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February 12, 2010

Via Electronic and U.S. Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: Rulemaking to Adopt Rules Related to Solar Photovoltaic Energy Systems
Docket No. AR 538

Dear Filing Center:

Enclosed please find the original and one copy of the Closing Comments of the Industrial Customers of Northwest Utilities in the above-referenced matter.

Thank you for your assistance.

Sincerely yours,

/s/ Brendan E. Levenick
Brendan E. Levenick

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Closing Comments of the Industrial Customers of Northwest Utilities upon the parties on the service list, shown below, by causing the same to be sent by electronic mail to all parties, as well as, deposited in the U.S. Mail, postage-prepaid, to parties which have not waived paper service.

Dated at Portland, Oregon, this 12th day of February, 2010.

/s/ *Brendan E. Levenick*
Brendan E. Levenick

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 538

In the Matter of a)
)
Rulemaking to Adopt Rules Related to Solar) **CLOSING COMMENTS OF THE**
Photovoltaic Energy Systems) **INDUSTRIAL CUSTOMERS OF**
) **NORTHWEST UTILITIES**
_____)

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits these Closing Comments to the Public Utility Commission of Oregon (“OPUC” or the “Commission”) regarding Commission Staff’s (“Staff”) proposed rules OAR §§ 860-084-0000 through 0450. The rules seek to implement certain aspects of House Bill 3039 (“HB 3039”), which provides for the establishment of a Solar Photovoltaic (“PV”) Capacity Standard and Pilot Programs.

ICNU appreciates the time and effort expended by the numerous parties participating in the rulemaking process. In these Closing Comments, ICNU addresses matters pertaining specifically to the proposed rules promulgating HB 3039. Matters relating to the Commission’s initial Order and Staff’s revised straw proposal are addressed in separate Closing Comments filed concurrently in Docket No. UM 1452.

II. COMMENTS

In these Closing Comments, ICNU focuses upon three main issues. First, in support of the position taken in UM 1452 comments—that pilot cost recovery in excess of resource value should be allocated in direct proportion to customer class participation in Solar PV Pilot Programs—ICNU opposes modification to OAR § 860-084-0380, the rule governing

cost recovery and rate impacts. Second, ICNU advocates for retaining the present form of the rules regarding solar PV system size-scale terminology, also consistent with analysis offered in UM 1452 commentary. Third, ICNU maintains that interconnection cost responsibility should be borne by pilot participants, in keeping with established OPUC rules and standards, while advocating in favor of Staff’s recommended cost cap as an alternative. Finally, ICNU addresses miscellaneous rule issues.

A. The Proposed Cost Recovery and Rate Impact Rule Should be Adopted

ICNU supports OAR § 860-084-0380 as proposed, which is the rule addressing cost recovery and rate impacts. Thus, ICNU strongly opposes the modification suggested by Portland General Electric Company (“PGE”), to delete the phrase “of participation in its pilot program” in section 2 of the rule. PGE Opening Comments, Attachment 1 at 6.

In brief, PGE advocates for this modification in accord with its basic position that rate recovery should be allocated evenly among all customer classes, *regardless* of class participation in Solar PV Pilot Programs. PGE Opening Comments at 8. ICNU addresses the issue of cost recovery allocation thoroughly in its UM 1452 Closing Comments. Consistent with ICNU’s belief that pilot costs in excess of the resource value should be allocated in rates by direct proportion to customer class participation, ICNU believes that amendment to OAR § 860-084-0380 is unnecessary. The approach advocated by PGE runs afoul of well-established principles that there should not be cross-subsidization among customer classes in either direction.

B. Rule Terminology Related to Solar PV System Size-Scale Should Remain Unchanged

The changes to rule terminology advocated by Renewable Northwest Project and Partners (“RNP”), concerning solar PV system size-scale, are contrary to the statute and should

be rejected. Among other things, RNP proposes changing the size-scale definition of “*smaller* systems” to “*small-scale* systems” in several rules. RNP Opening Comments at 39, 41, 42. Additionally, RNP proposes a modification to OAR § 860-084-0190(3) which would redefine the pilot design mandate; that is, 75% energy generation from “smaller-scale” systems would encompass solar PV systems as large as 100 kilowatts. *Id.* at 40; HB 3039 § 2(6). These proposals appear to be designed to implement RNP’s statutory interpretation arguments, in which RNP construes a legislative distinction between the terms “smaller” and “small,” thereby opening the door for enlarging the pilot benefits to larger commercial scale projects. RNP Opening Comments at 4–5.

