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January 14, 2010

VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket No. UM 1452

Enclosed for filing in the above-referenced docket are an original and one copy of the Joint Opening Comments of PacifiCorp d/b/a Pacific Power and Idaho Power.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in black ink that reads "Wendy McIndoo". The signature is written in a cursive style and is positioned above the typed name.

Wendy McIndoo
Legal Assistant

cc: Service List

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document in
3 Docket UM 1452 on the following named person(s) on the date indicated below by email
4 and/or first-class mail addressed to said person(s) at his or her last-known address(es)
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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
demonstrate the use and effectiveness of
Volumetric Incentive Rates for Solar
Photovoltaic Energy Systems

**Joint Comments of PacifiCorp d/b/a
Pacific Power and Idaho Power
Company**

I. INTRODUCTION

PacifiCorp d/b/a Pacific Power ("PacifiCorp") and Idaho Power Company ("Idaho Power") (collectively, "Joint Commenters") submit the following comments in the above-referenced proceeding. This proceeding has been initiated by the Commission to determine the programmatic structure associated with the Volumetric Incentive Rate ("VIR") contemplated by House Bill 3039 ("HB 3039"). Concurrently, the Commission has initiated a rulemaking in AR 538 to establish rules governing the solar photovoltaic feed-in tariff ("SPV") pilot program described in HB 3039. The Joint Commenters appreciate the opportunity to submit comments in this proceeding and intend to file separate comment in AR 538.

II. BACKGROUND

The Joint Commenters have participated in multiple workshops convened by Commission staff to discuss a variety of issues germane to both the UM 1452 and AR 538 proceedings. On December 18, 2009, UM 1452 was suspended indefinitely to allow parties to consider how the Federal Energy Regulatory Commission's ("FERC") exclusive jurisdiction to establish rates for wholesale sales of electricity in interstate commerce impacts or limits the ability of the Commission to implement HB 3039. On December 21,

1 2009, Staff filed comments proposing certain potential solutions to address the FERC
2 jurisdictional issue. In these Comments, the Joint Commenters: (a) address general
3 principles applicable to the establishment of a VIR; (b) address Staff's proposed approaches
4 to developing a VIR framework that avoids the jurisdictional issues raised; (c) propose an
5 alternative strategy for developing a VIR; and (d) comment on various other miscellaneous
6 issues.

7 The Joint Commenters note that the parties are continuing to discuss program
8 structures that will achieve the Legislature's intent in passing HB 3039, while at the same
9 time avoiding conflict with federal law. A workshop is set for these discussions to continue
10 on January 20, 2010. The Joint Commenters therefore regard these comments as
11 preliminary, and look forward to addressing additional proposals in its final comments to be
12 filed on January 29, 2010.

13 III. DISCUSSION

14 A. General Principles

15 The Joint Commenters appreciate Staff's efforts in developing possible solutions to
16 the FERC jurisdictional issue. As discussions continue to take place, the Joint Commenters
17 place a high value on ensuring that three overarching goals are achieved through the
18 programmatic solution ultimately agreed to and implemented. First, the pilot program must
19 include sufficient specificity to provide the Joint Commenters and stakeholders a clear
20 regulatory foundation on which to develop the program. The pilot program's success is
21 inextricably linked to the integrity and efficacy of the regulatory mechanisms implemented to
22 facilitate the installation of SPV systems. Second, the pilot program must be crafted in a
23 manner that is clear and concise for consumers. Complex programmatic solutions at some
24 level will result in diminishing returns for consumers and the program. Program simplicity
25 and familiarity are important components for maximizing consumer participation. Finally,
26 any programmatic solutions must be designed in a manner that holds harmless the

1 participating investor-owned utilities. The SPV pilot program is novel and designed to
2 demonstrate whether a solar photovoltaic feed-in tariff paradigm achieves the goals of the
3 legislature to improve and increase the development of renewable resources. That novelty,
4 and the continued questions about the program's legal standing, creates a substantial risk
5 that should be borne by the state mandating the program, not the participating investor-
6 owned utilities or their consumers.

7 Finally, in order to effectively implement the pilot program that is eventually adopted
8 by the Commission, the Joint Commenters support a delay in the implementation of the
9 program to July 1, 2010. To the extent the Commission has authority, the Joint
10 Commenters request that the Commission's final order in this proceeding include a
11 reasonable window of time, such as 90 days after the issuance of the final order, before
12 implementation begins. This will allow the utilities time to develop the internal processes
13 and prepare customer materials that will be necessary to successfully implement the
14 program.

15 **B. FERC Jurisdiction**

16 As described above, the primary challenge at this point in the proceeding lies in
17 developing a VIR structure that both achieves the goals of HB 3039, while avoiding conflict
18 with the FERC's exclusive jurisdiction to establish rates for wholesale sales of electricity in
19 interstate commerce. To this end, Staff has presented two proposals that it believes avoid a
20 conflict. In this section, the Joint Commenters will provide comments on each of these
21 proposals, and will offer a third option for the parties' consideration as well.

