

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 **AR 538/UM 1452**
4

5
6 In the Matter of PUBLIC UTILITY |
7 COMMISSION OF OREGON | Opening Comments
8 Investigation into Pilot Programs to | of the Citizens' Utility Board
9 demonstrate the use and effectiveness of | of Oregon (CUB) in regard to
10 Volumetric Incentive Rates for Solar | Staff's Straw Proposal and the
11 Photovoltaic Energy Systems. | Proposed Rules
12

13

14 The following opening comments are provided by the Citizens' Utility Board of Oregon
15 (CUB) in regard to the proposed rules generated in Docket AR 538 and the straw proposal
16 submitted by Staff in Docket UM 1452. CUB will attempt to make specific references to either
17 the proposed rules or straw proposal as appropriate in making its points.
18

18

19 CUB's comments focus on four main topics of discussion: 1) the proposed solar capacity
20 standard; 2) the Federal Energy Regulatory Commission (FERC) jurisdictional issues; 3) the
21 setting of a volumetric incentive rate (VIR), and 4) the rate cap permitted in the statute. CUB
22 also notes the need for the OPUC to request that the Department of Revenue review the tax
23 effects of the implementation of these processes – will the current tax structure encourage or
24 discourage residential and small business persons from participating in this pilot program.
25

25

26 Support for Other Joint Testimony

27 CUB has worked in conjunction with other parties to develop responses to the draft rule
28 and straw proposal in addition to these comments. CUB supports the efforts to find a workable
29 balance between customer concerns and industry needs. CUB believes that the comments

1 developed by RNP (together with other parties - referred to as “RNP, et al”) largely accomplish
2 this goal. CUB’s comments do not conflict with the issues addressed in the testimony submitted
3 by RNP, et al.
4

5 Solar Capacity Standard

6 CUB agrees that there is little to address in terms of new rules for the solar capacity
7 standard set forth in HB 3039. But CUB notes, for the record, that the solar capacity standard set
8 forth in the bill does not alter the requirement that an electric utility demonstrate prudence – See
9 Section 8 of HB 3039. Therefore, the cost recovery mechanism outlined in the proposed rule
10 860-084-0060 includes the same vigorous prudence review for solar projects as that applied to
11 any other resource decision that a company might propose.
12

13 FERC Jurisdictional Issues

14 CUB acknowledges the difficulties with potential FERC preemption issues as outlined by
15 Staff in its Comments filed on December 21, 2009,¹ CUB takes the position that consumers
16 (and clean energy industries) would be best served through the development of a system that
17 avoids the FERC preemption issue but still allows the State of Oregon to test new incentive
18 mechanisms for encouraging clean energy resources.
19

20 As outlined in the DOJ memorandum there are two approaches to avoiding the issue of
21 potential FERC jurisdiction. First, there is the use, at least in the residential and small business
22 setting of “parallel” net metering. The PUC is explicitly authorized to set net-metering rates.

¹ Staff’s Comments also included the legal analysis performed by the Oregon Department of Justice and dated December 15, 2009.

1 Given the fact that systems up to 2MW can be net-metered, there is more than adequate room
2 under existing rules to permit use of this mechanism for both residential and small scale
3 business. Second, the Oregon Public Utility Commission (PUC) could require the IOUs to a)
4 enter into power purchase agreements with pilot program participants as long as the contracting
5 parties voluntarily agreed to a rate for power sold under the contract, or b) require IOUs to issue
6 Requests for Proposals (RFP) to pilot program participants for supply of energy. These
7 measures are necessary to avoid the transactions being designated as “wholesale transactions”
8 over which FERC has exclusive authority.

9
10 While, most of the discussions have assumed an RFP process oriented toward small and
11 large commercial systems, CUB recognizes that individual residential customers may not wish to
12 undertake complex RFP application processes. CUB, therefore, proposes the modification of this
13 idea to instead utilize an aggregation of multiple residential customers into one RFP, much like
14 the model utilized by the Solarize Portland project (www.solarizeportland.org).

