BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

AR 622

In the Matter of Rulemaking for Community-Based Renewable Energy Projects.	JOINT COMMENTS OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION AND THE RENEWABLE ENERGY COALITION IN RESPONSE TO STAFF'S DRAFT PROPOSED RULE

INTRODUCTION

The Community Renewable Energy Association ("CREA") and the Renewable Energy Coalition ("REC") submit these Joint Comments in Response to the Public Utility Commission of Oregon ("OPUC" or "Commission") Staff's Request for Comments on Staff's draft proposed rule distributed on November 14, 2018.

CREA and REC appreciate the opportunity to comment on Staff's draft proposed rule for small-scale community-based renewable energy generation facilities, as required by ORS 469A.210. As we noted previously, this rulemaking is central to the mission of both CREA and REC because both organizations have the mission of advocating for policies to will lead to successful development and operation of small-scale community-based renewable energy generation facilities in Oregon. The Oregon legislature has also expressed its support for such policies – unambiguously proclaiming that "community-based renewable energy projects, including but not limited to marine renewable energy resources that are either developed in accordance with the Territorial Sea Plan adopted pursuant to ORS 196.471 or located on structures adjacent to the coastal shorelands, *are an essential element of this state's energy future*." ORS 469A.210(1) (emphasis added).

In light of the fact that these small-scale facilities are "an essential element of this state's energy future," *id.*, any ambiguities in the statute should be interpreted in a manner that will in fact lead to further development of such facilities *in the future*. The statute should not be creatively interpreted in a manner that paradoxically leads to a conclusion that no further development of such facilities is necessary when the legislature determined such development should continue into the future as recently as 2017, when it last revised the statute.

There should now be no question whatsoever that a rulemaking is needed because the stakeholders in this proceeding have taken drastically different positions on the meaning of the statutory language. In that regard, Staff's draft proposed rule is an important first step in clarifying these matters for all interested parties. However, in some very important respects, Staff's draft proposed rule adopts legally indefensible interpretations of the applicable statutory language. If these errors are not corrected, the Commission's rule would ultimately undermine the legislature's intent that small-scale community-based renewable energy facilities will be an essential element of the state's energy future.

CREA and REC provided detailed comments on all major issues related to the rulemaking on September 18, 2018, and our position remains the same as stated in those comments. We reiterate and elaborate upon some of those points below, where applicable, in response to Staff's draft proposed rule, and we also have attached a redline to the draft proposed rule that more faithfully implements the intent of the legislature.

COMMENTS

It is important to start with the statutory language. The critical statutory language in the current version of ORS 469A.210 provides:

> (1) The Legislative Assembly finds that community-based renewable energy projects, including but not limited to marine renewable energy resources that are either developed in accordance with the Territorial Sea Plan adopted pursuant to ORS 196.471 or located on structures adjacent to the coastal shorelands, are an essential element of this state's energy future.
>
> (2) For purposes related to the findings in subsection (1) of this section, by the year 2025, at least eight percent of the aggregate electrical capacity of all electric companies that make sales of electricity to 25,000 or more retail electricity consumers in this state must be composed of electricity generated by one or both of the following sources:
>
> > (a) Small-scale renewable energy projects with a generating capacity of 20 megawatts or less that generate electricity utilizing a type of energy described in ORS 469A.025; or
> >
> > (b) Facilities that generate electricity using biomass that also generate thermal energy for a secondary purpose.
>
> (3) Regardless of the facility's nameplate capacity, any single facility described in subsection (2)(b) of this section may be used to comply with the requirement specified in subsection (2) of this section for up to 20 megawatts of capacity.

In the following sections, these comments will specifically address each of the proposed rules circulated by Staff and then discuss additional topics related to the administrative rules.

Draft Proposed Rule 1

> ***Applicability***
>
> *(1) These rules are intended to implement ORS 469A.210.*
>
> *(2) The rules contained in this division apply only to an electric company that makes sales of electricity to 25,000 or more retail electricity customers in this state.*

(3) Upon request or its own motion, the Commission may waive any of the Division 0XX rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

CREA-REC Comments:

CREA and REC have no specific comments on this rule at this time.

Draft Proposed Rule 2

Definitions

For purposes of this division, unless the context requires otherwise:

(1) "Electric company" has the meaning in ORS 757.600.

(2) "Environmental attributes" means any and all claims, credits, benefits, emissions, reductions, offsets, and allowances, however entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil, or water.

(3) "Nameplate capacity" means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Nameplate capacity is usually indicated on a nameplate attached to the individual machine or device.

