-0580 was established to prevent cross subsidization between regulated and competitive operations. Staff believes that Special Condition No. 6 meets the same objective. It requires this program be accounted for in nonutility accounts. Thus, the costs and revenues associated with the program will be separated from regulated operations, providing a safeguard against cross subsidization.

OAR 860-038-0590 addresses transmission and distribution access. It is not applicable to the issues in this filing.

OAR 860-038-0600 prohibits joint marketing activities and referral arrangements between an electric company's regulated and competitive operations. An exception to this general rule allows bill inserts advertising competitive operations to be used provided competitors are provided the same opportunity under the same terms and conditions. Staff believes that Special Condition Nos. 6 through 9 afford reasonable assurance that this requirement will be met.

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OAR 860-038-620 and 640 address the Commission's access to the electric company books and records, and requires certain compliance filings. PGE's obligation to comply with these requirements will not change as a result of this filing.

There were numerous complex legal and regulatory issues to resolve in this filing. Staff appreciates the cooperation of all parties involved.

PROPOSED COMMISSION MOTION:

Portland General Electric's request for a waiver of OAR 860-038-0540 be granted and Advice No. 02-12, as filed on June 21, 2002 and amended on July 15, 2002, September 19, 2002, and October 7, 2002, be effective October 16, 2002.

PGE Advice 02-12/JF