

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of the approval of the Oregon)
Strategic Investment Program Agreement)
between Columbia County and Portland)
General Electric, and a request that the)
Oregon Business Development Commission)
determine under ORS 285C.606(1) that the)
Port Westward Peaker Plant be exempt from)
property taxation under ORS 307.123.)

ORDER NO. 43 - 2011

WHEREAS, the Oregon Legislature has established the Strategic Investment Program (hereafter "SIP") to promote industrial competitiveness and to improve employment in the area where projects are to be located by encouraging businesses engaged in projects to hire local employees; and

WHEREAS, SIP encourages local governments to enter into agreements with key industries to attract and retain long-term investment and employment; and

WHEREAS, Portland General Electric ("PGE") will propose in its 2011 Request for Proposals for Capacity Power Supply Resources to build and operate within the County a Project, alternatively incorporating either simple-cycle combustion turbines (the "Turbine Alternative") or natural-gas-fired, internal-combustion engines (the "Internal-Combustion Alternative"), with a capital cost of at least \$25 million and which is expected to create approximately 100-200 construction jobs over the construction period and approximately 1-2 new, permanent full-time jobs in the County; and

WHEREAS, PGE and the County have entered into negotiations to develop an Oregon SIP Agreement (this "SIP Agreement") in an effort to enhance the cost-effectiveness of both the Turbine Alternative and the Internal-Combustion Alternative; and

WHEREAS, the SIP Agreement provides the terms and conditions under which the County agrees to request that the State, acting through the Oregon Business Development Commission ("OBDC"), approve the SIP application and grant a certain tax exemption for the Project, in exchange for payment and performance by PGE of the obligations described in the SIP Agreement; and

WHEREAS, the County and PGE have provided public information and an opportunity for public input regarding the SIP generally and PGE's SIP application specifically, including a formal public hearing on the SIP Agreement held on July 13, 2011;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- 1) The County hereby approves the SIP Agreement between PGE and the County,

substantially in the form attached hereto as Attachment 1, and authorizes the Commission Chair to execute the SIP Agreement, but with such nonmaterial changes as may be approved by the Chair and County Counsel.

2) The County hereby requests that the State, acting through the Oregon Business Development Commission ("OBDC"), approve the SIP application and grant the tax exemption under ORS 307.123 for the Project, in exchange for payment and performance by PGE of the obligations described in the SIP Agreement.

3) This Order constitutes the official action of the County Board of Commissioners required by ORS 285C.609(1).

Dated this 13th day of July, 2011, at St. Helens, Oregon.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Anthony Hyde, Chair

By: [Signature]
Earl Fisher, Commissioner

By: [Signature]
Henry Heimuller, Commissioner

Approved as to form

By: [Signature]
Office of County Counsel

ATTACHMENT 1

OREGON STRATEGIC INVESTMENT PROGRAM AGREEMENT

Columbia County, a political subdivision of the State of Oregon, (hereafter "County"), and Portland General Electric Company (hereafter "PGE") hereby enter into this Strategic Investment Program Agreement.

WITNESSETH:

WHEREAS, the Oregon Legislature has established the Strategic Investment Program (hereafter "SIP") to promote industrial competitiveness and to improve employment in the area where projects are to be located by encouraging businesses engaged in projects to hire local employees. (See ORS 307.123 and ORS 285C.600 – 285C.620.); and

WHEREAS, SIP encourages local governments to enter into agreements with key industries to attract and retain long-term investment and employment; and

WHEREAS, PGE will propose in its 2011 Request for Proposals for Capacity Power Supply Resources to build and operate within the County a Project, alternatively incorporating either simple-cycle combustion turbines (the "Turbine Alternative") or natural-gas-fired, internal-combustion engines (the "Internal-Combustion Alternative"), with a capital cost of at least \$25 million and which is expected to create approximately 100-200 construction jobs over the construction period and approximately 1-2 new, permanent full-time jobs in the County; and

WHEREAS, PGE and the County have entered into negotiations to develop this Oregon SIP Agreement (this "SIP Agreement") in an effort to enhance the cost-effectiveness of both the Turbine Alternative and the Internal-Combustion Alternative, and

WHEREAS, the County and PGE have provided public information and an opportunity for public input regarding the SIP generally and PGE's SIP application specifically, including a formal public hearing on this SIP Agreement held on June 22, 2011; and

WHEREAS, this SIP Agreement provides the terms and conditions under which the County agrees to request that the State, acting through the Oregon Business Development Commission ("OBDC"), approve the SIP application and grant a certain tax exemption for the Project, as defined below, in exchange for performance by PGE of the obligations herein;

