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January 14, 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: In the Matter of THE PUBLIC UTILITY COMMISSION OF OREGON
Investigation into Pilot Programs to demonstrate the use and effectiveness of
Volumetric Incentive Rates for Solar Photovoltaic Energy Systems.
Docket No. UM 1452

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 14th day of January, 2010.

/s/ Brendan E. Levenick
Brendan E. Levenick

Waive Paper Service TEDDY KEIZER RAYMOND P NEFF DANIEL WELDON CABLE HUSTON BENEDICT HAAGENSEN & LLOYD, LLP RAYMOND S KINDLEY CITIZENS' UTILITY BOARD OF OREGON GORDON FEIGNER ROBERT JENKS G. CATRIONA MCCrackEN ECUMENICAL MINISTRIES OF OREGON JENNY HOLMES ECUMENICAL MINISTRIES OF OREGON KATHLEEN NEWMAN ENERGY TRUST OF OREGON KACIA BROCKMAN JOHN M VOLKMAN ENVIRONMENTAL LAW ALLIANCE WORLDWIDE JENNIFER GLEASON ESLER STEPHENS & BUCKLEY JOHN W STEPHENS IDAHO POWER COMPANY RANDY ALLPHIN DAVE ANGELL CHRISTA BEARRY KARL BOKENKAMP JEANNETTE C BOWMAN JOHN GALE BARTON L KLINE JEFF MALMEN LISA D NORDSTROM GREGORY W SAID MARK STOKES MCDOWELL & RACKNER PC WENDY MCINDOO	teddy@goteddygo.com; teddy1a@aol.com rpneff@efn.org danweldon@bctonline.com rkindley@cablehuston.com gordon@oregoncub.org bob@oregoncub.org catriona@oregoncub.org jholmes@emoregon.org knewman@emoregon.org kacia@energytrust.org john.volkman@energytrust.org jen@elaw.org stephens@eslerstephens.com rallphin@idahopower.com daveangell@idahopower.com cbearry@idahopower.com kbokenkamp@idahopower.com jbowman@idahopower.com rgale@idahopower.com bkline@idahopower.com jmalmen@idahopower.com lnordstrom@idahopower.com gsaid@idahopower.com mstokes@idahopower.com wendy@mcd-law.com
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1452

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF)	
OREGON)	
Investigation into Pilot Programs to)	OPENING COMMENTS OF THE
Demonstrate the Use and Effectiveness of)	INDUSTRIAL CUSTOMERS OF
Volumetric Incentive Rates for Solar)	NORTHWEST UTILITIES
Photovoltaic Energy Systems)	
_____)	

I. INTRODUCTION

The 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”) straw proposal for an initial Commission Order in this Docket. The Order will implement certain aspects of House Bill 3039 (“HB 3039”), which provides for the establishment of Solar Photovoltaic (“PV”) Pilot Programs.

ICNU appreciates the time and effort expended by the numerous parties participating in this Docket. The primary focus of ICNU comments concern the proposed rate impact and cost recovery section of the initial Commission Order. This subject is an important component to HB 3039, but it has received little attention to date. In addition, ICNU supports Staff’s proposed initial volumetric incentive rates. Staff’s proposed use of pilot capacity, however, appears to directly contradict HB 3039. To address this problem, ICNU recommends an alternate capacity allocation which is in accord with the statute. Finally, concerning the

recent controversy over preemption by the Federal Energy Regulatory Commission (“FERC”), ICNU supports the net-metering alternative proposed by Staff.

II. COMMENTS

A. **The Commission Order Should Provide Guidance to Utilities on Estimating Customer Class Rate Impacts in the Cost Recovery Process**

In the straw proposal, Staff states that “utilities will propose mechanisms for utility cost recovery in opening comments.” Re OPUC, OPUC Docket No. UM 1452, Staff Straw Proposal at 6 (Dec. 4, 2009). ICNU is hopeful that these utility proposals will fairly address cost allocation across customer classes, and looks forward to discussing this issue on January 20, 2010, during the Commissioner workshop.

Guidance from the Commission on estimating rate impacts and cost recovery mechanisms will be a vital component to the initial Order. The proposed rules state that, beginning in 2010, “each electric company must file for review in a Commission proceeding its estimates of the rate impact for *each customer class*.” OAR § 860-084-0380(2) (emphasis added). Since the impacts on “each customer class” must be estimated, it is imperative that some guidance be provided as to how cost recovery will be allocated across “each” customer class. ICNU believes that the most equitable distribution for rate recovery is directly proportionate to each class’s participation in and benefit from the Pilot Programs. Under no circumstances should industrial customers be saddled with a disproportionately high share of the costs for programs largely oriented toward residential customers.