15
16 There is also a proposed concept to avoid FERC preemption that suggests that the
17 Renewable Energy Certificates (RECs) can be used to represent the premium value of the solar
18 resource above the avoided cost of the resource with the Commission setting the price of RECs
19 within the pilot. CUB is interested in hearing more about the concept but has initial concerns
20 about two aspects of the proposal. First, RECs are a tradable commodity whose prices are set
21 through a market. Second, it is not clear what will happen to the value of RECs under a carbon-
22 reduction regime, such as cap-and-trade or some other mechanism. Some think that RECs will
23 have little value outside of Renewable Portfolio Standard compliance markets. Given the above,

1 CUB recommends that the Commission not interfere with a current active REC market so as not
2 to base the pilot on a mechanism that may not be viable or available in the long-term. CUB does,
3 however, look forward to further discussions about the proposal in future workshops.

4
5 Additionally, CUB does not support the Purchase Power Agreement concept that has also
6 been discussed because it requires an individual residential customer to voluntarily agree to a
7 rate for power sold under the contract and prohibits the setting of a VIR rate by the OPUC. This
8 would work counter to the aims of the pilot.

9
10 In summary, CUB can support the concept of parallel net-metering and the concept of an
11 RFP process as workable mechanisms to test the FIT-type approach but avoid federal jurisdiction
12 issues.

13
14 Setting the Rate within the New Pilot Structure

15 CUB understands that there will be a workshop specially dedicated to the rate-setting
16 issues involved in developing the pilot projects. CUB also understands that the
17 RNP, et al. comments already explore these issues in substantial detail. CUB is supportive of
18 RNP et al.s' analysis but writes separately to emphasize the consumer issues at play in this
19 Docket.

20
21 RNP, et al delve deeply into various factors that might go into setting an appropriate
22 Volumetric Incentive Rate (VIR) – whether or not the VIR is used in parallel with net metering.
23 They list use of federal tax credits, geographic location, financing costs, financing availability,

Comment [RM1]: Is this isolation or insulation?

1 insolation factors and other items as necessary to consider in determining an appropriate rate.

2 They also note that “average” costs for systems may be difficult to determine and that the rise or
3 fall of system prices may be difficult to predict. CUB agrees with these points. CUB also agrees
4 with the use of three key principles in setting initial VIRs:

- 5 • Initial VIRs should be set at levels sufficiently high enough to result in system
6 installations today
- 7 • Future VIRs should reduce according to real-world market conditions, as established
8 with the best market data that can be cost-effectively obtained
- 9 • VIR reductions should be transparent with sufficient notice to all prospective program
10 participants of any impending change.

11

12 CUB does, however, caution against setting the VIR rate too high or no useful lessons
13 will be learned because demand will be inflated due to an excessive incentive rate. It seems to us
14 that what we are trying to test in this pilot is to test whether a mechanism exists that can
15 supplement, or even improve upon, the existing support structure for the “above-market” costs of
16 renewable resources, in this case solar. In other words, can a VIR be used in place of or in
17 addition to state tax credits and incentives from the Energy Trust of Oregon (ETO) to increase
18 the installation of distributed solar resources? Currently, the ETO determines appropriate
19 incentive levels after examining market conditions and projecting potential incentive levels that
20 can move and eventually transform the market.

21

22 CUB encourages the Commission to request that the ETO do a similar examination in
23 this case to determine appropriate incentive levels and enter their analysis into the record for

1 consideration by the Commission and other parties. Because we have a resource in the ETO
2 with the experience to successfully set incentive levels while still ensuring appropriate value and
3 protection for the ratepayer, we should avail ourselves of that resource. CUB acknowledges that
4 this rate will certainly be higher than traditional resources but, utilizing the ETO's experience,
5 we are confident that the rate level will be appropriate and supported by substantial analysis.

6
7 Once the rate is set based on analysis from the ETO, CUB submits that the process
8 outlined by RNP, et al for "small-scale qualifying systems," which by definition are residential-
9 sized systems, be utilized. RNP, et al's testimony, as summarized in the chart on page 14,
10 suggests that the VIR is adjusted every quarter based on whether or not capacity reserved for that
11 time period is fully allocated or not. If it is fully allocated, the announcement of a new VIR rate
12 (reduced by up to 10 percent) is made at least 30 days before the end of the period. The process
13 would be continued for each successive time period until the reserved capacity was not fully
14 allocated. That rate would then be maintained until such time as the capacity is fully allocated
15 again before the end of the period, thus triggering another reduction in the rate (again, up to 10
16 percent).

