

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1452

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION)	
OF OREGON)	Opening Supplemental Comments of
)	The Environmental Law
Investigation into Pilot Programs to)	Alliance Worldwide (ELAW)
demonstrate the use and effectiveness of)	
Volumetric Incentive Rates for Solar)	
Photovoltaic Energy Systems)	

The Environmental Law Alliance Worldwide (ELAW) files these Opening Supplemental Comments addressing effects House Bill 3690 (HB 3690) has on positions previously taken in these proceedings.

HB 3690 removed any question that the Commission has the authority to design a true feed-in tariff (FIT) program. HB 3690 of the 2010 Special Session was introduced to ensure the Public Utility Commission could implement the pilot program created by HB 3039 (2009).

ELAW and others have commented that the pilot program currently recommended by Staff is not a FIT program. Staff was working on designing a strong FIT pilot project when some parties raised concerns about possible federal preemption. In its Closing Comments, Staff states that it could design a program that would not run into preemption problems by requiring utilities to pay an incentive rate for the Renewable Energy Certificate (REC) associated with electricity generated instead of paying the rate for the electricity itself. However, rather than recommending this route, and testing a pilot FIT, Staff recommends a bifurcated program that will be more complicated to understand (and thus less likely to attract participants), more complicated to implement (and thus more expensive for the utilities), and has its own unintended consequences. This program would include a bidding process for larger projects. If the Commission adopts this proposal, we will never know whether a FIT, which sets the price that will be paid, will work in Oregon. Neither the proposed "netmetering + VIR" program or the bidding process are true FITs. The Oregon legislature passed a law directing the Commission to design a pilot program to test whether a FIT would work in Oregon. Now, with the passage of HB 3690, the Commission clearly has the authority to follow this directive.

It is clear that the Commission could create a FIT that includes an incentive rate to be paid for the REC associated with the electricity generated without triggering federal preemption. The Staff acknowledges this in its comments. *Staff Final Comments*, pg.

40. Staff's Closing Comments imply that Staff is not recommending a FIT that would require a set payment for the REC for two reasons: 1) it is not clear that the Commission has authority from the Oregon legislature to set the price for the REC ("[t]he legislature has not granted the Commission specific authority to impose VIR for RECs" *Id.*); and 2) because the rate that would be set for the REC may be 400 times their market value. *Id.*

First, HB 3690 now clearly grants the Commission the authority to set the price of the REC. HB 3690 amends HB 3039 to make it clear the Commission may test the effectiveness of payments for the nonenergy attributes of the electricity. HB 3690 states that the Commission shall establish a pilot program testing the effectiveness of "payments for electricity or for the nonenergy attributes of electricity, or both." HB 3690, sec. 2(1). This language is clear authority for the Commission to design a program that requires the utilities to pay avoided cost for the electricity generated and pay an incentive rate for the associated RECs. The Commission clearly has the authority to set the price of the REC.

Second, as noted above, Staff expressed concern that the price that would need to be set for the REC may be 400 times the market rate. Whether the price of a REC purchased under this program should be set well above the current market rate should not raise any more concerns than the fact that the electricity that would be purchased under the Staff's proposed program would be purchased well above current market rates. The Commission is either going to require the utility to pay more than current market rates for a REC that it will then own and can use; or to pay more than current market rates for electricity that will not even be delivered to it. In addition, the second part of the program as currently recommended would likely require utilities to purchase electricity generated from larger projects at rates that are above current market rates, but this would be done through a *bidding* process that would not even begin to meet the goal of the law, which is to *test a feed-in tariff*.

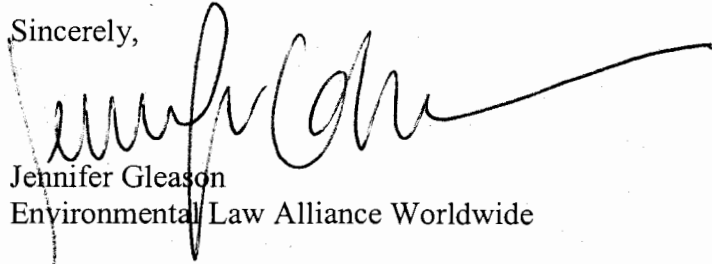
The legislature has clearly indicated that the generation of electricity from PV is a priority for Oregon and that there are environmental, social, and economic reasons to pay higher rates to encourage this generation. The Commission should not balk at complying with the legislature's mandate to test a FIT because payments will be above current market rates for a REC. The choice between program designs is not about differences in the cost of implementing the program. The cost of a program that tests FITs is likely to be the same as the cost of the currently recommended program, but the results of the program will be completely different. The bidding process will not provide Oregon with information about whether a feed-in tariff works -- which is the goal of both HB 3039 and HB 3690.

HB 3690, adopted during the 2010 Special Session, makes it clear that the Oregon legislature intended for the Commission to adopt a true FIT for all of the solar projects that would be developed under the pilot project. The bill's "relating to" clause specifically refers to a feed-in tariff and the change to section 2 referred to above was added to ensure that the Commission has the authority to adopt a FIT that would not be preempted.

ELAW urges the Commission to design a simple, true feed-in tariff for all of the project sizes that are included in the pilot program.

Dated April 9, 2010.

Sincerely,

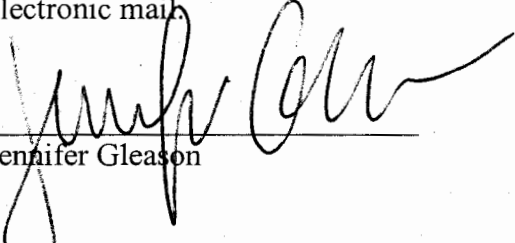


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CERTIFICATE OF SERVICE

I certify that on April 9, 2010, a true and correct copy of the Environmental Law Alliance Worldwide's Opening Supplemental Comments in UM 1452 was served on the parties listed below. Service was by First Class U.S. mail to all parties unless they have waived paper service. Service to parties who waived paper service (indicated by W) was by electronic mail.


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