NOW, THEREFORE, in consideration of the mutual covenants of the parties, each to the other giving, the parties do hereby agree as follows:

1. **Project Definition and Scope.**

a. The "Project," designated by PGE as the "Port Westward Unit 2 Project," shall consist of all tangible and intangible Property (whether held in fee, leasehold or by

contract), constructed or created on or after June 1, 2011, comprising, or otherwise relating to a natural gas-fired peaking-load power plant of up to 300 MW in nameplate electric-generating capacity, co-located on land adjacent to PGE's existing 425-MW Port Westward Unit 1 natural-gas-fired, base-load power plant in Columbia County, Oregon. The Project Property, to be described more fully in a seventh amended Port Westward site certificate and related order to be issued by the Oregon Energy Facility Siting Council ("EFSC"), is comprised of all of the following: one or more gas-fired prime movers (either combustion turbines or reciprocating engines); one or more electric generators; the electrical wires, cables and/or conduits connecting such generator(s) to point(s) of interconnection within an existing on-site substation and the associated step-up transformer(s); Project communication, metering; control, lighting and security equipment; buildings or other structures housing the Project or any part thereof; fuel tanks, pipelines, and fuel supplies; and all associated contracts, permits, licenses and other intangible rights pertaining to the Project. The Project shall also include all repairs to, additions or renovations to, or replacements of, the Project or any Project Property made before or during the SIP Exemption Period. The Project shall first exist, for purposes of this SIP Agreement, when the total cost of the foregoing Project Property is at least \$25 million. For purposes of this SIP Agreement, "Property" has the meaning assigned to that term in ORS 308.505 through 308.665.

b. Notwithstanding anything to the contrary in this SIP Agreement, the Project shall not include any property that has received an exemption under ORS 285C.175. For purposes of enforcing the foregoing sentence throughout the term of this SIP Agreement, PGE shall maintain books of account that segregate Project Property from PGE property that is or has been exempted from *ad valorem* property taxation under ORS 285C.175.

2. **SIP Exemption Period.** The "SIP Exemption Period" as defined in ORS 307.123 (1)(b), begins in and for the Property Tax Year after the Project commences Commercial Operation and the Project Property has a cost equal to, or in excess of, \$25 million, and continuing thereafter for fifteen (15) Property Tax Years. As used in this SIP Agreement, "Commercial Operation" shall mean that the Project produces electrical energy and that electrical energy is transmitted into the regional transmission grid for delivery to a power purchaser, and "Property Tax Year" means a period of 12 months beginning July 1, as provided in ORS 308.007.

3. **Condition Precedent.** Except for those obligations set forth in Sections 5.a and 6.a, the obligations set forth herein are conditioned upon a determination reasonably acceptable to PGE, by the OBDC, or its designee, that the Project is eligible for the tax exemption provided in ORS 285C.606, ORS 307.123, and applicable administrative rules.

4. **Exemption, PGE Payments and Related Obligations.**

a. Each Property Tax Year during the SIP Exemption Period, on or before October 25, the County shall submit to PGE an invoice that will include, and separately itemize, the amounts due, if any, from PGE for the Property Tax Year that includes that October 25, in

accordance with Section 4.b. The invoiced amounts shall be paid by PGE to the County Treasurer on or before the following December 1.

b. In consideration of participating in the SIP with respect to the Project, PGE agrees to pay the County the amounts as set forth below.

(1) Ad Valorem Property Taxes. The first \$25 million in real market value of the Project shall be taxable at its assessed value, subject to annual increase at the rate of three percent (3%), as provided by ORS 307.123 and 308.146. The remainder of the real market value of the Project shall be exempt from ad valorem taxation as provided by ORS 307.123. PGE shall make a payment of the ad valorem property taxes to the County each year, as provided by Oregon statutes.

(2) Community Service Fee ("CSF"). Pursuant to ORS 285C.609 (4) (b) (B), for each Property Tax Year during the SIP Exemption Period, PGE shall pay to the County a CSF, in an amount equal to twenty-five percent (25%) of the property taxes that would, but for the exemption, be due on the exempt property in each Property Tax Year, but not exceeding \$500,000 in any Property Tax Year. The amount of any CSF for any Property Tax Year shall be due and payable as part of the Total SIP Payment as provided in Section 4.b.(3) below.

