Oregon Renewable Energy Working Group

September 8, 2008

The Honorable Ted Kulongoski
Governor of the State of Oregon
160 State Capitol
900 Court Street
Salem, Oregon 97301

Dear Governor Kulongoski:

Over the past three years, the Renewable Energy Working Group (REWG) has been meeting to help develop strategies for implementing *Oregon's Renewable Energy Action Plan* (REAP). Some of their past work included developing proposals for consideration in the 2007 legislative session. As you know, many of these concepts, such as Oregon's Renewable Portfolio Standard, have now become laws to help encourage the development of renewable energy resources in Oregon. The REWG now has new proposals for renewable energy legislation in 2009 which they would like you to review and consider supporting.

Since spring 2008, the REWG has been meeting to learn about further challenges and opportunities for renewable energy in Oregon. The group worked in subcommittees to discuss and develop potential legislative concepts for 2009. Experts from the various topic areas were brought in to the committee process so the groups could make informed decisions on which concepts were the best ones to move forward to the REWG. Finally the REWG decided to survey their membership (which includes nearly 50 members and alternates) so that they could present their concepts for consideration with an indication of the level of support from the group. Survey responses were received from 21 members.

Each of the REWG's proposed legislative concepts is summarized in the attached report. They are listed in order of highest to lowest backing among the members. Please note that some of the concepts are listed with a relatively "low" level of support due to the need for further refinements of the conceptual details rather than due to opposition of the concept. The committees will complete additional fine-tuning work on any of the concepts that you would like to see move forward. Additionally, the committees have developed more detailed language for each legislative concept that can be supplied upon request.

Thank you for your time and attention to this matter.

Sincerely,

Mike W. McArthur, Co-Chair
Executive Director
Association of Oregon Counties

Cylvia Hayes, Co-Chair
Executive Director
3E Strategies

Renewable Energy Working Group (REWG)
Proposed Concepts for the 2009 Oregon Legislative Session
- Submitted for Governor's consideration on September 8, 2008 -

1. Oregon Green Jobs Initiative

This initiative will establish a comprehensive program to create family wage jobs in the clean energy industry and in the process establish strategies that can be used to promote job growth in other clean technology sectors. Steps in implementing this initiative should include identifying the top clean energy positions on which to focus, establishing a baseline assessment of those key positions and opportunities in Oregon, developing programs to increase the number of trained workers in those key positions (i.e. building on existing apprenticeship programs, creating programs to train low-income and challenged populations for clean tech jobs), identifying career ladders for key sectors, and establishing a green jobs certificate of readiness. Collaboration among all stakeholders from both the public and private sector should be emphasized throughout the drafting and implementation of the Oregon Green Jobs Initiative.

The agencies affected by this concept are Oregon Department of Energy, Oregon Economic and Community Development Department, Oregon University System, and Oregon Community Colleges. While there will not be any large fiscal impacts at this point, agencies will need to devote staff time and resources to this effort and should create an appropriate budget line item for such purposes. This concept might also be addressed as an Executive Order rather than legislation.

A large majority (85%) of the survey respondents strongly support or support this concept 15% of the members are on non-committal (may or may not support) regarding this concept and no members object to this concept.

2. Renewable Energy Research & Development, Commercialization, and Manufacturing Tax Credit Program

This concept is focused on supporting the development and improvement of renewable energy technologies in Oregon; above and beyond what is currently available via the Business Energy Tax Credit. The concept would establish a corporate income and excise tax credit for certain facility costs of business firms within the renewable energy sector that construct facilities and engage in business operations in which average annual gross payroll and increase in number of employees meet specified requirements. This would require interested firms to obtain certification from Oregon Department of Energy. The credit allowed is based on the annual gross payroll at the facility and shall equal 3% of the increase in annual gross payroll at the facility or 6% in distressed areas. The concept would establish business firm and biennial caps on amount of credit. The concept authorizes Oregon Department of Energy to certify business firms on or after October 1, 2009, and on or before December 31, 2014.

Affected agencies include Oregon Department of Energy, Oregon Economic and Community Development Department, and Oregon Department of Revenue. There would be some fiscal impact; the proposal is similar to HB 2779 from the 2007 session but restricted to renewable energy sector. The Legislature could set caps on amount of possible credits issued.

