

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 593

In the Matter of)
)
OBSIDIAN RENEWABLES LLC) Small Business Utility Advocates (SBUA)
) Petition to Comment Out of Time
Petition To Amend OAR 860-029-0040,)
)
Relating To Small Qualifying Facilities)
)
_____)

COMES NOW Small Business Utility Advocates (“SBUA”) to request permission to file comments out of time in response to the November 17, 2015 Invitation to Comment in this matter. Such Comments are attached herein.

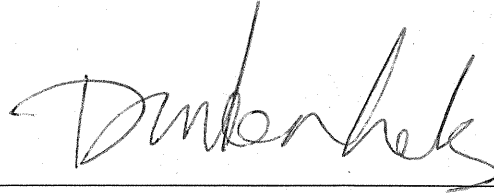
The Commission may accept as conditionally received to meet the filing deadline documents required to be filed within a specified time but that fail to substantially comply with these rules. OAR 860-001-0150(4). SBUA acknowledges that it is requesting it be permitted to file comments even though the deadline established for comments, 12/18/15, is passed. SBUA submits this petition and comments after the deadline due to a combination of illness due to which SBUA was out of the office during the week of the deadline and such comments were due along with other required and time-sensitive work matters preventing SBUA from meeting the 12/18/15 deadline. SBUA notes the significance of this proposed rulemaking on small business, the effort SBUA has put into underlying docket UM 1610, and other dockets, and sincerely hopes the Commission will accept and consider its comments.

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For these reasons, SBUA requests permission to file its Comments and that they be deemed timely filed.

RESPECTFULLY SUBMITTED December 23, 2015.



Diane Henkels
Of Counsel, Cleantech Law Partners PC
Counsel for Small Business Utility Advocates

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) Advocates (SBUA)
Petition To Amend OAR 860-029-0040,)
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Small Business Utility Advocates (“SBUA”) offers these comments pursuant to the Invitation to Comment issued November 17, 2015 to help inform the OPUC decision on the need for the proposed rule making, including whether there are options for achieving the substantive goals of the rule in a way that reduces the negative economic impacts on businesses, referring to OAR 137-001-0070.

As SBUA demonstrated in UM 1610 Part I, and would comment again, implementing the statutes and rules governing rates paid to qualifying facilities, and other contract and implementation terms, does impact small businesses in the State of Oregon. In that docket SBUA noted that consistency and transparency decrease the risk in what is often a long process of evaluating, developing, and bringing a qualifying facility on-line. SBUA would support such rule making given a rule must be applied uniformly and the proposed rule would hopefully codify provisions of orders produced by the generic and well-vetted UM 1610 applying to all Oregon PURPA projects.

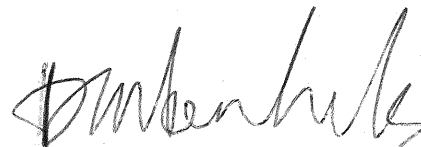
Of special interest to SBUA in a rule making would be the requirement to examine the impact on small business. ORS 183.335(2)(b)(E). Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action: "...the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected." ORS 183.255 (1) & (2)(b)(E). The Invitation to Comment highlights the concern of examining the impact on business, however, the rule making statutes explicitly note the effect on "small business".

SBUA is interested in two ways in participation of small business, that is, in the rule making itself and in implementing qualifying facilities within the state. First, SBUA believes the rule making should have a broad participation by those interested and that such participation not be limited by economics of travel and time. The benefit and burdens of participating in such rulemaking would be greater or lesser depending on how the rule making was conducted. Facilitating appropriate long distance participation would enable interested parties in the different utility areas throughout the state to contribute to the rule making adding an important geographic perspective, especially since most qualifying facilities are located in rural Oregon. Particularly if an advantage of a rule making might be to reduce the number of PURPA proceedings having substantive impact on presently operating or future projects in a given locality, small business community would have incentive to participate. Facilitating high quality long-distance participation would seem to reduce economic burdens of the rule making process itself would be reduced depending on how the rule making was conducted.

Second, SBUA that there is available information to assist in determining the cost of compliance on small business affected in this rule making. Reports, testimony, Commission orders, compliance filings, perhaps even an OPUC report in compliance with ORS 469A.210 could provide helpful information related this notice requirement. Also, caselaw including *Dika v. Department of Ins. and Finance*, 312 Or. 106 (1991), *Troutlodge, Inc. v. Dept. of Fish & Wildlife*, 113 Or.App. 123 (1992), *Independent Contractors Research v. Das*, 207 Or. App. 78 (Or. App., 2006), provide helpful guidance in implementing this fiscal assessment. First, the statement must identify which entities are to be affected by enactment of the rules, second, it must give the affected entities enough information to evaluate their position so that they might participate meaningfully in the rule adoption process or, if that information is not available, it must so state. *Independent Contractors Research v. Das*, 139 P.3d 995, 1001, 207 Or. App. 78 (Or. App., 2006). Given the information available in the different dockets pertaining to qualifying facilities proceeding and at the same time as this rule making, much of the information is likely available. Further information, too, is available regarding the impact on small business, too.

Thank you for the opportunity to comment. SBUA looks forward to supporting this rule making effort to the best of its ability, and supplying information needed for a the process.

RESPECTFULLY SUBMITTED December 23, 2015.



Diane Henkels
Of Counsel, Cleantech Law Partners PC
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