

**PUBLIC UTILITY COMMISSION OF OREGON  
AHD REPORT**

**PUBLIC MEETING DATE: December 14, 2021**

**REGULAR** \_\_\_ **CONSENT** \_\_\_ **RULEMAKING**  X  **EFFECTIVE DATE**  N/A

**DATE:** December 9, 2021

**TO:** Public Utility Commission

**FROM:** Sarah Rowe **SIGNED**

**THROUGH:** Nolan Moser and Diane Davis

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. AR 622) Small-Scale Renewable Energy Projects Rulemaking (Commissioner Work Session)

**AHD RECOMMENDATION:**

Adopt the proposed permanent new rules in the attached draft order.

**DISCUSSION:**

This rulemaking adopts rules relating to electric companies' compliance with the small-scale renewable energy project standard adopted as Section 14 of Senate Bill 1547 (2016) and codified at ORS 469A.210, as amended by Section 37 of House Bill 2021 (2021). It establishes a small-scale renewable energy project standard for electric companies that serve more than 25,000 customers in Oregon, which include Portland General Electric Company and PacifiCorp, dba Pacific Power.

In response to the Notice of Proposed Rulemaking filed with the Secretary of State on September 7, 2021, comments were received from the Renewable Energy Coalition, Oregon Solar + Storage Industries Association (OSSIA), the Community Renewable Energy Association (CREA), PacifiCorp, and PGE.

**PROPOSED COMMISSION MOTION:**

Adopt permanent Division 091 rule changes as set forth in Appendix A of the attached draft order.

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 622

In the Matter of

Small-Scale Renewable Energy Projects  
Rulemaking.

ORDER

DISPOSITION: NEW RULES ADOPTED

**I. SUMMARY**

In this order, we adopt rules related to electric companies’ compliance with the small-scale renewable energy project standard adopted as Section 14 of Senate Bill 1547 (2016) and codified at ORS 469A.210, as amended by Senate Bill 399 (2017) and Section 37 of House Bill 2021 (2021). It establishes a small-scale renewable energy project standard for electric companies that serve more than 25,000 customers in Oregon, which include Portland General Electric Company and PacifiCorp, dba Pacific Power. The law requires that, by the year 2030, these companies have 10 percent of their aggregate electric capacity come from small-scale renewable energy projects or biomass co-generation facilities.

Broadly speaking, our rules interpret the statute to specify how PacifiCorp and PGE must comply. PUC Staff’s opening report in our rulemaking process noted that a PUC rulemaking would clarify the precise scope of the standard and provide the utilities with time to plan for meeting the mandate. Below, we address which projects qualify for and how utilities are to calculate the 10 percent requirement. The rules we adopt are based on a plain reading of the statute, which does not define key statutory terms like “aggregate electrical capacity” and “small-scale renewable energy projects.”

During the rulemaking process, Staff, utilities, and other parties made a considerable effort to explore the implications of different interpretations of the statute. For example, the opening Staff report noted that, based on the combined 2016 portfolios of PGE and PacifiCorp and Staff’s proposed interpretation of the statute, the standard—which at that time required eight percent by 2025—would require approximately 593 MW of small-scale resources. We have not sought

updated information to determine the size or scope of the resources required to meet the amended requirement, as we interpret it, nor have we determined the interpretation of the statute based on such projections. We expect that the utility compliance filing process, detailed in the rules we adopt, will provide more information about the level of resources required to satisfy the statute and rules.

## II. PROCEDURAL BACKGROUND

### A. Process after SB 1547

In October 2018, Staff began holding informal workshops with stakeholders to develop the proposed rules. On December 28, 2018, we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact for this rulemaking with the Secretary of State, and we provided notice to all interested persons on the service lists established under OAR 860-001-0030(1)(b) and to legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the January 2019 *Oregon Bulletin*, establishing a hearing date of February 14, 2019, and a comment due date of February 21, 2019.

On two occasions—at a January 29, 2019, Commission workshop and at the February 14, 2019 rulemaking hearing—we received public comment and asked questions about the proposed rules with stakeholders including the Community Renewable Energy Association (CREA), jointly with the Renewable Energy Coalition (CREA-Coalition), Oregon Solar Energy Industries Association (OSEIA), Renewable NW, PGE, PacifiCorp, and Commission Staff. CREA-Coalition, Renewable NW, PGE, and PacifiCorp filed post-hearing written comments. We again discussed and deliberated the proposed rules at our Regular Public Meeting on February 26, 2019.