(3) The "Total SIP Payment." For each Property Tax Year of the SIP Exemption Period, (a) if the Turbine Alternative Project is built in the County, PGE shall pay to the County the amount set forth on Exhibit "A," or (b) if the Internal-Combustion Alternative is built in the County, PGE shall pay to the County the amount set forth on Exhibit "B." Both Exhibits A and B are attached hereto and by this reference incorporated herein as though fully set forth herein. The amount for the Property Tax Year shown in either Exhibit A or Exhibit B, as the case may be depending on which, if any, of the Project alternatives is selected for construction and operation, is the "Total SIP Payment" for that year. The Total SIP Payment includes the CSF specified in Section 4.b.(2), but does not include the ad valorem property taxes specified in Section 4.b.(1).

c. First-Source Agreement. PGE shall enter into a first-source hiring agreement with an appropriate third party acceptable to the County in substantially the form required pursuant to OAR 123-070-1000-2400. The County is to be designated a third-party beneficiary of the agreement and is entitled to enforce its terms. The parties may designate a different provider for this service by letter agreement.

d. SIP Application. PGE shall file a SIP application with the Oregon Business Development Department ("OBDD") and pay all applicable fees as provided in ORS 285C.612 and applicable administrative rules. PGE will provide to the County a copy of the SIP application filed with the OBDD and will submit updates to the SIP application to the OBDD after the parties have fulfilled their requirements under State law.

e. County's Cost of Preparation of SIP Agreement. PGE agrees to reimburse the County for its reasonable costs incurred for review and revisions to this SIP Agreement,

including staff, legal, administrative and professional fees, provided however, that the aggregate of such fees payable to the County will not exceed Twenty Thousand Dollars (\$20,000.00). Payment of these costs will be due thirty (30) days after PGE's receipt of the County's itemized invoice, together with supporting documentation reasonably satisfactory to PGE.

f. Annual Reports. PGE shall be solely responsible to submit all reports to the Oregon Department of Revenue and the OBDD that are required by law, including, but not limited to the reports described in ORS 285C.615 and OAR 150-307.123(3).

g. Transportation Improvement Agreement. Nothing in this SIP Agreement is intended to modify PGE's obligations arising through the Transportation Improvement Agreement entered into between the parties in June 2002, as amended, and as it may be amended during the term of this SIP Agreement, as defined in Section 8 below.

5. County Obligations.

a. At such time as PGE requests the County to do so, and after public hearing and official action of the County Board of Commissioners ("County Board") approving the request, the County shall promptly request that the OBDC determine that Project Property be granted the exemption from ad valorem property taxation as provided in ORS 307.123 for the SIP Exemption Period.

b. The County shall be solely responsible for disposition of the Total SIP Payment (which includes the CSF), including paying any portions that are due or payable to any other jurisdiction. PGE shall have no liability or obligation to any other person with respect to the Total SIP Payment after PGE has discharged its duty to pay the County as set forth in Section 4 above and the County shall hold PGE harmless with respect to any claims to the contrary.

6. Joint Obligations. In addition to the other obligations set forth in this SIP Agreement, the parties shall:

a. Cooperation with State. Cooperate with the OBDD, the OBDC and the Department of Revenue to secure approval of this SIP Agreement and take such steps as may, from time to time, be necessary to maintain the tax exemption specified herein.

b. Ancillary Documents. Cooperate and execute any and all supplementary documents and take all additional actions necessary or appropriate to give full force and effect to the terms and intent of this SIP Agreement.

c. Information. Provide such information to each other as may be reasonably necessary to ensure proper calculation of the amounts due under this SIP Agreement.

d. Ad Valorem Property Taxes. Nothing in this SIP Agreement shall be construed in a manner inconsistent with applicable Oregon statutes and administrative rules governing the assessment, payment, or collection of ad valorem property taxes on the portion of

the Project that is taxable as described in Section 4.b.1 of this SIP Agreement. Nothing in this SIP Agreement is intended to prejudice the rights of PGE as a taxpayer, under Oregon statutes and administrative rules, to contest any property valuation or assessment.

e. **Change of Law.** It is acknowledged that, due to the length of this SIP Agreement, federal or state laws and administrative rules, including those relating to the SIP and ad valorem property taxation, may be enacted, repealed, or amended so as to impact the terms and conditions of this SIP Agreement or otherwise alter the authority, rights, or responsibilities of the parties or the benefits anticipated from this SIP Agreement. Neither party shall be liable to the other for damages or costs resulting from such changes. Except if a party chooses to terminate this SIP Agreement under Section 8.c below, the parties shall negotiate, in good faith, amendments that conform to such legal changes while, to the extent feasible, retaining the essential features and relative benefits of this SIP Agreement. If the parties are unable to come to terms within 30 days, the parties shall, in good faith negotiate and effectuate winding down and termination of this SIP Agreement with the objective of minimizing disruption and hardship to either party. This provision shall not be construed as a waiver or release by either party of any constitutional claim or defense relating to impairment of contracts.