The majority of the survey respondents (76%) strongly supports or supports this concept. 24% are non-committal due to concerns about potential fiscal impact and no members object to the concept.

3. Business Energy Tax Credit (BETC) Transferability
This concept would be to revise ORS 469.206 to:
(1) clarify that a facility tax credit may be transferred to a partnership, corporation, limited liability company, trust or other entity, and
(2) permit the transferee of a facility tax credit to further transfer the credit to another person or entity, including a shareholder, member or partner of the transferee, and
(3) direct the Oregon Department of Energy to establish by rule procedures for the further transfer of facility tax credits.

The Department of Energy's BETC regulations implement ORS 469.206 by creating a "Pass-through Partner" program. The regulations define a "Pass-through Partner" as a "person or business." *See* OAR 330-090-0110(49). It is unclear whether an entity – such as a corporation, partnership, limited liability company or trust – that is not engaged in business may become a Pass-through Partner. This concept would amend ORS 469.206 to provide that a facility tax credit may be transferred to "a person" and to provide a definition of "person" that includes corporations, partnerships, limited liability companies, trusts and other entities.

ORS 469.206 permits the transfer of a facility tax credit, but it is unclear whether the credit may be further transferred by the transferee. This concept would revise ORS 469.206 to clarify that a facility tax credit may be further transferred, whether by sale or by allocation/distribution to the owners of an entity that holds the credit, subject to rules established by the Oregon Department of Energy. It is unclear from ORS 469.206 and the BETC regulations whether a facility tax credit held by an individual terminates upon death. This concept would amend ORS 469.206 to confirm that a facility tax credit is transferable to heirs and designated beneficiaries. This concept would affect Oregon Department of Energy and Oregon Department of Revenue and the fiscal impact is unknown.

The majority of the survey respondents (76%) strongly supports or supports this concept. 19% are non-committal and 5% of members do not support the concept.

4. Renewable Energy Research & Development, Commercialization, and Manufacturing Grant Program
The concept would establish a grant program to incent new investment and job creation for renewable energy firms conducting research, development, commercialization and manufacturing of products used in the generation of renewable energy. The proposal is to designate a fund of $10,000,000 for distribution over the next 4 years. This requires interested firms to obtain certification from Oregon Department of Energy. The funds would be used to assist firms in the renewable energy sector providing traded sector jobs. Funds could be used for facilities, equipment, training and other startup related costs associated with expanding or new businesses. A set aside for rural areas Authorizes Oregon Department of Energy to certify business firms on or after October 1, 2009, and on or before December 31, 2014.

Affected agencies include Oregon Department of Energy, Oregon Economic and Community Development Department, and Oregon Department of Revenue. The estimated fiscal impact would be $10,000,000.

The majority of the survey respondents (71%) strongly supports or supports this concept. 24% are non-committal, primarily because it would need an adequate funding source, and 5% of members do not support the concept.

5. Third-Party Ownership of Net Metering Facilities

This concept involves amending provisions of ORS 757 and ORS 758 to ensure that all third-parties that own net metering facilities are excluded from the definition of "public utility" in ORS 757.005 and that third-party financing arrangements for net metering facilities are excluded under ORS 758.450(4) from the regulation of allocated utility service territory.

ORS 757.300 allows a "net metering facility" to connect to an electric utility, and offset part or all of the customer-generator's requirements for electricity. By definition (ORS 757.300(d)), a "net metering facility" generates electricity using renewable energy sources. A common means of financing the installation of net metering facilities is for an investor to pay the up-front cost of installing the generating facility. The investor retains ownership of the facility, and benefits from multiple subsidies available under state and federal law. The investor sells electricity generated from the facility to its customer, who is the owner or occupant of the premises on which the facilities are located. The customer enters into a net-metering agreement with an electric utility, using the electricity from the generating facility to offset all or part of the load it would otherwise purchase from the electric utility. The arrangement makes the development of the net metering facility affordable for both the investor and the customer.