CREA-REC Comments:

The definitions contained in this section are a good start, however the list of definitions is incomplete. The list should also include other critical terms in the statute and the rules, including: electrical capacity, aggregate electrical capacity, biomass and renewable energy certificates.

CREA and REC propose the following additional definitions:

> "Electrical capacity" means a generation facility's ability to contribute capacity to the electric company. For purposes of this rule, an individual generation facility's electrical capacity will be measured according to its resource

> type and the electric company to which it delivers its energy and capacity in accordance with the percentages of nameplate capacity provided below:
>
> [Insert table of contribution to peak percentage for each resource type from PacifiCorp and Portland General Electric Integrated Resource Plans]
>
> "Aggregate electrical capacity" means the sum of the electrical capacity of multiple generators.

Additionally, the Commission should consider narrowing the definition of "Environmental Attributes" included in Staff's draft proposed rule. Staff has proposed a very broad definition of "Environmental Attributes" that is not specifically limited to the attributes and benefits directly associated with the generation of the electric energy at the generation facility. When applied to Rule 5, the draft rule's definition of Environmental Attributes would require the utility to obtain all of these attributes to use the facility for compliance with ORS 469A.210. However, it is not uncommon for a power purchase agreement selling bundled renewable energy to convey to the purchasing utility only those environmental attributes and benefits specifically derived from generation of the electric energy, and *not* the benefits associated with production of the renewable fuel itself in upstream processes, such as greenhouse gas offsets.

For example, PacifiCorp's Commission-approved standard contract for qualifying facilities ("QF") requires QFs selling at the renewable rates to convey "Green Tags" to PacifiCorp, which are defined as follows:

> "Green Tags" means (1) the Environmental Attributes associated with all Net Output, together with (2) all WREGIS Certificates; and (3) the Green Tag Reporting Rights associated with such energy, Environmental Attributes and WREGIS Certificates, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified", or otherwise. One (1) Green Tag represents the Environmental Attributes made

> available by the generation of one (1) MWh of energy from the Facility. *Provided however, that "Green Tags" do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.*[1]

In contrast, the term "Environmental Attributes" is more broadly defined without any such limitations in the standard contract (similar to how Staff's draft rule defines the same term). But the QF only conveys the "Green Tags" under Section 5.5 of the standard contract. These provisions were specifically negotiated to allow for QFs to separately convey attributes (such as greenhouse gas offsets) that are upstream of the generation and not required for the utility to use the generation facility for compliance with Oregon's Renewable Portfolio Standard ("RPS"). Portland General Electric Company's ("PGE") renewable standard contract has similar provisions.

The upshot of this issue is that utilities may not be able to use facilities selling their output under existing renewable standard contracts for compliance with ORS 469A.210 without a revision to the draft rule. CREA and REC are not opposed to revising the definition of "Environmental Attributes" in the rules to be consistent with the definitions of the attributes conveyed to the utility under the Commission-approved renewable standard contract provisions.

Draft Proposed Rule 3

> ***Small Scale Renewable Energy Project Standard***
>
> *(1) On or before January 1, 2025, and each year thereafter, at least eight percent of the aggregate electrical capacity of all electric companies that make sales of electricity to*

[1] Available online at: https://www.pacificpower.net/content/dam/pacific_power/doc/About_Us/Rates_Regulation/Oregon/Approved_Tariffs/PURPA_Power_Source_Agreement/Power_Purchase_Agreement_for_New_Firm_QF_And_Intermittent_Resource_with_MAG.pdf.

25,000 or more electric customers in this state must be composed of electricity generated by sources that meet the criteria of [Rule 4] and [Rule 5].

(2) Each electric company's compliance with the standard in Rule 3(1) will be based on the electric company's own percentage of qualifying eligible resources as compared to the electric company's forecasted annual peak load for Oregon in megawatts from the electric company's most recently acknowledged integrated resource plan.

CREA-REC Comments:

CREA and REC disagree with the proposed use "peak load for Oregon" as the metric that will be used in the denominator of the compliance equation in this section and elsewhere in the rule. Staff proposes to use "peak load for Oregon" as the Commission's interpretation of the statutory term "electrical capacity" as used in ORS 469A.210(2). For the reasons explained herein, CREA and REC propose revising subsection (2) of this Rule and incorporating language in combination with proposed Rule 6 that consistently uses the same definition of "electrical capacity" in both the numerator and denominator, as defined above in the definitions as the generator's ability to contribute to the capacity needs of the utility.

