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December 18, 2009

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 Opening 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 Opening 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 18th day of December, 2009.

/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)	OPENING COMMENTS OF INDUSTRIAL
Photovoltaic Energy Systems)	CUSTOMERS OF NORTHWEST UTILITIES
_____)	

I. INTRODUCTION

Industrial Customers of Northwest Utilities (“ICNU”) submits these 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. ICNU addresses two areas concerning the Pilot Programs rules in which clarification or revision of the proposed rules would better advance the purposes of the legislature in enacting HB 3039.

II. COMMENTS

In these Opening Comments, ICNU focuses upon two issues. First, the proposed rules would better implement the legislative purposes of HB 3039 by adopting the established OPUC interconnection cost responsibility standard. Second, the proposed rules concerning the establishment of volumetric incentive rates contain a problematic ambiguity. ICNU also proposes a simple solution to address the rate establishment ambiguity.

A. Interconnection Cost Responsibility Should Conform with Established Commission Standards

The proposed Solar PV Pilot Programs rules are in many respects modeled upon rules governing other forms of interconnections. For instance, proposed rules governing interconnection applications and agreements rely heavily on net metering rules adopted in OAR chapter 860, division 039, which, in turn, are similar to rules governing small generator interconnections in OAR chapter 860, division 082. This commonality of rules and standards is logical considering the similarities inherent to all these interconnections.

The proposed rules depart from convention, however, in assigning virtually all interconnection cost responsibility to participating electric companies. Under 860-084-0280(3), “all interconnection costs associated with the meter, interconnection facilities, modifications to the electric distribution system, interconnection review, or system upgrades *are at the electric company’s expense.*”^{1/} (Emphasis added). Conversely, interconnection cost responsibility is primarily borne by the customer in all other interconnections, such as small generator, net metering, and qualifying facility (“QF”) interconnections. E.g., OAR § 860-082-0035; OAR § 860-039-0045(3); OAR § 860-029-0060.

This novel assignment of all interconnection cost responsibility to the utilities in the proposed rules will hinder a legislative purpose behind HB 3039. An express purpose in establishing pilot programs is “to demonstrate the use and effectiveness of volumetric incentive rates and payments.” HB 3039, § 2(1). If the proposed rules prohibit virtually any allocation of cost responsibility to customers, however, then customers will naturally have a *disincentive* to

^{1/} The assignment of “all interconnection costs” is subject to an express “reasonable cost” limitation. OAR § 860-084-0290.

avoid poor installation of Solar PV systems. The data collected from the Solar PV Pilot Programs would be of questionable value in such case, and the demonstrative purpose of the Pilot Programs would not be met. Moreover, the OPUC must consider policies designed to “reduce the cost of incentive programs to utility customers” in reporting to the legislature. HB 3039 § 7. But assigning all costs to utilities will result in an invalid ratepayer subsidy contrary to the statute.

Additionally, the increased likelihood of poor Solar PV system installation would run contrary to another stated purpose of HB 3039: pilot programs are to demonstrate the use and effectiveness of rate incentives for electricity delivered from “systems that are *permanently* installed.” HB 3039 § 2(1) (emphasis added). Many parties involved in rule making workshops have emphatically pointed out the intent of the legislature in fostering permanent Solar PV system installations. Indeed, all parties seem to agree that permanent system installation is a component of the Solar PV Pilot Programs, as the statute plainly provides. But since the probable result of assigning all interconnection cost responsibility to electric companies will be to foster poor and impermanent installation systems, the proposed rules promise to thwart the permanence goal of the statute.

B. Rate Setting for Medium and Large Systems Should Not Be Variable

In 2009, as a result of significant proposed revisions to avoided cost rate tariffs, a number of complaints were filed against utilities concerning the proper avoided cost rates applicable to QFs—*i.e.*, whether to apply tariff rates in effect when negotiations between utilities and QFs were conducted or revised rates filed but not yet in effect during negotiations. In the proposed rules governing Solar PV Pilot Programs, an ambiguity exists which would create

similar uncertainty in rate setting for medium and large Solar PV systems. To avoid a virtual repetition of the QF rate dispute saga, the proposed rules can and should be modified to prevent similar rate setting issues in Solar PV Pilot Programs.

The ambiguity that arises in the proposed rules is not immediately apparent, but emerges when three interdependent sections are read together. First, Solar PV systems that properly reserve pilot capacity “are eligible for the volumetric incentive rate in place at the time of their capacity reservation.” OAR § 860-084-0200. Next, the time of capacity reservation for medium and large systems is explained under the definition of “reservation start date” as “the date the consumer *is allocated capacity* through an annual capacity reservation process.” OAR § 860-084-0010(13)(b) (emphasis added).

The ambiguity for medium and large systems arises upon application of the third rule, which establishes that a capacity allocation/reservation date *may be different* from the date on which a consumer applies to participate in a Solar PV Pilot Program. Namely, in the event that applications received during the proposed open season window exceed available capacities for medium or large systems, “capacity must be awarded . . . by random drawing, until the annual capacity is fully allocated.” OAR § 860-084-0190(5)(c). Of course, any random drawing to winnow an over-subscribed field could not take place until May at the earliest, since electric companies “must receive applications for medium and large systems during the month of April of each year.” OAR § 860-084-0190(5)(a). This fact leaves open the possibility that volumetric incentive rates could be changed between the time a medium or large system applicant submits its application and the time in which capacity is later allocated through a random drawing process.

The recent rash of avoided cost rate disputes is proof positive that a small window of uncertainty during a period of rate establishment can lead to many costly complaint proceedings. To ensure that similar disputes do not arise in connection with Solar PV Pilot Programs, ICNU submits a fairly simple solution to address the rate uncertainty ambiguity: divide OAR § 860-084-0200 into two sections. The existing rule could become section (1), with the first sentence adding an exceptions clause so as to read: “Reserved systems are eligible for the volumetric incentive rate in place at the time of their capacity reservation, *except as provided in section (2) of this rule.*” (Added clause in italics). The exceptions clause in section (2) could provide: “For medium and large systems, if the volumetric incentive rate changes between the date of application submission and the capacity reservation date, the rate in effect at the time of application will apply.”

III. CONCLUSION

ICNU appreciates the opportunity to submit these Opening Comments and looks forward to participating in further commentary.

Dated this 18th day of December, 2009.

Respectfully submitted,

/s/ Jesse E. Cowell

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