In Order No. 08-388 (DR 40), the Oregon Public Utility Commission (OPUC) addressed whether a third-party entering into such an arrangement with a customer of an electric utility is an "electricity service supplier" under ORS 757.600(16) or a "public utility" as defined in ORS 757.005(1). Although the OPUC held that the third party is neither an "electricity service supplier" nor a "public utility," the OPUC's ruling involved only solar-powered net metering facilities and, with respect to the definition of a "public utility", relied on an exclusion in ORS 757.005(1)(b) that applies to generation of electricity only from "solar or wind resources." That raises a question regarding whether third-party ownership of net metering facilities that generate electricity from other renewable energy sources recognized under ORS 757.300(d) would fall within the definition a "public utility." Also unresolved is whether such arrangements would violate restrictions regarding exclusive allocation of utility service territory, because ORS 758.450(4)(c) includes an exception that also is limited to "solar or wind resources."

The suggested solution is to amend ORS 757.005 and ORS 758.450(4) to ensure that the owner of a "net metering facility" as defined in ORS 757.300(d) is not a "public utility" as defined in ORS 757.005 and is not subject to territory allocation restrictions in ORS 758.400 to 758.475 by virtue of selling electricity to the "customer-generator" as defined in ORS 757.300(a).

This legislative concept will provide greater certainty with respect to the regulatory treatment of net metering facilities that are owned by third parties, and will promote generation of electricity from the renewable energy sources included within the definition of "net metering facility." This legislative concept primarily involves issues under the jurisdiction of the Oregon Public Utility Commission. This legislative concept is not expected to have a revenue impact or an impact on the budget of the PUC or any other state agency.

The majority of the survey respondents (62%) strongly supports or supports this concept. 38% of the members are non-committal, based on what the final concept language would include, and no members oppose this concept.

6. Business Energy Tax Credit (BETC) Energy Fund

The Oregon Department of Energy would establish a fund that would serve as a "pass-through-partner pool" for BETC projects. The pool would be used to pay project owners their pass-through tax credit amounts. Individual or corporate taxpayers would fund the pool by making voluntary contributions to the fund. In return, the taxpayer would receive a state tax credit equal to their contribution. This tax credit could be carried forward for up to three years. Similar to the current pass-through program, participation would be cash neutral to the taxpayer, but they would be able to support the cause of renewable energy.

The state will not guarantee that sufficient pool funds will be available to BETC projects, but as projects are approved, the project owners could place a "claim" on the pool, or go on a waiting list if the pool is short. This will provide the critical certainty needed by BETC program participants in working with their lenders and investors – and that is lacking now. If necessary, the pool program could be capped by limiting the tax credit available to a single taxpayer (e.g., $100,000) or by limiting the contributions made to the pool in any one year (contributions will be accepted on a first-come basis).

This concept is modeled after the state Individual Development Accounts program established in 1999 by the legislature. The program is operated by Housing and Community Services and allows contributions to be exchanged for state tax credits.

The agencies affected by this concept include Oregon Department of Energy to manage the fund and Oregon Department of Revenue to manage the tax credits. There would be no overall state revenue impact. The cost of administration of the fund would be included in the calculation of the pass-through amount. In fact, the discount rate could likely be lowered, making more money available to the project owner and possibly reducing program costs. For the amount funneled through the pool, the 5-year BETC revenue impact would now occur in first year – over time this will level out and be lower than the 5-year approach.

The majority of the survey respondents (61%) strongly supports or supports this concept. 34% are non-committal and 5% of members do not support the concept.

7. Insurance for Renewable Energy Projects

This concept could take the form of a government-supported program to assist renewable energy projects that have difficulty obtaining affordable insurance. Problems are often encountered by third-part ownership projects where insurance can be prohibitive because of a relatively small project size, a relatively new technology, or unrealistic bonding requirements. The Department of Consumer and Business Services Oregon Insurance Division has a Market Assistance Plan program that is funded to study and analyze these types of issues and make recommendations. They are prepared to engage on this issue. A placeholder could be submitted to the Legislature to address this issue in the event the outcome of the Oregon Insurance Division analysis requires action. The REWG would provide support and guidance to the Insurance Division in identifying the problem and possible solutions. Additional research and refinement is needed to produce a final legislative concept.

