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February 3, 2016

Oregon State Legislature
House Committee on Energy & Environment
Chair Jessica Vega Pederson
hee.exhibits@state.or.us

RE: Small Business Utility Advocates' testimony re HB 4036
Relating to utility regulation (eliminating coal-fired electricity)

Greetings Chair Vega Pederson and members of the Committee:

Thank you for this opportunity to present Small Business Utility Advocates' ("SBUA") testimony at this hearing on HB 4036. My name is Diane Henkels; I am an attorney based in Portland and Newport, Oregon. I am speaking to you as Of Counsel with Cleantech Law Partners ("CLP"), and CLP represents SBUA in energy and utility regulatory matters. In Oregon we have represented SBUA in Oregon Public Utility Commission proceedings regarding the recent Portland General Electric General Rate Case UE 294 and also in the PURPA docket UM 1610 generic proceeding.

SBUA is a 501(c)(3) of which the Oregon members comprise very diverse parts of our economy. Oregon SBUA members include small businesses from a roughly even spread of different industries including pest management, commercial cleaning and maintenance, artisanal glass, insurance consult, website hosting, wood products milling, food and beverage, commercial agriculture, small business consulting, residential and commercial construction, energy efficiency, and renewable energy consulting in solar and wind technologies, among others, and are presently located in Portland metro, the central coast, Salem, the rural Willamette Valley and Central Oregon.

SBUA membership grew in Oregon when we noticed that small business ratepayers are not generally represented in the state's energy and utility regulatory proceedings. (By statute, CUB represents residential ratepayers.) SBUA has testified to OPUC regarding the relation of small businesses, even those not directly in renewable energy, to Oregon's clean energy economy, and also with regard to the impact on small business of a general rate increase. In these matters, SBUA intervened, provided the input within its capabilities, and sought intervention funding.

Some statistics describing the profile of small business and energy in Oregon:

1) According to Oregon Employment Department statistics, in 2014, nine out of ten private sector firms in Oregon had fewer than 20 employees, and six out of ten employed fewer than five workers.

2) In the PGE General Rate Case we learned that the small nonresidential ("Schedule 32") accounts, which do include SBUA members and presumably mostly small business, numbered about 90,000, and it is by far the second largest rate category of PGE customers, compared to 750,000 residential ("Schedule 7"), and 11,000 of the next largest rate group ("Schedule 83"), nonresidential commercial customers using the next largest amount of electricity.

With this background in mind, SBUA testifies today on HB 4036 through lenses of supporting the policy to take Oregon off coal-generated electricity and move more toward clean energy, and supporting small businesses meeting their day-to-day and month-to-month challenges. Rate increases are among the challenges, however, SBUA recognizes rates change (sometimes decreasing), but another challenge is participating in proceedings like this without the staffing of a large company and without the expertise of the industry to ensure rates are fair and reasonable.

We make the following comments about the HB 4036 generally:

SBUA supports the policy of transitioning the state off of coal-fired resources and is enthusiastic about the prospects this presents our state. If nothing else, this is a prudent business decision given the regulatory risks and costs on the horizon for coal-fired resources. In the face of that risk, incremental investments in energy efficiency and renewable resources are prudent.

SBUA would argue for clear legislative direction to mitigate risk by:

1. Investing in all lower cost electricity/energy efficiency measures, followed in priority by higher cost renewable energy resources. SBUA acknowledges that these may need to be concurrent paths to meet future energy requirements, but the priority should be clear – waste not, want not. Achieving this policy direction will mean increasing investments in energy efficiency and Oregon jobs to install those energy efficiency measures.
2. Directing that the least cost, least risk approach to renewable resource investments be based on fulfilling public policy values for family wage jobs, safe and healthful working conditions, sustainable manufacturing practices, and the environment. Otherwise, Oregonians are paying to outsource jobs and community investments to other states and countries that do not share those values. These public policies should be inherent and significant considerations in the resource acquisition decisions. The test should be the least cost, least risk to achieve these policies – not to ignore them. It is not enough to simply state legislative intent. Compliance must become a statutory obligation of the OPUC.
3. Adopting an amendment such as that offered by the Community Renewable Energy Association requiring a certain amount of the electricity satisfying the

higher RPS requirements be required to come from PURPA projects in Oregon, with preference given to projects that meet the public policy values.

4. Amending Section 1 (5) to make it clear that the legislature does not intend to allow cost-recovery for coal-fired plants that are not used and useful, as precluded by current law – or at least clearly limit recovery to costs directly attributable to this legislation.
5. Requiring intervenor funding for representatives, such as SBUA, of all rate classes to ensure equitable allocation of any additional costs.
6. Directing state government to lead by example by requiring that all state agencies include in the 2017-19 capital improvement budget requests all cost-effective energy efficiency measures and that all land holding agencies report to the next Legislative Assembly on potential renewable resource sites, particularly those in utility service areas near load centers, potential community solar or other appropriate renewable technology sites. With more than 50% of Oregon in public ownership, public lands will play a pivotal role in renewable resource development and jobs in Oregon. If the legislature declares that renewable resource development is in the public interest, then those lands may offer cost-effective sites for renewable resource development, reducing the rate impact and potential adverse impact on high value farmland. A reasonable goal might be for state government to site the equivalent of enough renewable resources to offset its own electricity needs, reduced by energy efficiency. This will also provide state leadership with practical insights into the challenges and costs of energy efficiency and renewable resource development.