It is important to again focus on the statutory language here. The statute uses the term "electrical capacity" for purposes of measuring compliance by determining the numerator (electrical capacity of the facilities used by the utility to meet the requirement) and the denominator (electrical capacity of the utility's entire generation fleet). *See* ORS 469A.210(2). As we stated in our prior comments, the best interpretation of this statutory provision, when read in context and consistent with the overall policy of the legislation, is that the *electrical* capacity means the facility's ability to contribute electrical capacity to the utility, which is regularly measured in the utility's integrated resource plan ("IRP").

The term "aggregate *electrical* capacity" is used in ORS 469A.210(2) to describe the eight-percent requirement and to measure compliance with the requirement by facilities that meet the statutory criteria, whereas the term "generating capacity" is used in ORS 469A.210(2)(a) to describe qualifying criteria, which is the 20-MW maximum size of facilities qualifying as small-scale. "Generating capacity" would mean the maximum generating capacity at any instant, i.e., the maximum capacity the facility could potentially *generate* under ideal conditions. If a facility has a generating capacity of 20 MW or less, it can qualify as a facility used by the utility to meet the eight-percent target (assuming it meets the other requirements). Because the legislature used different words, it is presumed to have intended a different meaning for the terms "electrical capacity" and "generating capacity."

Additionally, the language of the statute requires that the same measurement metric be used in both the numerator and the denominator, but the "peak load" of the facilities used by the utility to meet the requirement (which is the numerator) makes no sense. A small-scale community-based generator does not have a "peak load." Therefore, instead of using the same measurement criteria in the numerator of the compliance equation, Staff proposes to use the aggregate of all of the nameplate capacities of all of the small-scale community-based facilities in the numerator in the draft proposed Rule 6. However, nameplate capacity is not the same as "peak load." Staff's proposal to use "peak load" in the denominator contradicts the statutory language for this additional reason.

There is also no basis in the statute to limit the denominator to the utility's electrical capacity in Oregon, but the proposed use of "peak load" is incorrectly limited in Staff's draft proposed Rule 3(2) to the "peak load *for Oregon.*" (emphasis added). The words "for Oregon"

do not appear in ORS 469A.210(2) with respect to the language addressing the denominator. As we previously explained, the statute uses the language "eight percent of the aggregate electrical capacity of all electric companies . . . . " ORS 469A.210(2). In turn, the term "electric company" means "an entity engaged in the business of distributing electricity to retail electricity consumers in this state . . . ." ORS 757.600(11); *see also* ORS 469A.005(8) (adopting ORS 757.600(11) for purposes of definition of "electric company" as used in ORS 469A.210). There is no limitation in the statute suggesting that PacifiCorp's compliance target is limited to eight percent of some subset of its generation fleet located within Oregon – let alone its peak load in Oregon.

This is in direct contradiction to the precise language on the same point with regard to the general RPS targets in ORS 469A.052, which derive their annual compliance percentage from the quantity of "electricity sold by the electric utility to *retail electricity consumers* in each of the calendar years." *See* ORS 469A.052 (emphasis added). Because the definition of "retail electricity consumer" is limited to customers "located in Oregon," *see* ORS 469A.005(13), the general RPS compliance requirements limit their annual target to a percentage of such sales made in Oregon. The different use of terms and words in ORS 469A.210 is significant and further supports the conclusion from the definitions of the terms used in ORS 469A.210 that the legislature intended the eight-percent compliance target to be measured by the multi-state utility's entire generation fleet, not the just the fleet located in Oregon or sold to retail electricity

customers in Oregon or the peak load in Oregon.[2] Thus, Staff's draft proposed rule is doubly wrong because it fails to account for the electric company's entire system.

Given Staff's draft proposed rule's complete departure from the statutory language, it would appear that "peak load for Oregon" was used because it is likely to result in an easier compliance path for the utilities than the ordinary reading of the statute itself, especially for PacifiCorp. However, the administrative rule must be at least minimally consistent with the statutory language. The use of "peak load for Oregon" fails that test on multiple counts.

CREA and REC strongly disagree with assertions in the commentary accompanying Staff's draft proposed rule. Staff provides the following explanation for the proposed use of "peak load for Oregon" in the denominator:

> Staff spoke to ODOE about options for measuring the capacity standard for PAC. ODOE reported that the working group that worked on section 14, SB 1547 at the end of the 2016 legislative session concurred with proposal that "system capacity" is equal to the utility's Oregon peak load for purposes of determining compliance. PAC and PGE were part of this working group, as were representatives from renewable development community.