22 **1. VIR Net-metering**

23 Staff's first proposal is to redefine the transactions under HB 3039 as net-metering
24 transactions. Under this approach, participants in the pilot programs would sell to the utility
25 no more energy than the amount the participants consume for their own use, thus avoiding a
26 "net sale" to the utility. Staff's specific proposal, as explained at the last workshop, is as

1 follows: Each month the pilot participants would receive a payment for as much energy as
2 they consume for their own use—at the VIR rate, minus the value of the energy consumed
3 by the participant, calculated at the retail rate. The value (at the VIR) of any generation in
4 excess of the amount consumed by the consumers would be credited to the consumer for
5 payment in future months. At the end of the year, any remaining excess generation would
6 be reconciled in a manner that would avoid implicating FERC jurisdiction (e.g. given to
7 charity, or if the SPV system owner had applied for and received FERC market-based rate
8 authority, sold to the utility at a market index rate). Staff suggests that this net-metering
9 approach would work best in situations where the SPV system was sized to generate at or
10 below the annual consumption level of the retail electricity consumer.

11 Staff's net-metering VIR framework is challenging, but potentially workable. The
12 Joint Commenters do, however, have specific concerns—which it may or may not be
13 possible to ameliorate.

14 *First*, the proposed billing and accounting for net-meter energy VIR payments is
15 complex and may prove to be difficult to understand and administer. For the program to be
16 successful, the parties will need to work with the Commission in this proceeding and/or AR
17 538 to develop billing and other administrative systems that are as streamlined as possible.

18 *Second*, the structure of the net metering VIR program may create a perverse
19 economic incentive for participants to consume as much energy as they generate—whether
20 they need it or not. This is a serious defect that could significantly undercut the integrity of
21 the program. The Joint Commenters recommend that contracts with participants specifically
22 prohibit the inefficient use of energy to maximize VIR payments. While such a provision will
23 be difficult to enforce, it may have some constraining effect. Alternatively, the Commission
24 may consider a requirement similar to that in the California Solar Initiative where a
25 participating customer requests an energy audit from the Energy Trust of Oregon and is
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1 required to install all recommended measures before they are eligible for participation to
2 further mitigate inefficient energy use.

3 *Third*, some parties argue that the net metering VIR payments made under the net
4 metering proposal should be regarded as compensation solely for “solar” renewable energy
5 credits (“RECs”) created by the SPV systems and transferred to the utility— potentially
6 leaving the participant free to sell the energy in a separate transaction. This argument is not
7 logical and undercuts the notion of a net energy sale thereby jeopardizing the FERC
8 exemption for net metering. As a result, this argument must be rejected. As a threshold
9 matter, there should be no requirement that enrolled consumers actually convert associated
10 environmental attributes into certified RECs. Doing so would require registering a project
11 within the Western Renewable Energy Generation Information System (“WREGIS”), among
12 other things. Such a requirement would be cost prohibitive for smaller commercial and
13 residential projects. Moreover, after having sold the solar RECs to a utility, a consumer
14 could presumably sell the remaining “null” energy to the utility at the avoided cost rate, after
15 the utility had already paid the consumer the VIR. Such an outcome is contrary to the goals
16 of HB 3039. The rules effectuating a net metering VIR program must avoid ambiguity that
17 could lead to just such unintended or perverse outcomes. Construing the VIR as payment
18 only for solar RECs is inconsistent with the traditional net-metering approach, which by its
19 very nature links enrollment to energy generated and consumed exclusively for the benefit
20 of the enrolled consumer.

21 *Fourth*, to ensure consumer participation, some rules from the existing traditional net
22 metering program should be duplicated within the new program. For example:

- 23 • Netting should occur exclusively on the consumer’s side of the meter(s).
- 24 • Interconnection rules used in the standard net metering program should apply to
25 the net metering VIR program. By incorporating established interconnection
26 processes into the net metering VIR program, the program will reduce

1 administrative complexity and avoid confusion for consumers who may have
2 trouble distinguishing between the net metering VIR program and the traditional
3 net metering program.

- 4 • When undertaking monthly billing, consumers enrolled in the net metering VIR
5 program would still be responsible to pay PacifiCorp's monthly customer (or
6 facilities) charge. For Idaho Power, current net metering rules do not allow Idaho
7 power to collect these facility costs. Therefore, Idaho Power will need to depart
8 from its net metering rules to include a facilities charge for its SPV pilot program
9 customers.
- 10 • Adopt a "March" default end-of-year netting true-up (i.e., netting starts in April,
11 instead of January and ends in March instead of December). At the end of the
12 netting year, any generation produced by the project in excess of a consumer's
13 usage during the same period would not be compensated.

14 Finally, while the Joint Commenters commend Staff for devising a creative approach
15 to resolving the FERC jurisdictional issues, it remains uncertain that the net-metering VIR
16 program would withstand a legal challenge on jurisdictional grounds. For this reason, the
17 Joint Commenters renew their request that participating utilities be held harmless in the
18 event the program is deemed illegal or otherwise contrary to law.

