**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**AR 518 – Phase III**

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| In the Matter of a Rulemaking to Implement SB 838 Relating to Renewable Portfolio Standard | ) ) ) ) ) ) ) | Comments of the Citizens' Utility Board of Oregon and Renewable Northwest Project |

The Citizens' Utility Board (CUB) and Renewable Northwest Project (RNP) support the PUC Staff's proposed rules in Phase III of this proceeding. These comments are intended to reiterate two important points raised during these proceedings: 1) that power source disclosure is "use" of a REC and 2) that the incremental cost of compliance for long term qualifying electricity may be less than zero.

**Power Source Disclosure is "Use" of a REC**

ORS 757.659(3) ensures utility customers are informed about the generation sources utilized to provide their electricity. Most importantly, power source disclosure must accurately represent the attributes of the power.

In the context of renewable energy, a megawatt hour from a power source cannot be "renewable" if the environmental attribute—the REC—is not bundled with that power. If a REC is separated from the underlying power, that power is considered to be "null power" and assumes the attributes of the average emissions of the electricity grid. If a REC is banked for future compliance with the Renewable Portfolio Standard (RPS), use of renewable power can only be reported in a power source disclosure label for the year that the REC associated with that power is retired, i.e. used, for RPS compliance.

Given that utilities can bank RECs for future compliance with the RPS, the Commission must ensure that utilities cannot claim the green attributes twice: once in the year that the power is generated (but the REC is banked) and a second time in the year that the REC is reported for compliance purposes. If the utility makes the same claim twice, they will be fraudulently reporting to their customers. Similarly,

if a utility reported power from renewable sources in a power source disclosure but then sold the REC from that power to another party, they would be in violation of their contract because the green attributes associated with the REC had already been utilized through the power source disclosure.

The Green-e Energy Code of Conduct and Customer Disclosure Requirements states that, "Use of a REC may include, but is not limited to, (1) use of a REC by an end use customer, marketer, generator, or utility to comply with a statutory or regulatory requirement, (2) a public claim associated with the purchase of a REC by an end use customer, or (3) the sale of or public claim on any component attributes of a REC for any purpose." The public claim of renewable energy in a power source disclosure constitutes use of a REC and any additional claim towards RPS compliance is double counting.

**Incremental Cost of Compliance May Be Less Than Zero**

Under ORS 469A.100(4), the incremental cost of compliance "is the difference between the levelized annual delivered cost of the qualifying electricity and the levelized annual delivered cost of an equivalent amount of reasonably available electricity that is *not qualifying electricity* [emphasis added]." Under this statutory requirement, the proxy plant in the incremental cost calculation cannot be renewable energy. As a result, qualifying electricity will never be compared against other types of qualifying renewable electricity to calculate the incremental cost of compliance. It should be noted that power unbundled from the REC associated with that power is not qualifying renewable electricity.

Given the statutory requirement to compare qualifying electricity with non-qualifying electricity, the incremental cost of compliance may be less than zero if qualifying electricity is less expensive than non-qualifying electricity. In the case of comparison with a baseload combined-cycle natural gas-fired generating facility as the proxy plant, a negative incremental cost could result if natural gas prices are high whereas a qualifying generator like wind power has no fuel costs. Whatever the true incremental costs are, including negative values, they should be looked at in aggregate and taken at face value (except when deemed zero as provided for in OAR 860-083-0100(1)(i)).

In summary, disclosure of renewable energy in a power source portfolio is appropriate only in the year when a REC is retired, such as for RPS compliance. Disclosure at any other additional time constitutes double counting of the REC and its environmental attributes, misleading consumers. Likewise it is important to make a comprehensive evaluation of the incremental cost of compliance with the RPS by comparing the actual cost of qualifying electricity against non-qualifying electricity. Such incremental cost of compliance may be positive, negative, or zero. CUB and RNP recommend that the Commission adopt the AR 518 Phase III rules as drafted by Commission staff.

Respectfully Submitted,

May 21, 2009

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