CREA and REC have numerous objections to this reasoning. First of all, as a participant to the referenced Oregon Department of Energy ("ODOE") stakeholder workshops, CREA completely disagrees with the allegation that CREA "concurred with proposal that 'system capacity' is equal to the utility's Oregon peak load for purposes of determining compliance." CREA made no such concurrence for purposes of clarifying the regulatory requirement through

[2] In contrast, the facilities qualifying for the criteria should be located in Oregon. The express purpose of ORS 469A.210 is to meet the legislative finding that small-scale community-based facilities are "an essential element of this state's energy future." ORS 469A.210(1). Given this context, an electric company operating in Oregon cannot meet the legislative objective through the use of facilities located in another state or region. Staff's rule appears to agree with this proposition.

these proposed rules. The use of peak load was acknowledged at the workshop as a means to expedite an initial calculation regarding the then-state of compliance, given the disagreements among workshop participants over precisely these issues. CREA has long sought cooperation from either ODOE, the OPUC, or both in obtaining basic data that might help measure compliance. ODOE finally expressed a willingness to attempt to do that during the referenced workshops, but there was no agreement upon fundamental issues including but not limited to how to define system capacity. Faced with those disagreements and desiring to see ODOE move forward with meaningful data collection, several accommodations were made, including the use of peak load as an interim proxy for system capacity, as well as incorporation of several "toggles" in the data spread sheet for issues related to the numerator portion of the calculation. Those accommodations were not intended to be, and may not be credibly represented as, positions for this rulemaking.

Moreover, CREA affirmatively rejected such characterization of any such past agreement at the first stakeholder workshop held in this rulemaking. Staff did not subsequently ask CREA if it agreed with ODOE's apparent characterization. CREA again affirmatively rejects this characterization of the discussions during the ODOE workshop.

The second problem with Staff's reasoning, is that an administrative agency cannot adopt an interpretation of a statute that is at odds with the statutory language just because some stakeholders allegedly agreed to evaluate compliance status under that interpretation in an informal process. In fact, even if all stakeholders to this rulemaking agreed to use "peak load for Oregon" as the metric, the Commission would still be unable to lawfully implement that

interpretation of the statutory term "electrical capacity" because the definition does not lawfully implement the statutory language.

In sum, CREA and REC strongly urge Staff to reconsider its proposed use of "peak Oregon load" in the denominator of the compliance equation. Instead, the rule should define "electrical capacity" as the contribution to peak capacity needs, which is a well defined metric developed in the utility industry as the measure of a generator's electrical capacity, which is already in widespread use in Oregon. *See generally* Docket No. UM 1719. Additionally, the electrical capacity used in the denominator of the equation should consider the electric company's entire system, not just some subset of the system located or served in Oregon.

Draft Proposed Rule 4

Qualifying Projects

(1) To qualify for the standard in [Rule 3] energy projects must be located in Oregon, and:

(a) Have a nameplate capacity equal to or less than 20 megawatts and generate energy utilizing a type of energy described in ORS 469A.025; or

(b) Generate electricity using biomass and generate thermal energy for a secondary purpose.

(2) For energy projects that qualify under subsection (1)(b), any of the project's capacity in excess of 20 megawatts is not eligible for the standard specified in [Rule 3].

CREA-REC Comments:

This provision of the draft rule appropriately limits the qualifying projects to facilities located in Oregon. As noted above, the statute is best interpreted to limit the facilities that may qualify as small-scale community-based projects to projects located in Oregon. This interpretation is consistent with the statutory language and purpose of the legislation to ensure

that such facilities are part "of this state's energy future" as ORS 469A.210(1) proclaims to be the policy of the legislation. Developing solar facilities in Utah would do nothing to make such facilities an essential element or Oregon's energy future.

Additionally, the rule should clarify the meaning of the facilities described in subpart (1)(b) of this rule – facilities that "[g]enerate electricity using biomass and generate thermal energy for a secondary purpose." These statutory terms also appear in ORS 469A.132, which requires creation of "thermal renewable energy certificates" from such facilities. ODOE recently completed a rulemaking defining the critical statutory terms, and it would therefore make sense to use the same definitions in this context. *See* OAR 330-160-0015(21) (defining "secondary purpose"); OAR 330-160-0080 (describing criteria for a facility to be a facility that generates thermal energy from generation of electricity using biomass).