19 **2. Competitive Bidding**

20 Staff's second proposal involves the implementation of competitive solicitations for
21 SPV system capacity. As described by Staff, this proposal would allow retail consumers
22 interested in becoming SPV system owners to compete for a share of the utility's assigned
23 pilot program capacity by bidding a fixed fifteen year VIR. The winning bidders would enter
24 into a power purchase agreement ("PPA") with the applicable investor-owned utility. Under
25 this proposal, the SPV owner would be required to acquire market-based rate authority from
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1 the FERC, because the transactions would be considered wholesale sales. Staff suggests
2 that this approach would best serve business consumers and larger SPV systems.

3 Depending on how the competitive bidding is structured — and whether it would
4 apply only to business consumers or to residential consumers as well — this approach could
5 prove expensive and administratively burdensome.

6 Of equal importance, there also appears to be an assumption among stakeholders
7 that bids received below the then current net metering VIR would automatically be deemed
8 prudent in a subsequent regulatory review. When developing the competitive bidding
9 proposal, the Joint Commenters believe parties must identify prudency criteria to be used
10 during a competitive bidding process. Such criteria must be clearly established by the
11 Commission for use in utility bidding documentation and prior to any actual project
12 solicitation.

13 The Joint Commenters will look forward to discussing the details of such a
14 competitive bidding program at the January 20, 2010 workshop, and will provide reply
15 comments after Staff releases the proposal.

16 **3. Pricing Avoided Energy Cost Plus Other Attributes**

17 Given some of the drawbacks of the net metering VIR and competitive bidding
18 approaches, the Joint Commenters offer a third alternative that combines an avoided cost of
19 energy sale and a separate sale of the other SPV attributes. Specifically, the Joint
20 Commenters suggest that participants receive two payments from the utility on a monthly
21 basis. The first payment would be the utility's avoided cost rate for the energy produced.
22 SPV projects would self certify with FERC – which is a simple process—and Oregon
23 standard processes and contracts have been approved for these sales. The second
24 payment would be for other attributes (including incentives) the Commission assigns to the
25 solar energy produced within the SPV pilot program. These other attributes would include:

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1 This second payment would also be set at a per kWh rate at an amount equal to the
2 Commission's determined VIR minus the avoided cost of energy. The Joint Commenters
3 believe this third approach may avoid FERC jurisdictional issues. The approach employs
4 the utility's standard avoided cost of energy rate and the standard contracts and
5 interconnection processes that have already received Commission approval. And FERC
6 has no jurisdiction to set rates for environmental attributes or other attributes. That said, it is
7 unclear that the Commission has jurisdiction to set a rate for these other attributes. For that
8 reason, the utilities and participants may need to agree to the arrangement and memorialize
9 the arrangement via contract. Finally, the Commission would need to declare that the
10 applicable rate attached to the other attributes of the SPV energy was in fact prudently
11 incurred by the utility.

12 IV. MISCELLANEOUS ISSUES

13 The Proposed Rule provides that upon request electric utilities should be allowed to
14 recover their prudently-incurred costs to comply with the statute through their automatic
15 adjustment clauses under ORS 469A.005 et.seq. That statute codifies Oregon's Renewable
16 Portfolio Law and provides that the costs of renewable resources may be recovered through
17 an automatic adjustment mechanism. The Joint Commenters do not disagree, but point out
18 that Idaho Power is currently exempt from most requirements of that statute and for that
19 reason, unlike the other electric utilities in the state, has not developed an automatic
20 adjustment clause to recover renewable costs. Therefore, instead, Idaho Power requests
21 that it be allowed to recover 100% of the actual costs to implement and maintain the pilot
22 program through a Rider mechanism similar to its currently approved Energy Efficiency
23 Rider, Schedule 91. Under the proposed Rider mechanism all customers would be charged
24 0.25 percent (or a percentage equal to the estimated annual pilot program costs) of the sum
25 of the monthly charges for the base rate components of their electric bill. Funds received
26 from Idaho Power's Oregon customers would be booked to a FERC Regulatory Liability

1 Account. As funds are used in support of the pilot program, this same account would be
2 debited for the amount of the disbursement. It would be Idaho Power's intention to keep any
3 balance in this account as close to zero as possible. However, interest equal to the Idaho
4 Power's authorized rate of return would accrue to any debit or credit balance held in the
5 account.

6 PacifiCorp proposes to defer and recover all costs associated with the VIR pilot
7 program consistent with the deferral mechanism established in Order No. 07-572 (see
8 Section F in Appendix A) associated with the Renewable Adjustment Clause ("RAC"). The
9 costs to be deferred would include any administrative, marketing and incentive payments
10 incurred by PacifiCorp for purposes of implementing the pilot program. To the extent that a
11 material level of energy is generated by systems in the pilot, PacifiCorp would determine the
12 system dispatch benefits by preparing a net power cost run based on the final GRID update
13 for the relevant year, with and without the energy.

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V. CONCLUSION

For the foregoing reasons, the Joint Commenters submit the following comments.
The Joint Commenters look forward to working with Staff and interested parties in an effort to resolve these challenging issues.

DATED: November 9, 2009

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