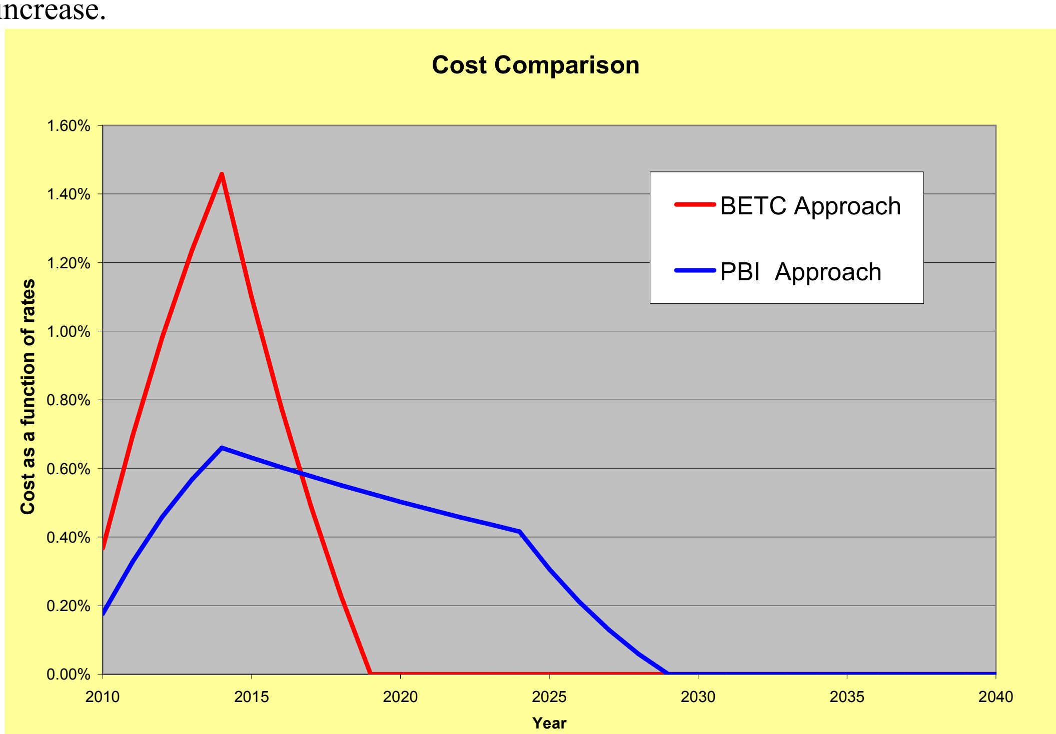
Affected agencies include Department of Consumer and Business Services - Insurance Division, Oregon Department of Energy, Oregon Economic and Community Development Department, and Oregon Department of Revenue. There would be a fiscal impact; however, the level is unknown at this time.

The majority of the survey respondents (52%) strongly supports or supports this concept. 38% are non-committal and 10% of members do not support the concept.

8. Production-Based Incentive Pilot

This concept would authorize the OPUC to establish a pilot production based incentive program. A portion of the cost of the production payment would be paid by rate payers, and the remainder be paid by the state to the participating utility via a BETC pass-through payment. This pilot would begin in 2010 and be limited to 20-megawatts per year. Customers that participate would be excluded from claiming the BETC for themselves. This would modify ODOE administrative rules to allow utilities to receive a tax credit equal to half of the production incentive value. Public utilities could "opt-in" if they provide a production based incentive to their customers.

The graph shows the cost of a 5-year 100MW pilot program compared with the current BETC approach. The area under the two curves (total cost) are roughly equal based on a 2.5% annual rate increase.



Assumed financial impact from this concept: Largest homeowner bill increase: $.29 per month. Total invested in solar: $550 million. Federal dollars leveraged: $220 million. State revenue savings: $57 million during first 5 years (assuming a 50% BETC, 50% rate payer split). This concept would affect Oregon Department of Energy and Oregon Department of Revenue.

43% of the survey respondents strongly support or support this concept. Another 43% are non-committal and 14% of members do not support the concept.

9. Business Energy Tax Credit (BETC) Changes for Fuel Cells

This concept would amend BETC standards to provide for a 50% tax credit for all fuel cell systems. Fuel cells that run on renewable fuels currently qualify for a 50% BETC, however those that run on non-renewable fuels qualify for the 35% BETC. The recommendation is that fuel cells should be eligible for a larger BETC because they are such an efficient technology and their use should be encouraged. While this is not specifically a renewable energy issue, the REWG felt like it was a viable concept.

The primary agencies impacted include Oregon Department of Energy and Oregon Department of Revenue. The fiscal impact is estimated to be approximately $300,000 or slightly more annually.

43% of the survey respondents strongly support or support this concept. Another 43% are non-committal and 14% of members do not support the concept.