

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket No. AR 674**

In the Matter of  
Rulemaking to Amend OAR 860-091,  
Division 91 Rulemaking Small Scale  
Renewable (SSR) Energy Amendments

JOINT COMMENTS OF  
OREGON SOLAR + STORAGE  
INDUSTRIES ASSOCIATION,  
COMMUNITY RENEWABLE ENERGY  
ASSOCIATION, AND RENEWABLE  
ENERGY COALITION

**I. INTRODUCTION**

The Oregon Solar + Storage Industries Association (“OSSIA”), Community Renewable Energy Association (“CREA”), and Renewable Energy Coalition (the “Coalition”) (collectively the “QF Trade Groups”) appreciate the opportunity to provide these joint comments on the Public Utility Commission of Oregon (“PUC” or “Commission”) Staff’s Draft Proposed Rule Amendments to the Division 91 Small Scale Renewable (“SSR”) Requirements. Below, the comments are organized as Comments in Support, Comments Based on Nuanced Support, Comments in Opposition, and Other Comments.

**II. COMMENTS IN SUPPORT**

The QF Trade Groups support the following in Staff’s draft proposed rule amendments:

- Treat the SSR requirement as a generating capacity standard to be measured in nameplate capacity as this is consistent with the current administrative rules.

- Behind-the-meter resources continue to be ineligible for the numerator. The Commission has repeatedly and consistently held this position, and the issue is expressly outside of the scope of this rulemaking.<sup>1</sup>
- Front-of-the-meter resources incorporated into a microgrid or other resilience project are eligible for SSR compliance.
- Minimize subtractions from the denominator. The value of total capacity should include all forms of capacity and we agree with Staff’s changes which removed subtractions in the draft proposed rule amendments.
- Storage should not contribute to the numerator of the SSR compliance calculation.

### **III. COMMENT BASED ON NUANCED SUPPORT**

#### **A. Generation Types that are RPS Eligible are SSR Eligible**

The QF Trade Groups support Staff’s proposal that generation types eligible under Oregon’s RPS should also be eligible for SSR compliance. At the same time, we comment to reiterate the continuing disagreement with the Commission’s prior decision that SSR compliance does not require retirement of the associated renewable energy credits (“RECs”). Consistent with our prior positions, allowing utilities to claim SSR compliance for facilities whose environmental attributes may be sold or retired elsewhere creates a double-counting problem and undermines the integrity of both the SSR and REC programs. That being said, we recognize that this rulemaking has a narrow scope focused on implementation questions not already decided in the

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<sup>1</sup> Oregon Public Utility Commission, Public Meeting on June 24, 2025 (starting at 50:50).

existing rules. We do not ask to reopen this issue here, but we comment to preserve our ongoing disagreement with this issue.

#### **IV. COMMENTS IN OPPOSITION**

The QF Trade Groups are opposed to any subtraction from the denominator of the SSR compliance calculation, whether that be specified storage resources or demand response or flexible load or SSRs themselves. ORS 469A.210 established that at least ten percent of a utility's aggregate electrical capacity ("AEC") must come from small-scale renewable resources. The statute does not authorize deductions or adjustments to that aggregate figure to reflect other policy objectives, nor does it define different types of capacity, such as generation capacity or planning capacity. While we agree with Staff's removal of most of the denominator subtractions, we also believe that storage and demand response/flexible load programs should be included. Staff's proposal to create exclusions from the denominator departs from the plain language of the law and risks diluting the procurement obligation the legislature intended. In fact, Commissioner Perkins expressly cautioned against weakening the SSR requirement during the public meeting establishing this very docket.<sup>2</sup>

Subtractions from the denominator will create significant risks to the SSR requirement. While Staff's current proposal is limited to certain resources and programs, Staff does not include any limiting principle to prevent future rulemakings, or utility proposals in compliance filings or petitions for waiver of the rules, from introducing additional, and potentially more significant, carve-outs. Each subtraction reduces the SSR obligation and, over time, lays a foundation that could materially weaken the SSR requirement. The QF Trade Groups are

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<sup>2</sup> *Id.* (starting at 44:50).

concerned that opening the door to denominator adjustments will undermine compliance certainty and credibility.

