



Oregon

Tina Kotek, Governor

Public Utility Commission

201 High St SE Suite 100

Salem, OR 97301-3398

Mailing Address: PO Box 1088

Salem, OR 97308-1088

503-373-7394

DATE: March 15, 2023

TO: House Committee on Climate, Energy, and Environment

FROM: Mike Grant, Executive Director, Oregon Public Utility Commission

SUBJECT: HB 3004-2



The Public Utility Commission is not taking a position on this bill but would like to provide comments on issues it views as significant to implement the measure.

For context, it is important to note that, under the Federal Power Act, the Federal Energy Regulatory Commission (FERC) has jurisdiction over many aspects of the sale and transmission of electricity. This includes exclusive authority to regulate wholesale rates, which are defined as a “sale of electric energy to any person for resale.” The only exception to FERC’s exclusive authority over wholesale sales is under the Public Utility Regulatory Policies Act of 1978 (PURPA), which states may implement within federal rules. States also retain authority over net metering, which FERC interprets not to be a wholesale sale of electricity if the net metering customer uses the equivalent of the energy produced by the net metering facility, over a defined period of time. “Virtual net metering” broadens the concept of net metering to include facilities not located at the customer’s site.

To mitigate the risk of federal preemption, the PUC implemented the Community Solar Program (CSP) as a blend between net metering and PURPA concepts.

Section 9 of the -2 amendments to HB 3004 makes changes to eliminate size and location restrictions for CSP projects that increase the risk of federal preemption. That section provides:

“(A) Permit a community solar project to participate in the program, irrespective of the community solar project’s nameplate capacity, location in this state or interconnecting utility, or of the electric company service territory in which the community solar project’s owners or subscribers are located relative to the location of the community solar project[.]”

- No size restriction – This is problematic because a CSP project must be a qualifying facility under federal PURPA rules – which sets a cap at 80 MW.
- CSP located outside utility system - There is risk of federal preemption if the CSP project is located outside the utility’s system because the transactions between the utility and CSP look more like a wholesale sale than virtual net metering, where the CSP projects offset the retail utility customers’ load. This may result in a sale of electricity that falls under FERC jurisdiction and outside the PUC’s jurisdiction to implement PURPA.
- The transmission system is another area where federal preemption may be an issue. Generally speaking, FERC regulates federal transmission rates, while states retain

jurisdiction over the distribution system. Renewable resources in Oregon may interconnect to a FERC-regulated transmission system, a state-regulated distribution system, or a federal or consumer-owned utility's system.

Section 12 of the -2 amendments to HB 3004 proposes a reimbursement program for network upgrades. Directives to the PUC to set reimbursement terms for network upgrades related to federally regulated interconnection facilities may be preempted. The Oregon Legislature could specify who pays for network upgrades for *state-jurisdictional* interconnections, but the language needs to be drafted carefully to avoid preemption challenges.

Thank you for the opportunity to submit comments on HB 3004-2.