

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 518 – Phase II

In the Matter of a)	
)	COMMENTS OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST UTILITIES
Rulemaking to Implement SB 838 Relating to)	
Renewable Portfolio Standard)	
_____)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits these comments to the Oregon Public Utility Commission (“OPUC” or the “Commission”) regarding Commission Staff’s (“Staff”) proposed rules OAR §§ 860-083-0005 and 860-083-0050, and amendments to rules OAR §§ 860-038-0220 and 860-038-0300. These proposed rules seek to implement certain aspects of Senate Bill 838 (“SB 838”), which adopted a Renewable Portfolio Standard (“RPS”) for the State of Oregon.

ICNU’s comments only address the references within the proposed rules and rule amendments to OAR § 330-160. Because the Oregon Department of Energy (“ODOE”) exceeded its rulemaking authority in adopting OAR § 330-160-0030, and because the rule is contrary to the plain language of SB 838, specific inclusion of OAR § 330-160 in Staff’s proposed rules and amendments is inappropriate and contrary to law.

II. COMMENTS

Staff’s proposed rules and amendments make one express reference to OAR § 330-160-0030, as well as two further references to OAR § 330-160. The rules and amendments should not include specific incorporation of OAR § 330-160, because OAR § 330-

160-0030 is inconsistent with SB 838. The Commission should delete all references to OAR § 330-160 in its proposed rules and amendments.

A. The OPUC Should Not Adopt any Rules Referencing OAR § 330-160 Because OAR § 330-160-0030 Is Contrary to the Plain Language of SB 838

SB 838 establishes a RPS for Oregon electric utilities.^{1/} The RPS provides increasing requirements for electric utilities to ensure that electricity sold to retail electric consumers consists of a certain percentage of qualifying electricity, or electricity generated by renewable resources, by certain target years. SB 838 § 6; ORS § 469A.052. In order for electric utilities to show compliance with the RPS, the utilities must produce RECs or qualifying electricity to meet the standard for each compliance year in the statute. SB 838 § 10; ORS § 469A.070. The statute expressly allows utilities to carry forward unused or banked RECs, applying them to the RPS in subsequent years without limitation. SB 838 § 16; ORS § 469A.140.

SB 838 defines electricity qualified for compliance with the RPS—or qualifying RECs—as any electricity generated by a renewable energy facility that began operations on or after January 1, 1995. SB 838 § 3; ORS § 469A.020. SB 838 does not provide for any other temporal restrictions on qualifying electricity or RECs issued for such qualifying electricity. In fact, SB 838 explicitly makes temporal allowances in permitting banked RECs from prior years to be applied to the RPS in subsequent years. SB 838 § 10; ORS § 469A.070. Therefore, the plain language of SB 838 reveals the legislature’s intent: any RECs for which the underlying

^{1/} SB 838 § 1 uses the definition of “electric utility” in ORS § 757.600(13), which provides that an electric utility is “an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.”

electricity meets the definition of qualifying electricity may be used to comply with the RPS, including banked RECs from January 1, 1995, to the present.

In direct contravention of SB 838, however, ODOE's rules prohibit any REC deriving from generation prior to January 1, 2007, from being used to comply with the RPS. The rule adds to the definition of "qualifying electricity," or REC, a new restriction: that to be counted toward compliance with the RPS, an REC must be generated *after January 1, 2007* by a facility that becomes operational on or after January 1, 1995. OAR § 330-160-0030. This is inconsistent with SB 838 because the law contains no requirement of a 2007 vintage—quite the contrary, the statute requires recognition of RECs carried forward from 1995. SB 838 § 16; ORS § 469A.140.

The Commission should not compound the error of the ODOE by specifically referencing OAR § 330-160 in its proposed rules and amendments. The Commission should revise its proposed rules to eliminate references to the ODOE rule.

B. The OPUC Should Not Adopt any Rules Referencing OAR § 330-160 Because the ODOE Exceeded Its Authority in Adopting OAR § 330-160-0030

SB 838 delegates to ODOE *only* the authority to establish a system for tracking RECs, in order to establish compliance with the RPS. SB 838 §14; ORS § 469A.130. ODOE's adoption of a vintage date for RECs goes beyond that authority. Any system of RECs adopted by ODOE must accommodate all qualifying electricity under SB 838. ODOE cannot arbitrarily redefine "qualifying electricity" by only tracking RECs from a date it decides is appropriate.

Section 14(1) of SB 838, entitled "Renewable energy certificates system," provides:

(1) The State Department of Energy *shall establish a system of renewable energy certificates* that can be used by an electric utility or electricity service supplier to establish compliance with the applicable renewable portfolio standard. The department shall consult with the Public Utility Commission before establishing a system of renewable energy certificates under this section. The department may allow use of renewable energy certificates that are issued, monitored, accounted for or transferred by or through a regional system or trading program, including but not limited to the Western Renewable Energy Generation Information System. The system established by the department shall allow issuance, transfer and use of renewable energy certificates in electronic form.

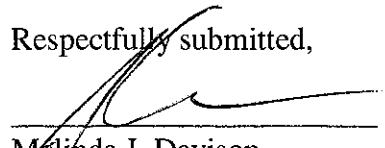
ORS § 469A.130(1) (emphasis added). This very limited and specific delegation of authority to ODOE establishes that ODOE's authority under SB 838 Section 14 only encompasses the creation and implementation of a system that tracks and accounts for RECs. ODOE was not given the authority to determine *which* RECs may be used to comply with the RPS. The Commission should not sanction such impermissible action by the ODOE through adopting rules explicitly referencing OAR § 330-160.

III. CONCLUSION

ICNU appreciates the opportunity to submit these comments and looks forward to participating in future rulemakings regarding SB 838.

Dated this 12th day of January, 2009.

Respectfully submitted,



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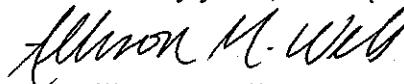
Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON
Rulemaking to Implement SB 838 Relating to Renewable Portfolio
Standard
Docket No. AR 518

Dear Filing Center:

Enclosed please find the Phase II Comments on behalf of the Industrial Customers of Northwest Utilities ("ICNU") in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,



Allison M. Wils

Allison M. Wils


Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Phase II
Comments on behalf of ICNU upon the parties, on the service list, by electronic mail.

Dated at Portland, Oregon, this 12th day of January, 2009.


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