As a point of further clarification, the Commission should adopt a uniform term for referring to the projects that qualify or are eligible for the small scale renewable energy standard. Rule 4 refers to them as "qualifying projects" and "energy projects;" rule 3 refers to them as "qualifying eligible resources;" Rule 5 uses the terms "eligible projects," "renewable energy projects," and "qualifying energy projects;" and Rule 6 uses the term "qualifying eligible projects." These differing terms create unnecessary confusion. We propose that the term "small-scale renewable energy projects" be used consistently throughout the rules because that is the term used to describe this small-scale renewable energy standard in the title of these new rules. That change is reflected in the attached redline for this Rule 4 and throughout the draft rules as appropriate.

Draft Proposed Rule 5

Eligible projects

(1) Energy projects that satisfy the criteria of [Rule 4] are eligible to count toward the standard in [Rule 3] as renewable energy projects when the electric company owns or otherwise has the rights to the environmental attributes associated with the energy produced by the energy project during the compliance year. Energy projects that satisfy the criteria of [Rule 4], but for which the subject electric company does not own or otherwise have the rights to the environmental attributes associated with the project's output during the compliance year, are not eligible to meet the standard in Rule 3.

(2) Notwithstanding subsection (1) of this rule, to the extent the electric company owns or has the rights to the environmental attributes associated with energy produced by a qualifying project for a period of time during a compliance year, the qualifying renewable energy project is eligible to meet the standard for that same period within the compliance year.

(3) If the electric company owns or otherwise has the rights to the environmental attributes for only a portion of the energy generated by the qualifying energy project during the compliance year, a share of the energy project's capacity that is proportionate to the subject electric company's interest in the environmental attributes of the energy produced by the renewable energy project is eligible to meet the standard for the compliance year.

CREA-REC Comments:

This provision is generally consistent with CREA and REC's view of the legislation. As we commented previously, Oregon's RPS requires that the electric company meet the requirement by retiring the renewable energy certificates supplied to the electric company with bundled energy from such facilities within the compliance year. The law expressly references the requirement in ORS 469A.210 when discussing the limitations on use of renewable energy certificates for other purposes. For example, the RPS states, "An electric utility or electricity service supplier that uses a renewable energy certificate to comply with a renewable portfolio standard imposed by a state other than this state may not use the same renewable energy certificate to comply with a renewable portfolio standard established under ORS 469A.005 to

469A.210." ORS 469A.140(5). It must also follow that the utility could not use the renewable energy certificate for some other purpose, such as sale to another party, and that the utility must itself own and retire the renewable energy certificate for compliance purposes. If the utility could claim compliance without retiring the renewable energy certificates produced from the facility, there would also be a double counting violation of Federal Trade Commission regulations regarding environmental claims.

That said, CREA and REC are somewhat confused by Staff's draft Rule 9's apparent attempt to make the distinction between ownership of the environmental attributes and the renewable energy certificates, which is discussed below.

Draft Proposed Rule 6

Measurement of System Capacity under the Renewable Energy Project Standard

Each electric company's compliance with the standard of [Rule 3] will be measured based on the nameplate capacity of qualifying eligible projects that the electric company owns or contracts to purchase the output of during the year of compliance.

CREA-REC Comments:

This provision suffers from the same problems as draft Rule 3 discussed above. This is the numerator of the compliance equation and its metric must be the same as the denominator. Both rules are implementing the statutory term "electrical capacity," but Staff's draft rule proposes to use different meanings for that term in the numerator (generator's nameplate capacity) and the denominator (utility's peak load). For the reasons explained above, both the numerator and the denominator should use the contribution to peak capacity for the term "electrical capacity." Thus, draft Rule 6's proposed use of "nameplate capacity" should be

changed to contribution to peak capacity, which could be used in the definition of "electrical capacity."

Additionally, even if the Commission will use "peak load" in the denominator, the Commission would have to at least adopt an equivalent metric for the numerator instead of the full generating capacity of the qualifying small-scale community-based facilities. The equivalent measurement criteria to a generation facility's "peak load" would be the amount of generation the facility produces during the utility's peak load period, which is more analogous to CREA and REC's proposal to use the generation facility's capacity contribution to the utility's peak load needs. For example, at least based on the IRPs and the utilities' avoided cost rates, a wind plant does not generate at its maximum generating capacity during the utility's "peak load" period; it generates at a fraction of that level. Thus, even if the Commission were to use Staff's proposal for "peak load" in the denominator, it would have to modify Staff's proposed measurement criteria for the numerator to reflect the level of generation from the qualifying small-scale community-based facilities during that peak load period.

Draft Proposed Rule 7

Compliance Report

(1) No later than February 1, 2025 and no later than February 1 for each year thereafter, each electric company subject to the standard of Rule 3 must file a report with the Commission demonstrating compliance, or explaining in detail any failure to comply, with the standard.