17
18 CUB believes that that the analysis of needed incentive levels by the ETO in order to
19 establish to establish an initial rate and the subsequent process to reduce rates constitute a fully
20 transparent process, allowing ratepayers to understand the process and be able to weigh risks and
21 benefits of participating in the program up front or waiting until a later time.

22
23 CUB looks forward to the future workshop to fully explore these issues.

1 A Potential Rate Cap

2 Section 2(7) of HB 3039 states: “The commission may establish total generator
3 nameplate capacity limits for an electric company so that the rate impact of the pilot program for
4 any customer class does not exceed 0.25 percent of the electric company’s revenue requirement
5 for the class in any year.” It is important to note that the cap of 0.25 percent is a permissive
6 element, not a required one. CUB agrees with this approach.

Comment [RM2]: Format issue. Not sure how to fix it.

7
8 There have been some comments made during the course of various workshops to the
9 effect that one of the goals of this pilot is to explore how to replace taxpayer subsidies for
10 renewable resources with ratepayer subsidies. While CUB does not believe this view is widely
11 shared, CUB feels it necessary to underscore that while CUB is supportive of diversifying our
12 utilities’ resource mix, and believes that such diversification benefits customers in the long term,
13 CUB is against the pursuit of such a course without any regard to cost.

14
15 Additionally, while CUB views itself as an ally of clean energy industries, ratepayers are
16 not responsible for being an economic engine to drive the development of clean energy
17 industries. Economic development is not an appropriate primary use of ratepayer dollars.
18 Utilities are required to provide service to customers on a least-cost, least-risk basis and we
19 caution the other parties in this process from moving too far from this fundamental principle.

20
21 At several points during the ongoing discussion, there have been concerns expressed
22 about “perverse incentives” that could lead consumers to consume additional energy to meet a
23 higher level of energy productions from the FIT-supported systems. CUB feels compelled to

1 point out that current efforts to acquire power through efficiency efforts is currently costing
2 approximately 2 cents per kilowatt hour. However, we are considering resources in the FIT pilot
3 that may require a rate reaching or exceeding 40 cents per kilowatt hour, 20 times the cost of
4 efficiency. We do indeed want to avoid perverse incentives.

5
6 While CUB does not advocate that the Commission impose the allowed rate cap, CUB
7 does request that the Commission and the parties be very cognizant of rate impact as we design
8 the pilot. It is our hope that this pilot will provide information regarding system benefits and the
9 required support to attain those benefits from these resources in a sustainable way over time. As
10 we noted earlier, if we simply learn that spending top dollar encourages more solar system
11 installation, we will not have gained much valuable information.

12
13 As the Commission fashions a workable pilot project, CUB asks that it recognize whether
14 the rate cap is being exceeded. If it is being exceeded, CUB requests that there be a discussion
15 put in the record regarding how much the cap is exceeded and that there be some projected
16 benefit to customers. If no benefit to customers is identified, then there should be some analysis
17 on potential sustainability of rate support for the resources.

18
19 Effect of the current state and federal tax laws upon participation in the pilot program under the
20 processes suggested in these Comments.

21
22 CUB also notes the need for the OPUC to request that the Department of Revenue review
23 the tax effects of the implementation of these processes – will the current tax structure encourage
24 or discourage residential and small business persons from participating in this pilot program.

25

1 Conclusion

2 CUB appreciates the efforts of the PUC staff and the other participants in this rulemaking
3 and investigatory process. We have been covering a lot of ground quickly and exploring
4 complex issues. CUB is optimistic that the process will result in a pilot that will teach us
5 valuable lessons about how to support nascent energy resources in order to ensure long-term
6 stability and diversity of our resource mix. We look forward to the continued discussions and
7 are confident that we will be able to develop workable solutions to issues as they arise.

8

9 This concludes CUB's comments.

AR 538 and UM 1452 – CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of January, 2010, I served the foregoing **OPENING COMMENTS OF THE CITIZENS' UTILITY BOARD OF OREGON IN REGARD TO STAFF'S STRAW PROPOSAL AND THE PROPOSED RULES** in docket UM 1452 and Docket AR 538 upon each party listed in the UM 1452 and AR 538 PUC Service Lists by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending 2 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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AR 538 and UM 1452 - Certificate of Service **OPENING COMMENTS OF THE
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PROPOSAL AND THE PROPOSED RULES**

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