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Via Electronic Mail

Diana Enright
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 Compliance with SB 838

Dear Ms. Enright:

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 customers 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. SB 838 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. Section 14 of SB 838 delegates authority to ODOE to establish a system of tracking RECs for compliance with SB 838 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 SB 838, and also set a January 1, 2008 qualifying date for the use of RECs. 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 October 7, 2007 qualifying date for RECs.

SB 838 unambiguously allows RECs associated with qualifying electricity generated after January 1, 1995 to count towards compliance with the RPS. Section 10(1)(b) of SB 838 allows the use of “banked RECs” to comply with the RPS. A “banked REC” is defined by Section 1(1) of SB 838 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, Section 16(2) 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.” SB 838, Section 15. Section 2 of SB 838 defines “qualifying electricity” as “electricity generated from a renewable energy source” that “meets the requirements of section 3” In turn, Section 3 of SB 838 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 SB 838 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 October 7, 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.

Based on the plain language of SB 838, ICNU urges ODOE to amend its proposed rules to allow RECs as of January 1, 1995 to count towards compliance with the RPS. ICNU appreciates the opportunity to participate in this proceeding and thanks ODOE for consideration of these comments.

Sincerely yours,

/s/ Allen Chan
Allen Chan