(2) The report required in section (1) of this rule must include the following information associated with each owned or contracted qualifying and eligible renewable energy project:

(a) The name of the facility;

(b) The location of the facility;
(c) The in-service date of the facility;
(d) The manufacturer's nameplate capacity rating;
(e) The execution date of any associated power purchase agreement;
(f) The contracted capacity and output delivery period of any associated power purchase agreement;
(g) The electric company's forecasted peak load in megawatts for Oregon from the company's most recently acknowledged integrated resource plan; and
(h) Proof of the electric company's ownership interest in the environmental attributes of the project output during the compliance period.

CREA-REC Comments:

This rule also has the same problems as Rules 3 and 6 and should be modified in subsection (2)(d) and (2)(g) to reflect the proper definition of "electrical capacity" or "aggregate electrical capacity" in the statute, which CREA and REC submit is derived from individual generator's contribution to peak capacity.

Additionally, CREA and REC recommend that the utilities be directed complete annual progress reports effective February 1, 2019. Once the rule is finalized, this data should be readily available, and the sooner the level of compliance is known the sooner stakeholders can recommend resource actions in other critical proceedings and planning exercises.

Draft Proposed Rule 8

Cost Recovery

An electric company may request recovery of its prudently incurred costs to comply with the standard specified of [Rule 3] in an automatic adjustment clause proceeding filed at the Commission pursuant to ORS 469A.120.

CREA-REC Comments:

CREA and REC do not have any concerns with this proposed rule at this time.

Draft Proposed Rule 9

Renewable Energy Certificates and Compliance with the Renewable Portfolio Standards

(1) Use of a qualifying project's capacity to meet the standard of [Rule 3] does not prevent the electric company from using otherwise eligible renewable energy certificates associated with qualifying projects' output for purposes of meeting a renewable portfolio standard established under ORS 469A.005 to ORS 469A.120 or a voluntary renewable energy tariff during the [Rule 3] standard compliance year.

(2) Use of a qualifying project's capacity to meet the standard of [Rule 3] does not prevent the electric company from banking otherwise eligible renewable energy certificates associated with qualifying projects' output for purposes of meeting a renewable portfolio standard established under ORS 469A.005 to ORS 469A.120 in a year subsequent to the [Rule 3] standard compliance year.

CREA-REC Comments:

CREA and REC understand this rule to provide some flexibility in the ability to use the renewable energy certificates for the small-scale community-based facilities to meet the general RPS requirements. We are still evaluating this novel approach and its compliance with the statutory language. We look forward to responding to other parties' comments on this topic.

CREA and REC also note that the utility would not ordinarily own the environmental attributes (including renewable energy certificates) under a voluntary renewable energy tariff. *See* Order No. 15-405 (requiring the customer to own the environmental attributes). Therefore, the last clause of subsection (1) should probably be deleted to eliminate confusion.

Draft Proposed Rule 10

Implementation Plans

Starting in 2021, each electric company subject to the standard of [Rule 3] must incorporate its plan to achieve or exceed, and maintain, the standard into its renewable portfolio standard implementation plans filed pursuant to OAR 860-083-0400.

CREA-REC Comments:

CREA and REC agree that the utilities should include ORS 469A.210 in their RPS implementation plans, but propose that the utilities should start addressing this issue in the next implementation plan they file. The draft proposed rule delays this issue until 2022, and it is not clear why this aspect of the rule should not take effect immediately with the rest of the rule.

The utilities are required to file their implementation plans on or before January 1 in even-numbered years, OAR 860-083-0400(1), so their next one is due January 1, 2020. This means that if they are not required to include this standard in their implementation plan until January 1, 2021 the practical effect is that it will be delayed until 2022. There is plenty of time over the next year to include this in their next 2020 implementation plan.

Additional Comments

The draft proposed rule does not address compliance and penalties, but such provisions should be clarified in the final rules. Given the history of regulatory inaction on this issue, going back to the passage of Oregon's initial RPS and ORS 469A.210's initial language up through the present time,[3] CREA and REC are concerned that the message being sent by the omission of penalty provisions for lack of compliance is that continued non-compliance is acceptable.

