

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**UM 1276**

In the Matter of	)	Final Comments
	)	of the
Performance-Based Ratemaking Mechanisms To	)	<b>NW Energy Coalition</b>
Address Potential Build-Vs-Buy Bias.	)	

1 **I. Observations**

2 The NW Energy Coalition (NWECC or “Coalition”) urges the Commission to step  
3 back from the details and the proposals in this docket to take in the big picture.

4 It has been very interesting to watch the utilities participate in this docket. They  
5 have readily admitted that they have a bias present in the area of resource acquisition.  
6 The bias is against PPAs and it stems from two causes: the treatment of imputed debt by  
7 credit rating entities and the lack of opportunity to make a profit under traditional  
8 regulatory treatment. While there has been a debate over the magnitude of these factors,  
9 all parties agree that these reasons make sense.

10 A question that has not been asked, however, is how this bias has been manifested  
11 in action. How and where did (or will) the presence of this bias result in outcomes that  
12 would otherwise have not occurred?

13 What is surprising to this observer is that the utilities have admitted that they  
14 might act on this bias (which must lead to a suspicion that they have done so in the past).  
15 And even more astounding is that they then calculate the incentive (“bribe”?) needed to  
16 get them to not do so!

17 Although I’m not a lawyer, I have watched numerous episodes of Law and Order  
18 and CSI. So if asked for legal advice I would have told the utilities the following. “First,  
19 shut up. A crime needs motive, means and opportunity. They’ve got you on motive—the  
20 unfairness of how PPAs are rewarded compared to ownership. There is also  
21 opportunity—perhaps in the IRP or RFP scoring process. The means aren’t quite as  
22 clear, but I guess the cops will claim you could have manipulated the IRP black box  
23 models, or skewed the scoring out-of-sight somewhere in the RFP process to make PPAs  
24 look like worse options than they really were. But this is all circumstantial evidence,  
25 there’s no body or fingerprints, so don’t admit anything.”

26 But instead of listening to my advice, it seems the utilities want to make a deal.  
27 They won’t exactly admit they’ve been biasing the results against PPAs, but for a price

1 they will agree to not do it in the future. They don't want this case sent to the jury.

2 But if a crime has or soon will be committed, is it in the public interest to cover it  
3 up? It seems that for the Commission to find that an incentive is needed to influence  
4 utility behavior, it would have to see evidence proving that improper decisions have been  
5 made in the past, or are certain to occur in the future. No party has provided such  
6 evidence. Absent such a smoking gun, the utilities themselves would have to admit they  
7 have been, or will, play fast and loose with the resource selection process. It would be  
8 surprising to see that admission.

9 In all seriousness, let's put this analogy to rest. Before crafting a mechanism to  
10 eliminate a bias or its effects, it is critical, to not just identify its presence, but also to  
11 describe where and how it might be acted upon. Are there flaws in the IRP or RFP  
12 processes that allow the utilities in essence to skew the results in their favor? And is the  
13 best way to fix them to give the utilities money? And how much money?

## 14 **II. Where the Bias Meets the Road**

15 It is in the ratepayers' interest to have resources evaluated fairly. In particular, it  
16 is important that the risk-mitigation value of PPAs which the Parties have identified be  
17 properly considered--and acquired if cost effective.

18 NWECC argues, and has argued in the past, that these attributes have not been  
19 given enough weight in the utilities' IRPs. It is likely that the bias at issue here is at least  
20 partially responsible for that fact. One could see how a bias against PPAs would make a  
21 utility reluctant to give much weight to their risk-mitigation characteristics in both the  
22 IRP and RFP processes.

23 We posit, therefore, that the probable mechanism whereby the bias may be  
24 manifested is in the failure to give a numeric weight to the risk-shifting value of PPAs. It  
25 would work like this. If a PPA does have additional risk-mitigation value, the costs of  
26 that value would show up in the price an IPP would be able to sell it for. Then, because  
27 the price is higher, but the value (score) given to it by the utility is low or non-existent, it  
28 will not be chosen in a competitive process. In this way a utility's bias toward ownership  
29 would result in rejection of competitive PPA bids, even if the RFP is conducted  
30 completely above-board.

## 31 **III. Solution**

32 NWECC did offer an incentive proposal in the spirit of compromise, and we could  
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1 accept it as a limited experiment. But, we have maintained all along that a better solution  
2 is to focus on the point where the bias is acted upon. We believe that is in the valuation  
3 of PPAs. We have argued that PPAs should be given a risk-mitigation premium, and we  
4 readily admit that it is not easy to quantify. (For discussion in this docket, for example,  
5 we have agreed that a 10% value is appropriate as a placeholder, contingent upon further  
6 analysis in the IRP process.)

7 One solution is for the Commission to direct the utilities to develop *and quantify*  
8 risk adders (really, “subtractors”) for PPAs that would be used, like CO2 adders, in their  
9 IRP models and subsequent RFP scoring.

10 Unlike the untargeted incentives being debated in this docket which essentially  
11 beg the utilities to not artificially skew their results, this proposal focuses on the actual  
12 place and method whereby the utilities’ bias is put into play.

## 13 **VI. Summary and Conclusions**

14 We know that this docket seems interminable, and that the parties—and  
15 Commission—are anxious to conclude it, given upcoming utility RFPs. However, the  
16 lack of evidence on the source and size of the bias and the mechanism whereby that bias  
17 results in ratepayer harm leaves the Commission with little guidance or foundation for  
18 approving an incentive. In addition, there are numerous unanswered questions about the  
19 proposed incentives, especially possible unintended consequences when applied to multi-  
20 state utilities or to PPAs that are already planned by the utilities (which would occur  
21 without an incentive).

22 It seems to us, unfortunately, that this docket is still not ripe for a Commission  
23 decision. We believe the proper focus is on developing mechanisms to quantify the risk-  
24 mitigation value of buying (i.e., renting) as compared to building (i.e., owning). That  
25 analysis, however, is probably better done in an IRP setting. Therefore it might be best to  
26 simply put this docket on hold until that analysis can be completed.

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29 Respectfully submitted,

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33 Steven Weiss,  
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35 NW Energy Coalition  
*January 30, 2008*

**CERTIFICATE OF SERVICE**

**UM 1276**

On this 30th day of January, 2008 I certify that I served the NW Energy Coalition's UM1276 Final Comments upon all parties of record in this proceeding by e-mail.

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