

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1452

In the Matter of	)	
	)	Closing Supplemental Comments of
PUBLIC UTILITY COMMISSION	)	The Environmental Law
OF OREGON	)	Alliance Worldwide, SolarWorld
Investigation into Pilot Programs to	)	Industries America, the Oregon
demonstrate the use and effectiveness of	)	Solar Energy Industries Association,
and Volumetric Incentive Rates for Solar	)	and International Brotherhood of
Photovoltaic Energy Systems	)	Electrical Workers Local 48

The Environmental Law Alliance Worldwide (ELAW) files these Closing Supplemental Comments addressing effects House Bill 3690 (HB 3690) has on positions previously taken in these proceedings. SolarWorld Industries America (SolarWorld), the Oregon Solar Energy Industries Association (OSEIA), and International Brotherhood of Electrical Workers (IBEW) Local 48 support these comments.

As stated in our Opening Supplemental comments, 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).

HB 3690 clearly grants the Commission the authority to set the price of the non-energy attributes of electricity generated from PV sources. 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).

Some commentators have suggested that the Commission should not implement a true feed-in tariff program and should instead create a program using two systems: net metering plus an incentive payment and a bidding process. However, while HB 3690 clearly states that the Commission has the authority to pay for non-energy attributes of electricity, HB 3690 does not include new language granting the Commission authority to implement a bidding process.

When the legislature met for the 2010 Special Session, legislators were aware that the Commission was considering various options for implementing the program it established under HB 3039. As we have stated, the legislature amended the law to add language making it perfectly clear that the Commission could require utilities to pay for the non-energy attributes of the electricity. The legislature also knew that the Commission was

considering a call for bids as one way to implement the program. The legislature did not change the language to authorize a call for bids.

HB 3039 stated that each electric company “shall file for commission approval *rate schedules* for the pilot programs that conform to the [Commission’s] requirements.” HB 3039, sec. 2(2) (emphasis added). HB 3690 only amended this to replace ‘rate’ with ‘tariff.’ Therefore, the law, as amended, requires the utilities to file tariff schedules. This means that each utility must file with the Commission the price at which it will buy electricity generated under this program. A utility using a bidding process would not be able to meet this requirement because it would not be able to file tariff schedules to be approved. The language of the statute uses “shall,” which is an unequivocal requirement that the price be established and filed for Commission approval. This language demonstrates that the legislature intended for a price to be set, rather than establishing a bidding process. If the legislature intended to provide the Commission authority to establish a bidding process, it needed to amend this section.

The language of the law as amended found in HB 3690, sec. 2(4) also does not support creating a bidding process. This language states that consumers participating in the program may receive payments for electricity generated at rates established under the filed tariff schedule or at “rates otherwise established at the time of enrollment.” However, this language does not open the door to a bidding process. This section must be read in conjunction with the mandate that the Commission establish “a pilot program . . . to demonstrate the use and effectiveness of volumetric incentive rates and payments . . .” It also needs to be read in conjunction with the clear requirement that utilities file tariffs with the Commission for Commission approval. “Rates otherwise established at the time of enrollment” must refer to rates that the Commission might establish itself as it adjusts rates under its authority to do so found in HB 3690, sec. 2(5).

ELAW finds no language in the original bill, HB 3039, or in the amended law, HB 3690 to support a call for bids under this program.

ELAW, SolarWorld, OSEIA, and IBEW Local 48 urge 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 19, 2010.

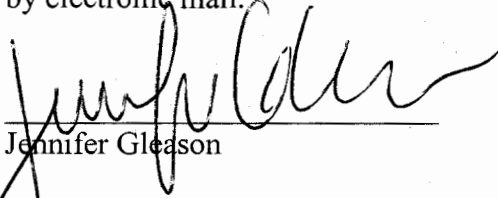
Sincerely,



Jennifer Gleason  
Environmental Law Alliance Worldwide

CERTIFICATE OF SERVICE

I certify that on April 19, 2010, a true and correct copy of the Environmental Law Alliance Worldwide's Closing 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.

  
Jennifer Gleason

April 19, 2010

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