

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 **UM 1452**

4 In the Matter of

5 PUBLIC UTILITY COMMISSION OF  
6 OREGON

7 Investigation into Pilot Programs to  
8 Demonstrate the use and effectiveness of  
9 Volumetric Incentive Rates for Solar  
10 Photovoltaic Energy Systems

11 **STAFF MOTION TO INDEFINITELY**  
12 **POSTPONE DUE DATE FOR SIMULTANEOUS**  
13 **OPENING COMMENTS**

14 Staff of the Public Utility Commission of Oregon (“staff”) asks the administrative law  
15 judge to indefinitely postpone tomorrow’s due date for simultaneous opening comments in UM  
16 1452 to allow parties to confer about potential jurisdictional limitations on the Commission’s  
17 ability to establish Volumetric Incentive Rates (“VIR”) in the pilot programs required by House  
18 Bill 3039. Staff also asks for expedited consideration of the motion because the simultaneous  
19 opening comments are due tomorrow. Staff relies on the points and authorities below.

20 **POINTS AND AUTHORITIES**

21 Under House Bill 3039, the Commission is required to establish pilot programs to  
22 determine the use and effectiveness of VIR for energy generated by customers of investor-owned  
23 utilities and sold to the investor-owned utilities. However, the Commission’s jurisdiction to  
24 establish such prices appears to be limited by federal law. Under the Federal Power Act, the  
25 Federal Energy Regulatory Commission (“FERC”) has exclusive authority to establish prices for  
26 wholesale sales of electricity in interstate commerce.<sup>1</sup>

Staff has presented parties with a straw proposal that assumes no limitation on the  
Commission’s jurisdiction to establish VIR, and parties are scheduled to comment on that  
proposal in simultaneous opening comments due on December 18, 2009. However, staff intends

1 <sup>1</sup> 16 U.S.C. § 824, *et seq.* (granting FERC exclusive authority over interstate sales of electricity  
for resale by public utilities).

1 to provide parties with a description of the limitations on the Commission's jurisdiction to set  
2 rates for sales for resale in interstate commerce and to provide a potential regulatory route to  
3 avoid FERC preemption.

4 Accordingly, staff proposes that the administrative law judge indefinitely postpone  
5 tomorrow's due date for simultaneous opening comments to allow staff an opportunity to inform  
6 the parties of the reasoning underlying its concerns regarding jurisdictional limitations and to  
7 describe potential regulatory routes to avoid FERC preemption. Staff intends to provide this  
8 information to the UM 1452 and AR 538 parties by close of business on Monday, December 21,  
9 2009.

10 Counsel for staff did not contact parties regarding this motion. Staff only recently  
11 concluded that the potential jurisdictional limitations were significant and learned this afternoon  
12 that several parties are still working on their opening comments. In fact, one party has filed an  
13 unopposed motion to postpone the due date for the comments until December 22, 2009. Given  
14 the late-breaking nature of the developments described above and the looming due date for  
15 comments, staff counsel did not have opportunity to contact all parties to ascertain their position  
16 regarding the motion.

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18 DATED this 17th day of December 2009.

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Respectfully submitted,

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JOHN R. KROGER  
Attorney General

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22

/s/ Stephanie S. Andrus  
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Utility Commission of Oregon

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1 **CERTIFICATE OF SERVICE**

2 I certify that on December 17, 2009 I served the foregoing Staff Motion to Indefinitely  
3 Postpone Due Date For Simultaneous Opening Comments upon the parties in this proceeding by  
4 electronic mail and by sending a true, exact and full copy by regular mail, postage prepaid, or by  
5 hand-delivery/shuttle, to the parties accepting paper service.

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