The RPS charges the Commission with penalizing electric companies that fail to comply with this requirement. It provides: "If an electric company or electricity service supplier that is subject to a renewable portfolio standard under ORS 469A.005 to 469A.210 fails to comply with

[3] From enactment in 2007 through March 8, 2016, ORS 469A.210 was an eight-percent goal that specifically required "[a]ll agencies of the executive department as defined in ORS 174.112 shall establish policies and procedures promoting the goal declared in this section." Oregon Laws 2007 ch. 301, § 24; Oregon Laws 2010 ch. 68, § 1; Oregon Laws 2016 ch. 28, § 14, effective March 8, 2016. However, the Commission never adopted any specific policies designed to achieve this goal.

the standard in the manner provided by ORS 469A.005 to 469A.210, the Public Utility Commission may impose a penalty against the company or supplier in an amount determined by the commission." ORS 469A.200. Without penalties and clarity in the rule, the affected utilities may elect to simply violate the statutory requirement.

In closing, CREA and REC note that a more logical and easily administered measurement criteria for the eight-percent requirement would be the same criteria used for other RPS thresholds – percent of energy used to serve load as measured by energy (MWh), not capacity (MW). While CREA and REC strongly urge the Commission to adopt administrative rules at this time implementing the current statutory language, CREA and REC would also be willing to work with other stakeholders to seek changes to the statutory language to make the eight-percent requirement's measurement criteria consistent with Oregon's other RPS requirements.

Dated: November 28, 2018.

Respectfully submitted,

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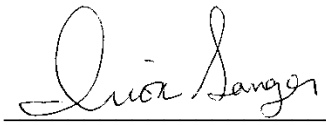

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ATTACHMENT 1

CREA and REC's Proposed Revisions to Staff's Draft Proposed Rule

SMALL SCALE RENEWABLE ENERGY PROJECT STANDARD

[Rule 1]
Applicability

(1) These rules are intended to implement ORS 469A.210.

(2) The rules contained in this division apply only to an electric company that makes sales of electricity to 25,000 or more retail electricity customers in this state.

(3) Upon request or its own motion, the Commission may waive any of the Division 0XX rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

[Rule 2]
Definitions

For purposes of this division, unless the context requires otherwise:

~~(1~~(1) "Aggregate electrical capacity" means the sum of the electrical capacity of multiple generators.

(2) "Electric company" has the meaning in ORS 757.600.

~~(2~~(3) "Electrical capacity" means a generation facility's ability to contribute capacity to the electric company. For purposes of this rule, an individual generation facility's electrical capacity will be measured according to its resource type and the electric company to which it delivers its energy and capacity in accordance with the percentages of nameplate capacity provided below:

[Include table of contribution to peak percentage for each resource type from PacifiCorp and Portland General Electric Company's Integrated Resource Plans]

(4) "Environmental attributes" means any and all claims, credits, benefits, emissions, reductions, offsets, and allowances, however entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil, or water associated with all electrical output of a generating facility. Provided however, that for purposes of this rule, Environmental Attributes do not include attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

(~~3~~5) "Nameplate capacity" means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Nameplate capacity is usually indicated on a nameplate attached to the individual machine or device.

Stat Auth: ORS 756.060, ORS 469A.200, 469A.210
Stats. Implemented: ORS 469A.210.
Hist: NEW

[Rule 3]
Small Scale Renewable Energy Project Standard

(1) On or before January 1, 2025, and each year thereafter, at least eight percent of the aggregate electrical capacity of all electric companies that make sales of electricity to 25,000 or more electric customers in this state must be composed of electricity generated by sources that meet the criteria of [Rule 4] and [Rule 5].

(2) ~~Each electric company's~~ For purposes of compliance with the ~~standard~~requirement in Rule 3(1~~) will be based on~~), each electric company must individually satisfy the ~~electric company's own percentage of~~ requirement in Rule 3(1) by acquiring at least eight percent of its aggregate electrical capacity from qualifying eligible ~~resources as compared to the electric company's forecasted annual peak load for Oregon in megawatts from the electric company's most recently acknowledged integrated resource plan.~~ small-scale renewable energy projects.

Stat Auth: ORS 756.060, ORS 469A.200, 469A.210
Stats. Implemented: ORS 469A.210.
Hist: NEW

[Rule 4]
Qualifying Small-Scale Renewable Energy Projects

(1) To qualify for the standard in [Rule 3] small-scale renewable energy projects must be located in Oregon, and:

(a) Have a nameplate capacity equal to or less than 20 megawatts and generate energy utilizing a type of energy described in ORS 469A.025; or

(b) Generate electricity using biomass and generate thermal energy for a secondary purpose.

(2) For energy projects that qualify under subsection (1)(b), any of the project's capacity in excess of 20 megawatts is not eligible for the standard specified in [Rule 3].