Moreover, utilities already have ample policy incentives to procure storage, demand response, and flexible load outside of the SSR framework. Using denominator adjustments to purportedly encourage these resources is not consistent with the language in 469A.210 nor with the statute's primary function: "to require procurement."<sup>3</sup> If the Commission wishes to incentivize storage or load flexibility, it should not do so by reducing the SSR obligation through accounting adjustments.

This argument applies equally to the proposal to deduct the SSR resources themselves from the denominator. At the workshop, the concern was expressed that without deducting the existing and future SSRs from the denominator, the utility would never be able to achieve full compliance because each new MW of SSR it adds to the system also increases its compliance target by ten percent of that new SSR resource(s). However, this is only a problem if the utility's objective is to achieve the minimum compliance in every single compliance year. This problem can be mitigated by adopting Staff's proposal to use the utility's AEC as of the beginning of the compliance year to prevent an increasing compliance target during the compliance year, which we support. Once that point is adopted, the denominator is locked down for the compliance year, and the utility can easily achieve precisely ten percent SSR capacity in that year or, if the utility elects, more than ten percent to ensure compliance in future years too without further SSR acquisitions in those future years. Specifically, the utility can ensure it will achieve compliance in future years by simply acquiring the necessary buffer of SSR capacity in the first compliance

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<sup>3</sup> Staff's Straw Proposal at 2 (Aug. 5, 2025).

year to overtake the relatively minor incremental compliance obligation the new SSR resources themselves create. Or the utility could acquire diminishing quantities of SSRs in the following years to ensure compliance with the new AEC inclusive of SSRs at the end of each year.

In contrast, the alternative that has been initially proposed by Staff would substantially reduce the SSR requirement by removing all existing SSRs from the denominator even though the statute makes no suggestion that deduction should occur. The statute requires “at least 10 percent of the aggregate electrical capacity” be SSR resources, not “at least 10 percent of the aggregate non-SSR electrical capacity” or “at least 10 percent of the aggregate electrical capacity after deducting SSR capacity.” Similarly, a load-based compliance target, like the RPS, does not typically reduce the compliance obligation by deducting out the load that is served by 100 percent renewable resources. The reality is that the utility’s AEC is likely to move up and down from year to year due to the non-SSR acquisitions and retirements in any event, so this is going to be a moving target for that reason regardless of whether new SSRs are included in the denominator. For these reasons, the QF Trade Groups oppose the inclusion of the word “generation” in the proposed changes to OAR 860-091-0020(1)(a).

For these reasons, the QF Trade Groups respectfully recommend that Staff and the Commission decline to make any subtractions from the AEC and calculate the SSR requirement as a clear percentage of the full capacity base for which Oregon customers are paying.

## **V. OTHER COMMENTS**

While Staff’s draft proposed rule amendments did not address PGE’s comments, we feel obligated to address several issues in their comments. First, PGE claims that excluding net metered resources would disincent rooftop solar or virtual power plants. PGE’s own efforts to

create a virtual power plant (“VPP”) program, as seen in their 2024 Distribution System Plan (“DSP”), disprove that assertion. Their VPP and flexible load pilot programs were created despite the increase of the SSR requirement in 2021 and the Commission’s ruling in AR 622 that net metered resources were not eligible. Clearly, their exclusion did not disincite those resources for PGE.

In addition, whether or not net metered resources sometimes export power to the grid is irrelevant to this docket. Net metered resources are treated as load reduction and are not procured by the utility.