B. **Staff Proposes Initial Rates that Appear to Accord with the Legislative Intent of HB 3039**

Before issuing the straw proposal, Staff presented the parties with an analysis of extensive Solar PV data provided by the Energy Trust of Oregon. Staff analyzed hundreds of Solar PV projects, reviewed the data from various perspectives, and explained its findings to the

parties. The data analyses presented at the most recent workshop appear to support the volumetric incentive rates in the straw proposal. The initial proposed rates seem to strike a balance between: 1) incentivizing Solar PV Pilot Programs participation by establishing sufficiently high rates to allow participants to repay system installation loans; and 2) minimizing general customer rate impacts by not establishing an unnecessarily high rate. ICNU strongly believes that rate increases should be avoided or minimized during this extreme economic recession.

One purpose of HB 3039 is “to demonstrate the use and effectiveness of volumetric incentive rates and payments for electricity delivered from solar photovoltaic energy systems” through Solar PV Pilot Programs. HB 3039 § 2(1). In short, pilot data will most likely produce the most useful evidence if pilot rates are set at median levels. Pilot rates set too low will not generate sufficient customer interest in solar system development. Conversely, collected data will be of negligible value in demonstrating *anything* if volumetric incentive rates for customers are set so high as to induce a flood of applications.

The rate levels proposed by Staff also take into account another mandate of HB 3039, “the commission shall also consider regulatory policies designed to . . . reduce the cost of incentive programs to utility customers.” HB 3039 § 7. This specific mandate arises in the context of Commission reporting to the legislature; but there is no question that minimizing rate impacts is an express and important concern of the legislature in HB 3039. This goal of providing for solar demonstration project participation must be balanced with minimizing rate impacts on the other customers.

C. The Pilot Capacity Should Be Aligned with the Statute

In commenting upon Staff’s initial pilot capacity use, ICNU does not take a position on the precise megawatt allocation to each utility. Rather, ICNU expresses serious

concern over Staff's proposed annual allocation across class sizes—i.e., allocating 15% of capacity to smaller projects, and 5% each to medium and large size projects.

The legislature expressly requires the Commission to “establish” Solar PV Pilot Programs which are “designed to attain a goal of 75 percent of the energy under each program to be generated by *smaller*-scale qualifying systems.” HB 3039 § 2(6) (emphasis added).

Notwithstanding, the straw proposal allocation is designed only to achieve a four year total of 60% generation from systems which Staff itself defines as “Smaller.” OAR 860-084-0190(2)(a). This appears to contradict the statute. To remedy this apparent contradiction, ICNU believes that systems which the proposed rules define as “smaller” should be allocated at least 75% of pilot capacity and, ultimately, 75% of costs in later rate recovery.

D. Staff's Net-Metering Alternative Is the Best Solution to FERC Preemption Issues

In comments dated December 19, 2009, Staff offered three solutions to avoid FERC preemption issues in the implementation of HB 3039: 1) redefining the Solar PV Pilot as net-metering; 2) competitive bidding for Pilot Programs capacity; or 3) a combination of these two approaches. UM 1452, Staff Comments at 2–3. ICNU believes that the first alternative best accords with the plain text of HB 3039 and is, therefore, the alternative that best implements the legislative intent behind HB 3039.

As noted, the legislature unmistakably intended to primarily benefit “smaller-scale” systems. HB 3039 § 2(6). Under the proposed rules, “[s]maller systems” are defined as having a nameplate capacity of only 10 kilowatts or less. OAR § 860-084-0190(2)(a).

Obviously, “smaller” effectively means residential or very small commercial systems. To this end, Staff notes that its net-metering alternative “would work best for *smaller* SPV systems,” while its competitive bidding alternative “would probably work best for business consumers and *larger* SPV systems.” Staff Comments at 2–3 (emphasis added). Thus, the net-metering

alternative promises to better implement the legislature’s goal—which the Commission is positively required to “establish”—of attaining 75 percent energy generation from smaller-scale systems. HB 3039 § 2(6).

In brief, HB 3039 was designed to benefit the residential class and, to a lesser extent, the commercial customer class. Those classes are entitled to the FERC preemption solution which best serves their interests, consistent with ICNU’s belief that these customer classes should also be allocated their proportionate share of the costs under the Solar PV Pilot Programs.

III. CONCLUSION

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

Dated this 14th day of January, 2010.

Respectfully submitted,

/s/ Jesse E. Cowell

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