Stat Auth: ORS 756.060, 469A.200, 469A.210
Stats. Implemented: ORS 469A.200, 469A.210
Hist: New

[Rule 5]
Eligible Small-Scale Renewable Energy Projects

(1) Small-scale renewable energy projects that satisfy the criteria of [Rule 4] are eligible to count toward the standard in [Rule 3] as small-scale renewable energy projects when the electric company owns or otherwise has the rights to the environmental attributes associated with the energy produced by the energy project during the compliance year. Energy projects that satisfy the criteria of [Rule 4], but for which the subject electric company does not own or otherwise have the rights to the environmental attributes associated with the project's output during the compliance year, are not eligible to meet the standard in Rule 3.

(2) Notwithstanding subsection (1) of this rule, to the extent the electric company owns or has the rights to the environmental attributes associated with energy produced by a qualifying project for a period of time during a compliance year, the qualifying small-scale renewable energy project is eligible to meet the standard for that same period within the compliance year.

(3) If the electric company owns or otherwise has the rights to the environmental attributes for only a portion of the energy generated by the qualifying small-scale renewable energy project during the compliance year, a share of the energy project's capacity that is proportionate to the subject electric company's interest in the environmental attributes of the energy produced by the renewable energy project is eligible to meet the standard for the compliance year.

Stat Auth: ORS 756.060, 469A.200, 469A.210
Stats. Implemented: ORS 469A.200, 469A.210
Hist. NEW

[Rule 6] Measurement of ~~System~~Electrical Capacity under the Small-Scale Renewable Energy Project Standard

Each electric company's compliance with the standard of [Rule 3] will be measured ~~based on~~by the ~~nameplate~~electrical capacity of qualifying eligible small-scale renewable energy projects that the electric company owns or contracts to purchase the output of during the year of compliance.

Stat Auth: ORS 756.060, 469A.200, 469A.210
Stats. Implemented: ORS 469A.200, 469A.210
Hist: NEW

[Rule 7] Compliance Report

(1) No later than February 1, 2025 and no later than February 1 for each year thereafter, each electric company subject to the standard of Rule 3 must file a report with the Commission demonstrating compliance, or explaining in detail any failure to comply, with the standard.

(2) The report required in section (1) of this rule must include the following information associated with each owned or contracted qualifying and eligible renewable energy project:
(a) The name of the facility;
(b) The location of the facility;
(c) The in-service date of the facility;
(d) The ~~manufacturer's nameplate~~project's electrical capacity ~~rating~~and supporting calculations;
(e) The execution date of any associated power purchase agreement;
(f) The contracted nameplate capacity and output delivery period of any associated power purchase agreement;
(g) The electric company's forecasted ~~peak load~~electrical capacity in megawatts for Oregon from the company's most recently acknowledged integrated resource plan; and
(h) Proof of the electric company's ownership interest in the environmental attributes of the project output during the compliance period.

Stat Auth: ORS 756.060, 469A.200, 469A.210
Stats. Implemented: 469A.200, 469A.210
Hist: NEW

[Rule 8] Cost Recovery

An electric company may request recovery of its prudently incurred costs to comply with the standard specified of [Rule 3] in an automatic adjustment clause proceeding filed at the Commission pursuant to ORS 469A.120.

Stat Auth: ORS 756.060, 469A.120, 469A.200, 469A.210
Stats. Implemented: ORS 469A.120
Hist: NEW

[Rule 9] Renewable Energy Certificates and Compliance with the Renewable Portfolio Standards

(1) Use of a qualifying small-scale renewable energy project's electrical capacity to meet the standard of [Rule 3] does not prevent the electric company from using otherwise eligible renewable energy certificates associated with qualifying projects' output for purposes of meeting a renewable portfolio standard established under ORS 469A.005 to ORS 469A.120 ~~or a voluntary renewable energy tariff during the~~ [Rule 3] standard compliance year.

(2) Use of a qualifying project's capacity to meet the standard of [Rule 3] does not prevent the electric company from banking otherwise eligible renewable energy certificates associated with qualifying projects' output for purposes of meeting a renewable portfolio standard established under ORS 469A.005 to ORS 469A.120 in a year subsequent to the [Rule 3] standard compliance year.

Stat Auth: ORS 756.060, 469A.200, 469A.210
Stats. Implemented: ORS 469A.200, 469A.210
Hist: NEW

[Rule 10] Implementation Plans

Starting in ~~2021~~2020, each electric company subject to the standard of [Rule 3] must incorporate its plan to achieve or exceed, and maintain, the standard into its renewable portfolio standard implementation plans filed pursuant to OAR 860-083-0400.

Stat Auth: ORS 756.060, 469A.200, 469A.210
Stats. Implemented: ORS 469A.200, 469A.210
Hist: NEW