In Closing Comments filed concurrently in UM 1452, ICNU addresses the proper construction of the terms “smaller” and “small” in HB 3039 § 2(6). In short, consistent with a plain, natural and ordinary reading of the statutory text in its context, ICNU believes that the terms “smaller” and “small” were used interchangeably by the legislature in HB 3039 and that the present rule definition of “smaller systems” is fully in accord with legislative intent. Therefore, ICNU believes that terminology changes to the proposed rules, as advocated by RNP, are unwarranted.^{1/}

C. The Interconnection Costs of Pilot Participants Should Minimally Impact Ratepayers

ICNU maintains that, in keeping with Commission precedent and every rule standard currently applicable to interconnections, the interconnection cost responsibility of Solar

^{1/} The legislature is presently considering a bill which would modify the statute to expressly include “residential and small commercial qualifying systems” of 100 kilowatt capacity or less as being within the 75% generation design goal. HB 3690 § 1(4), (7); HB 3690 § 2(6). Unless and until those modifications are adopted, however, ICNU maintains that the original text and context of the statute, in conjunction with the proposed size-scale rules in this docket, do not provide for systems larger than 10 kilowatts within the percentage goal.

PV Pilot Programs participants should be borne by pilot participants. Conversely, the proposed rules place this responsibility upon electric companies. OAR § 860-084-0280(3).

ICNU submits that a modification to OAR § 860-084-0280(3), placing interconnection cost responsibility upon pilot participants would be the optimal means of minimizing costs associated with implementation of the Solar PV Pilot Programs. The OPUC is required to consider policies designed to “reduce the cost of incentive programs to utility customers.” HB 3039 § 7. Moreover, Staff has stated that the “interconnection responsibilities sections of the proposed rules are designed to ensure that [PV] systems . . . integrate in a way that protects the continued safety, reliability *and cost effectiveness* of the distribution systems.” Staff Opening Comments at 16 (emphasis added). Plainly, the best method to ensure cost effectiveness is to retain cost responsibility with the customer as the Commission does with other interconnections.

Staff’s rationale for altering the “established net metering rules” is contrary to the statute. Id. “Staff bases its recommendation regarding cost allocation on the fact that the costs of the systems are recoverable in rates” Id. In this context, Staff is effectively treating the pilot as a blank check payable by Oregon ratepayers, instead of fashioning rules which minimize the cost of the pilot to customers, as required by the text of the statute itself. HB 3039 § 7. Hence, the Commission should not adopt OAR § 860-084-0280(3) without revising the cost responsibility standard to accord with established practice and the statute.

If the Commission adopts the proposed rules in their current form, ICNU supports Staff’s recommendation that electric company cost responsibility be limited to only the first \$1,000 of interconnection costs, for all three levels of pilot interconnections. Staff Opening

Comments at 17.^{2/} Staff also recommends that any costs above \$1,000 should be borne by pilot participants. Id. ICNU believes that, short of revising the rules, this approach would minimize the pilot impact on ratepayers, consonant with the statutory requirement of HB 3039 § 7. As PGE notes, “if costs are unchecked, future feed-in tariff programs may be imperiled and viewed as risky due to the potential for excessive costs.” PGE Opening Comments at 7. While ICNU believes the costs should be borne by the participants, at least a \$1,000 cap on electric company cost responsibility will serve a practical end of minimizing the cost shift to other ratepayers.

D. Miscellaneous Rule Matters

In Opening Comments, ICNU addressed an ambiguity in the original rules proposal which created a potential for incentive rate change between the date in which a medium or large size applicant submitted a capacity request and the date on which pilot capacity was allocated. ICNU Opening Comments at 3–5. The revised rules, however, have largely mooted ICNU’s concern. The rules now provide for a bidding process for large system applicants with a rate established upon bid acceptance. Medium system capacity will now be allocated every year on May 1, leaving only a one month window of rate uncertainty during which no rate revisions are presently contemplated in Staff proposals. In this light, there appears to be little remaining risk that pilot applicants will be disadvantaged by rate changes occurring between the application and capacity allocation dates.

Finally, ICNU is opposed to the proposal of RNP to delete the allowance of a four month capacity reservation extension in OAR § 860-084-0210(1)(b) for medium and large

^{2/} The revised straw proposal states that a \$1,000 interconnection cost allowance should be established only for Level 1 pilot interconnections. Staff Opening Comments, Addendum A at 4. To the extent Staff’s Opening Comment recommendations are in tension with the revised straw proposal, ICNU only supports, as an alternative to cost recovery from participants, the former.

solar PV systems. RNP Opening Comments at 41. Larger interconnections sometimes implicate complex technical and engineering adjustments to a utility’s electrical system, thereby justifying an allowance for large system applicants to seek an extension on capacity reservation—especially when delay is attributable to utility work progress. The rule presently makes an extension conditional, *i.e.*, an “extension *may* be granted,” so the Commission has authority to deny a capacity reservation extension if delay is attributable to an applicant. OAR § 860-084-0210(1)(b) (emphasis added). Since an extension will not be allowed as a matter of right, there is nothing to be gained by deleting this provision and much to be lost in not retaining it.

III. CONCLUSION

ICNU appreciates the opportunity to submit these Closing Comments and respectfully requests that the Commission:

1. Adopt the proposed cost recovery and rate impact, system size-scale, and capacity reservation rules without modification; and
2. Amend the proposed rules to implement established Commission standards placing interconnection cost responsibility upon customers.

Dated this 12th day of February, 2010.

Respectfully submitted,

/s/ Jesse E. Cowell

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