7. Miscellaneous Provisions.

a. The laws of the State of Oregon shall govern this SIP Agreement and venue is in the Circuit Court of the State of Oregon for the County of Columbia. The parties agree that, in the case of any disputes that arise under this SIP Agreement, they shall first attempt to resolve such disputes through good-faith negotiations between authorized representatives for both parties. Subject to any action the party must take in order to preserve any rights to pursue remedies, a party may not file court action against the other party to enforce or interpret this SIP Agreement until one hundred and eighty (180) days after the party has given notice, or has been given notice by the other party, of the existence of a dispute.

b. Unless defined herein, the terms herein shall be given their normal and customary meaning, except that terms relating to the payment of property taxes and fees in lieu of taxes shall be construed consistently with the tax laws and rules of the State of Oregon. No provision shall be construed against a party on the basis that the party drafted the provision.

c. Failure to make payment in full of the Total SIP Payment by the due date shall result in interest being charged on the past due balance in the same amount as is provided by law for late payment of ad valorem property taxes.

d. If PGE fails to pay the Total SIP Payment by the end of a Property Tax Year in which it is due, the tax exemption for the Project shall be revoked and the property shall be fully taxable for the following year and for each subsequent Property Tax Year for which the Total SIP Payment remains unpaid. If all delinquent unpaid Total SIP Payments are paid after the exemption is revoked, the property shall again be eligible for the exemption, beginning with the Property Tax Year after the payment is made. Reinstatement of the exemption shall not extend the 15-year SIP Exemption Period.

e. All amounts due under Section 4(b)(3) for a Property Tax Year for which PGE receives the exemption as contemplated by 4b(1) that remain unpaid by PGE at the end of the Property Tax Year in which such amounts are due shall be treated as delinquent taxes and the remedies under ORS Chapter 311 shall be deemed to apply.

f. All notices and other communications required or permitted under this SIP Agreement shall be in writing and shall be either hand delivered in person, sent by facsimile, sent by certified or registered first-class mail, postage pre-paid, or sent by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by facsimile, three days after mailing if sent by mail, and one day after dispatch if sent by express courier, to the following addresses, or such other addresses as any party may notify the other party in accordance with this Section 7.f.:

If to County, to:

Columbia County Assessor
230 Strand Street St. Helens, OR 97051
Facsimile No.: (503) 397-2240
Telephone No.: (503) 397-5153
Attention: County Assessor

With a copy to:

Columbia County Counsel
230 Strand Street
St. Helens, OR 97051
Facsimile No.: (503) 397-3839
Telephone No.: (503) 366-3925

If to PGE, to:

Portland General Electric Company
Corporate Tax Department
121 SW Salmon Street, 1WTC0402
Portland, OR 97204
Facsimile No.: (503) 464-2236
Telephone No.: (503) 464-7859
Attention: Tax Manager

Either party may change its designated contact person by sending the other party notification thereof in accordance with this provision.

g. In the event of an overpayment of any amount due under this SIP Agreement, the County, in accordance with Oregon law, shall either issue an overpayment refund check or return the incorrect payment and request that PGE reissue payment in the correct

amount. In the event of a returned payment, the County assessor shall establish a reasonable schedule for payment.

h. The failure of a party to enforce any provision of this SIP Agreement shall not constitute a waiver by that party of that, or any other provisions of this SIP Agreement.

8. **Term.** The term of this SIP Agreement shall commence on the date of its execution by the parties and shall continue through and terminate on the sixtieth (60th) day after the expiration of the SIP Exemption Period, with the exception that County remedies for enforcement shall continue until all enforcement actions are completed. Notwithstanding the foregoing sentence, either party may terminate this SIP Agreement, by giving 60-day advance notice thereof to the other party, in the event: (a) PGE decides not to construct the Project, or (b) a change is made to applicable law or administrative regulation, prior to commencement of Commercial Operation, that would materially increase the terminating party's obligations or materially reduce its benefits under this SIP Agreement. All obligations incurred prior to termination of this SIP Agreement shall be preserved until satisfied.

9. **Merger.** This SIP Agreement constitutes the complete and exclusive agreement between the parties with respect to the relationship of the SIP to the Project, and supersedes all prior agreements and proposals, oral or written and any other communication between the parties on this matter. No waiver, modification, amendment or other change will be binding on either party, except as a written addendum, signed by authorized agents for both parties.