<u>SBUA is concerned that small business might not gain as anticipated by this legislation, and might pay or at least have the prospect of paying more than other rate groups. These concerns have merit.</u>

1. Small business has not benefitted as it might or could have from the previous RPS where ORS 469A.210 set a goal of meeting 8% of the RPS by community-based projects with demonstrated economic multiplier effect in local economies, but the state has not yet ascertained where we are on meeting this goal. This is a consideration also given that PacifiCorp's larger regional footprint and the evolving regional Energy Imbalance Market, and that capital infrastructure such as transmission is already present at existing coal plants in other states, and that other states such as California (solar) and Utah (solar) and Wyoming (wind) may produce electricity at lower cost than Oregon-based projects. As a result, Oregonians risk paying to outsource jobs and community investments, including property taxes, sorely needed by Oregon, and particularly rural communities.
2. Small business is at risk to face higher rate hike proportionally than other rate groups. This is what occurred in the recent PGE rate case where a main purpose of the rate case was to cover the cost of Carty natural gas plant. The relative burden of rate increases between customer classes has not come up in the

meetings and hearings on this bill, to our knowledge, and small business has not, unlike residential and large electricity users, and despite SBUA efforts, achieved a funding mechanism to enable SBUA to participate substantively and consistently in ratemaking.

3. Least cost/least risk must be matched with public policy. The proposed RPS requirements contain no policy framework (as the legislation proposes for energy efficiency) and are based solely on least cost, least risk. This will result in exporting jobs to other states, or to countries which do not share Oregon's commitment to family wage jobs, safe and healthful working conditions, sustainable manufacturing practices, and the environment. This would be both short-sited and disingenuous. These public policies should be inherent and significant considerations in the resource acquisition decisions. The test should be the least cost, least risk to achieve these policies – not to ignore them.

We make the following provision-specific comments regarding HB 4036:

Section 1 (5): Used and useful
Under Oregon law, rate recovery is only allowed for a resource that is used and useful. This was originally adopted to preclude utilities from including costs incurred for major generating facilities that were not needed or perhaps not even completed.

ORS 757.355 Cost of property not presently providing utility service excluded from rate base
(1)Except as provided in subsection (2) of this section, a public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property not presently used for providing utility service to the customer.

However, HB 4036 Section 1 (5) states:
"(5) Notwithstanding ORS 757.355, this section does not prevent the full recovery of prudently incurred costs related to the decommissioning of a coal-fired resource or the closure of a coal-fired resource, at the time those costs are incurred."

This provision implies that ratepayers could bear the burden not only of the additional renewables generation, but also retirement of the coal facilities no longer needed – for any reason, which might include coal plants no longer economic to operate because of EPA or other regulations. The alternative would be to require that those costs specific to the legislation all be recovered while the plant is used and useful so its true costs were known. Ironically, this would make both renewables and energy efficiency more cost-effective. SBUA would like to learn how and whether HB 4036 is consistent with current law because it seems to open the door to significant adverse rate impacts, unrelated to your policy direction.

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Section 9: Cost recovery
SBUA is concerned about how fairness will be achieved in ratemaking that will occur to achieve the objectives of HB 2046. The prudently incurred costs associated with complying with this bill are several, and include large costs such as transmission, firming and shaping energy, and also uncertain where "any other costs associated with complying with an RPS" seems a wide-open door for cost increases. Energy storage may be an expensive technology to put into place. SBUA advocates close technical examination of the projected 1.5% rate increase over business as usual and protections provided. At a minimum, for this to be fair, Section 9(b) must include intervenor funding for participating in such cost recovery proceedings for representatives of all affected rate classes, including small business. As drafted, the provision is business as usual but with far larger risks than now present under Oregon law.

Section 17: Energy Efficiency
Section 17 would appear to establish an obligation for the impacted utilities to plan for and pursue all cost-effective energy efficiency ("EE"). Because EE is the least cost/least risk, this should establish an obligation that extends beyond that being accomplished by the Energy Trust of Oregon, which is not achieving all cost-effective EE. If that results in additional EE funding – that is a good thing. While the explanation to the OPUC was that section 17 essentially codifies what is currently happening – that is short-sighted and falls far short of achieving all cost-effective EE.

According to the PGE explanation of HB 4036 there would be no significant change to Oregon's EE efforts. Current Oregon policy results in EE costs being capped at $0.036/kWh levelized where new renewables typically cost at least two to three times that cap. Therefore, Oregon policy requires investments in renewables while prohibiting investments in EE that better meet the state's goals at a dramatically lower cost

The U.S. Department of Energy reports that energy cost savings resulting from Oregon updates in its commercial and residential building energy codes are estimated on the order of nearly $150 million annually by 2030. What even these savings overlook are the potential savings of bringing pre-existing commercial and residential buildings up to current energy code standards.

A simple approach would be to require that the utilities provide rebates to bring all pre-existing commercial and residential buildings up to current Building Code standards for energy efficiency, except where precluded by structural constraints or when incremental improvements from compliance with an earlier adopted energy code would not be cost-effective.

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To conclude, SBUA is excited to see the possibilities this bill offers Oregon small businesses and our state, and hopes that these comments assist the effort by identifying avoidable risks and ways to avoid them. The primary goal stated for HB 4036 is to reduce carbon emissions while keeping power costs low, keeping power reliability high, and keeping ratepayer dollars and jobs in Oregon. It is early in this session and we have the capability to see this happen.

Thank you for your attention.

/s/ Diane Henkels

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