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August 22, 2008

## *Via Electronic Mail*

Kathy Stuttaford  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301-3737

Re: Rulemaking to Establish a Renewable Energy Certificate Tracking and Reporting System for Oregon Renewable Portfolio Standard

Dear Ms. Stuttaford:

The Industrial Customers of Northwest Utilities (“ICNU”) submits these comments in response to the Oregon Department of Energy’s (“ODOE”) Notice of Proposed Rulemaking. ICNU represents large end-use consumers of electricity in Oregon that will be directly affected by rules passed by ODOE in this proceeding. This proceeding involves the establishment of a tracking system for Renewable Energy Certificates (“RECs”) used to meet the requirements of SB 838, codified in OR. REV. STAT. § 469A (2008). OR. REV. STAT. § 469A establishes a Renewable Portfolio Standard (“RPS”) for the State of Oregon, with the ultimate goal of 25% of electricity sold to retail electricity consumers consisting of renewable energy by 2025. OR. REV. STAT. § 469A.052(1)(d) (2008). OR. REV. STAT. § 469A.130(1) (2008) delegates authority to ODOE to establish a system of tracking RECs for compliance with OR. REV. STAT. § 469A in electronic form.

ODOE’s proposed rules establish the Western Renewable Energy Generation Information System (“WREGIS”) as the only reporting system that can be used to establish compliance with OR. REV. STAT. § 469A, and also set a January 1, 2009 qualifying date for the use of RECs. See Establish an REC for the Oregon RPS, Draft 1A (proposed July 30, 2008) (to be codified at OR. ADMIN. R. 330-160-0020 (2008)). ICNU supports the use of WREGIS as the reporting system to establish compliance; however, ICNU believes that ODOE has exceeded its rulemaking authority in establishing a January 1, 2007 qualifying date for RECs.

OR. REV. STAT. § 469A.020 (2008) unambiguously allows RECs associated with qualifying electricity generated after January 1, 1995, to count towards compliance with the RPS. Section (1)(b) of OR. REV. STAT. § 469A.070 (2008) allows the

use of “banked [RECs]” to comply with the RPS. A “banked REC” is defined by Section (1) of OR. REV. STAT. § 469A.005 (2008) as “a bundled or unbundled [REC] that is not used by an electric utility... to comply with a [RPS] in a calendar year and that is carried forward for the purpose of compliance with a [RPS] in a subsequent year.” Further, OR. REV. STAT. § 469A.140(2) (2008) allows unlimited banking of RECs. Nowhere in these sections did the legislature mention a qualifying date for banked RECs.

RECs, however, must be associated with “qualifying electricity.” See OR. REV. STAT. § 469A.135 (2008). OR. REV. STAT. § 469A.010 (2008) defines “qualifying electricity” as “electricity generated from a renewable energy source” that “meets the requirements of OR. REV. STAT. § 469A.020.” In turn, OR. REV. STAT. § 469A.020 (2008) states that “electricity may be used to comply with a [RPS] only if the electricity is generated by a facility that becomes operational on or after January 1, 1995.”

Accordingly, electricity generated from a renewable energy source post-1994 would satisfy the plain meaning of “qualifying electricity” and the RECs associated with such “qualifying electricity” satisfies the definition of “banked RECs.” It follows, then, that all electricity generated from a renewable energy source beginning January 1, 1995 is “qualifying electricity” and the associated RECs may be banked and later used to comply with the RPS. Nowhere in any of the above mentioned provisions of OR. REV. STAT. § 469A (2008) does the legislature set an arbitrary, later qualifying date for RECs, much less give ODOE the discretion to determine such a date through rulemaking.

Further, ODOE’s proposed January 1, 2007 qualifying date would unfairly punish utilities that chose to invest in qualifying renewable resources before these mandates were implemented by not giving credit for early action. This date clearly places a greater financial burden on ratepayers. This is a result not intended by the Oregon Legislature.

Based on the plain language of SB 838, codified in OR. REV. STAT. § 469A (2008), ICNU urges ODOE to amend its proposed rules to allow RECs as of January 1, 1995, to count toward compliance with the RPS. ICNU appreciates the opportunity to participate in this proceeding.

Sincerely yours,

/s/ Melinda J. Davison  
Melinda J. Davison