10. **Assignment.** Upon written notice to the County, but without prior approval by the County, PGE may assign all of its rights and obligations under this SIP Agreement: (a) to any party succeeding to all or substantially all of its assets, so long as the party to which this SIP Agreement is transferred or assigned agrees in writing to be bound by the terms and conditions of this SIP Agreement, or (b) as collateral to any person or entity providing debt or equity financing, refinancing, or credit to or for the Project. No other assignment of this SIP Agreement by PGE may be made without the prior written consent of the County, which consent shall be given if, in the County's reasonable judgment, the assignee satisfies all applicable requirements under ORS 285C.600 to 285C.626 and assumes the obligations, conditions, requirements and other terms of this SIP Agreement; and provided further that no assignment or delegation shall be permitted unless all payments due the County under this SIP Agreement as of the time of the assignment or delegation have been paid in full .

IN WITNESS WHEREOF, the parties hereto have executed this SIP Agreement in duplicate effective the 13th day of July, 2011.

COLUMBIA COUNTY

**PORTLAND GENERAL ELECTRIC
COMPANY (PGE)**

Anthony Hyde, County Commissioner

By:

Dave Robertson,
Vice President, Public Policy

Earl Fisher, County Commissioner

Henry Heimuller, County Commissioner

Approved as to form:

Columbia County Counsel

**OREGON STRATEGIC INVESTMENT PROGRAM AGREEMENT
“PORT WESTWARD II” PROJECT**

Exhibit A

Col. 1	Col. 2	Col. 3	Col. 4
<u>SIP EXEMPTION PERIOD (year)</u>	<u>AD VALOREM TAX ON 1st \$25M OF PROJECT VALUE (3% escalation)</u>	<u>TOTAL SIP PAYMENT TO COLUMBIA COUNTY *</u>	<u>TOTAL PGE PAYMENT FOR PROJECT (col. 2 +3)</u>
1	\$255,212	\$1,408,100	\$1,663,312
2	\$262,868	\$1,392,857	\$1,655,725
3	\$270,754	\$1,378,071	\$1,648,825
4	\$278,877	\$1,363,729	\$1,642,606
5	\$287,243	\$1,349,817	\$1,637,060
6	\$295,860	\$1,236,323	\$1,532,183
7	\$304,736	\$1,223,233	\$1,527,969
8	\$313,878	\$1,210,536	\$1,524,414
9	\$323,295	\$1,198,220	\$1,521,515
10	\$332,994	\$1,186,273	\$1,519,267
11	\$342,983	\$1,074,685	\$1,417,668
12	\$353,273	\$1,041,464	\$1,394,737
13	\$363,871	\$997,032	\$1,360,903
14	\$374,787	\$952,849	\$1,327,636
15	\$386,031	\$908,900	\$1,294,931

* Includes Community Service Fee (“CSF”) and an amount payable by the County to fund Economic Development

**OREGON STRATEGIC INVESTMENT PROGRAM AGREEMENT
"PORT WESTWARD II" PROJECT**

Exhibit B

Col. 1	Col. 2	Col. 3	Col. 4
<u>SIP EXEMPTION PERIOD (year)</u>	<u>AD VALOREM TAX ON 1st \$25M OF PROJECT VALUE (3% escalation)</u>	<u>TOTAL SIP PAYMENT TO COLUMBIA COUNTY *</u>	<u>TOTAL PGE PAYMENT FOR PROJECT (col. 2 +3)</u>
1	\$255,212	\$1,199,420	\$1,454,632
2	\$262,868	\$1,190,438	\$1,453,306
3	\$270,754	\$1,181,725	\$1,452,479
4	\$278,877	\$1,173,273	\$1,452,150
5	\$287,243	\$1,165,075	\$1,452,318
6	\$295,860	\$1,057,123	\$1,352,983
7	\$304,736	\$1,049,409	\$1,354,145
8	\$313,878	\$1,041,927	\$1,355,805
9	\$323,295	\$1,023,964	\$1,347,259
10	\$332,994	\$987,826	\$1,320,820
11	\$342,983	\$851,827	\$1,194,811
12	\$353,273	\$815,958	\$1,169,231
13	\$363,871	\$780,211	\$1,144,082
14	\$374,787	\$744,577	\$1,119,364
15	\$386,031	\$709,047	\$1,095,078

* Includes Community Service Fee ("CSF") and an amount payable by the County to fund Economic Development