### B. Process after HB 2021

Rulemaking activities were paused during the 2020 and 2021 Legislative Sessions and began again after HB 2021 was passed. Following the 2021 Legislative Session, the rules proposed in 2018 were updated to reflect the Legislature's 2021 changes and to resolve issues raised in our 2019 deliberations. We note that, despite considerable discussion of the standard and related policy proposals in the 2021 Legislative Session, the only change the Legislature made to the statute was to increase the required percentage from eight percent to 10 percent, and to change the year from 2025 to 2030.

On September 7, 2021, we filed a new Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact for the 2021 proposed rules with the Secretary of State, and we provided notice to all interested persons on the service lists established under OAR 860-001-0030(1)(b)

and to legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the October 2021 *Oregon Bulletin*, establishing a hearing date of October 15, 2021. The posted comment date of October 22, 2021 was subsequently extended to November 5, 2021.

The Renewable Energy Coalition and Oregon Solar + Storage Industries Association (OSSIA), CREA, PacifiCorp, and PGE made appearances at the hearing and offered comments on the revised rules. CREA-Coalition-OSSIA filed two sets of joint supplemental comments. CREA-Coalition-OSSIA encouraged changes to limit the rules to facilities located in Oregon, to require utilities to own the renewable attributes of the facilities, to require utilities' renewable portfolio standard compliance plans to include small-scale projects, and to clarify that there will be penalties for noncompliance. PGE and PacifiCorp also filed written comments after the hearing, asserting that the Commission does not have authority to adopt rules or administer ORS 469A.210.

### **C. Final Public Meeting**

Most recently, at the December 14, 2021 Regular Public Meeting, we reviewed a draft version of this order and a draft version of the final rules. We adopted final rules as shown in Appendix A.

## **III. DISCUSSION OF LEGAL AUTHORITY**

### **A. PacifiCorp and PGE's Positions**

As a threshold matter, PGE and PacifiCorp assert the Commission lacks the authority to implement the small-scale renewable energy project standard rulemaking. PGE and PacifiCorp state that ORS 469A.210 contains no explicit direction to any agency to implement it. PGE and PacifiCorp contrast other sections of the Renewable Portfolio Standard (RPS) in Chapter 469A that specifically direct the Commission or the Oregon Department of Energy to take an action. PGE's view is that because the Legislature was explicit where authority was granted, to avoid conflicts and to ensure that authorities did not incidentally overlap, it did not implicitly provide authority to administer ORS 469A.210. PGE and PacifiCorp maintain that ORS 469A.210 is not a RPS and the Commission's RPS authority does not extend to something in the series that is not a RPS. PGE states the inclusion of ORS 469A.210 in the series with the RPS ensures only that the series' definitions apply, and there are no generally applicable penalty provisions or rulemaking authority.

PGE and PacifiCorp explain that the Legislature considered adding rulemaking authority to ORS 469A.210 multiple times, and expressly elected not to. PacifiCorp and PGE suggest that, rather than adopting rules, the Commission consider overseeing utilities' progress towards the goal in ORS 469A.210 with the Commission's authority under ORS 756.040 to supervise

utilities by order. PGE offers that the Commission could open an investigation and within that proceeding could request that PGE and PacifiCorp show their progress toward meeting the standard expressed in ORS 469A.210 and take testimony or receive other information that is the subject of the proposed rules.

## **B. CREA-Coalition-OSSIA's Position**

CREA-Coalition-OSSIA assert the Commission is the agency expressly charged with implementing, and ensuring compliance with, the renewable portfolio standards in Chapter 469A, including ORS 469A.210. CREA-Coalition-OSSIA point to several examples in the RPS that require the Commission to complete specific tasks such as authorizing rate recovery or ensuring the utilities costs of compliance do not exceed the statute's cost cap. CREA-Coalition-OSSIA finds that the Commission's RPS authority overlaps with issues in the proposed rulemaking here, such as establishing requirements for compliance reports.

## **C. Resolution**

We disagree with PGE and PacifiCorp that the revised rules exceed our statutory authority and find the rules are within our jurisdiction. ORS 469A.120 provides that "all prudently incurred costs associated with complying with ORS 469A.005 to 469A.210 are recoverable in the rates of an electric company," and that filings to recover costs of compliance are "subject to the commission's authority under ORS 757.215 to suspend a rate, or schedule of rates, for investigation." We consider that, without the rules, we would have to decide on an ad hoc basis how to interpret elements of the standard in ORS 469A.210 to determine whether the investments the utility has made are compliant with the statute and eligible for recovery under ORS 469A.120. It is within the Commission's authority to make these determinations regarding the correct interpretation of the ORS 469A.210 standard by rule rather than on an ad hoc basis.