Lastly, while the QF Trade Groups do not believe that the SSR requirement must solely be met with PURPA projects, it was clearly not created to include behind-the-meter resources, as they are not and never have been used for RPS compliance. PGE’s attempt to diminish the significance of the legislative history supporting the exclusion of net metering facilities from the utilities’ SSR capacity is unpersuasive. The fact remains that one of the sponsors of HB 2021, Representative Helm, in a legislative floor speech just prior to the House’s vote on the final version of the bill stated, among other things, that the intent was that the SSR standard could be satisfied with any RPS-eligible technology but not with net metered projects in ORS 757.300.<sup>4</sup> PGE does not dispute Representative Helm’s statement, and PGE identifies no contrary statement in the legislative history expressing that net metering does count towards the utility’s qualifying SSR capacity under the current version of ORS 469A.210.

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<sup>4</sup> House Chamber Convened 06/25/2021 10:00 AM, Oregon State Legislature (October 4, 2021), available at <https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2021061180&startStreamAt=3928>.

PGE’s legal arguments are misplaced. PGE cites *Brown v. SAIF Corp.*, as holding that “one legislator ‘is an especially slim reed on which to rest’ a reading regarding the meaning of a statute.”<sup>5</sup> However, in *Brown*, the court explained that “one legislator provided not entirely consistent signals about the meaning of the terms at issue[,]” and other legislators, legislative staff, and witnesses had also provided a contrary understanding of the terms at issue.<sup>6</sup> It was in that context that a single legislator’s understanding was a “slim reed” upon which to rely.<sup>7</sup> Here, in contrast, PGE’s portrayal of small-scale renewables advocates’ comments made regarding HB 4036 in 2016 is unhelpful to PGE. Just because comments in 2016 may not have referenced behind-the-meter resources does not imply that the organizations, much less the legislators, would consider them eligible. Both in 2016 and now, behind-the-meter resources are designed to offset a single customer’s load and are not eligible for the RPS, and so commenters likely did not feel the need to discuss them at all.

## VI. CONCLUSION

The QF Trade Groups thank Staff for their thoughtful work in this expedited rulemaking and for considering stakeholder input on these important issues. We encourage Staff to further

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<sup>5</sup> PGE’s Comments, Docket No. AR 674, at 9-10 (Sept. 11, 2025) (quoting *Brown v. SAIF Corp.*, 361 Or 241, 271 (2017)).

<sup>6</sup> *Brown*, 361 Or at 268-73.

<sup>7</sup> *Brown*, 361 Or at 271. Despite PGE’s argument, the Oregon Supreme Court has relied on a floor speech as a valid and persuasive form of legislative history. See *Ostlund v. Hendricks*, 289 Or 543, 549, 615 P2d 327 (1980) (relying on “committee discussions and Senate floor speech”). The Second Circuit case PGE relies upon is one where there were contradictory floor speeches, and thus it was logical not to rely on a floor speech. See *Butts v. N.Y. Dep’t of Hous. Pres. & Dev.*, 990 F2d 1397, 1405 (2d Cir 1993) (“The Congressional Record is replete with floor speeches by Senators and Representatives stating either that the bill is intended to apply prospectively only or that it was meant to apply retroactively”).

refine the draft rules in order to preserve the integrity of the SSR requirement and to ensure draft rules do not water down the procurement intent of the statute.

Dated this 13th day of October 2025.

Respectfully submitted,

/s/ Angela Crowley-Koch  
Angela Crowley-Koch  
Executive Director  
Oregon Solar + Storage Industries Association  
PO Box 14927  
Portland, OR 97293  
P: 503.867.3378  
E: [angela@orssia.org](mailto:angela@orssia.org)

/s/ Gregory M. Adams  
Gregory M. Adams  
OSB No. 101779  
Richardson Adams, PLLC  
515 North 27th Street  
Boise, ID 83702  
P: 208-938-7900  
F: 208-938-7901  
E: [greg@richardsonadams.com](mailto:greg@richardsonadams.com)  
Of Attorneys for the Community Renewable  
Energy Association

/s/ Ellie Hardwick  
Ellie Hardwick  
Sanger Greene, PC  
4031 SE Hawthorne Blvd.  
Portland, Oregon 97214  
P: 336-337-0381  
F: 503-334-2235  
E: [ellie@sanger-law.com](mailto:ellie@sanger-law.com)  
Of Attorneys for the Renewable Energy Coalition