Furthermore, ORS 757.262 expressly authorizes the Commission to adopt policies to encourage development of small-scale renewable resources. ORS 757.262 provides in pertinent part, "(1) The Public Utility Commission, by rule, may adopt policies designed to encourage the acquisition of cost-effective conservation resources and small-scale, renewable-fuel electric generating resources." ORS 757.262 supports adoption of rules that further the policies in ORS 469A.210 to require public utilities to acquire a certain amount of small-scale renewable and biomass resources.

Our rules do not contravene any legislative policy in ORS 469A.210.<sup>1</sup> The rule provision requiring a compliance report detailing how the utilities will comply with the standard is appropriate considering our obligation to determine whether the utilities' costs to comply with

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<sup>1</sup> ORS 183.400(4).

the standard are prudent. The rule provision requiring any project must be an Oregon RPS-approved generator follows our interpretation of eligible resources in ORS 469A.210, which is consistent with legislative history discussed below.

#### IV. DISCUSSION OF DRAFT RULES

Our goals with this rulemaking were three-fold: (1) to implement the Legislature's direction, (2) to interpret the statutory language in as direct a manner as possible, and (3) to establish a compliance framework that is administratively manageable. Below, we explain how we interpret ORS 469A.210 primarily by examining the text and context of the statute, with some deference to achieving a manageable compliance framework. We adhere as closely as possible to the plain language of the statute and standard industry definitions.

ORS 469A.210 provides in its entirety:

ORS 469A.210 Goal for community-based renewable energy projects.

(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 2030, at least 10 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.

##### A. Operative Requirements of the Statute

ORS 469A.210 begins with subsection (1) containing legislative findings that cite the importance of "community-based renewable energy projects" to the state's energy future.

The phrase “community-based renewable energy projects” is not used in the operative language of ORS 469A.210. The operative language of the statute, beginning in subsection (2), specifies that 10 percent of the relevant electric companies’ “aggregate electrical capacity” must come from one of two resource types: (a) “[s]mall-scale renewable energy projects with a generating capacity of 20 megawatts or less” and (b) “[f]acilities that generate electricity using biomass that also generate thermal energy for a secondary purpose.” We regard subsection (2), supplemented by the refinement to counting rules for biomass co-generation facilities in subsection (3), as the statutory requirements that we must implement.

Some participants in the rulemaking process recommended that we define “community-based renewable energy projects” and limit eligible resources to those that both satisfy the explicit requirements in subsection (2) of the statute *and* meet some definition of “community-based.” We decline to adopt this recommendation. We note that, despite adopting a definition of “community-based renewable energy” in Section 1 of HB 2021, the Legislature chose not to replace the operative phrase “small-scale renewable energy projects” in ORS 469A.210 with “community-based renewable energy projects.” We note that the Legislature used both terms in Section 18 of HB 2021, clearly recognizing a difference between them. We therefore focus our rules and the remainder of this order on interpreting and implementing the requirements for “small-scale renewable energy projects” explicitly stated in subsections (2) and (3), looking to the legislative findings in subsection (1) only where our interpretation of the operative language requires it.

## **B. 10 Percent of “Aggregate Electrical Capacity”**

### ***1. Summary***

ORS 469A.210 establishes a capacity standard. Generally speaking, capacity refers to the *ability* of an electric generating resource to produce energy and is not a measurement of the *amount* of energy the resource actually produces during a certain period of time. As a capacity standard, ORS 469A.210 is distinct from the state’s RPS, which generally measures how much renewable energy is produced in a year and, correspondingly, how many renewable energy credits (RECs) representing the environmental attributes of one megawatt-hour (MWh) of generation are generated for compliance.

ORS 469A.210 does not specify how the required 10 percent of “aggregate electrical capacity” should be calculated. It neither defines “aggregate electrical capacity” nor details how the capacity of small-scale renewable energy projects is to be counted toward the required percentage. In order to clarify how electric companies are to prudently comply with the statute, we must establish definitions and counting rules for both of the elements necessary to calculate

whether the required percentage is met—that is, the numerator (the capacity of eligible small-scale projects) and the denominator (the company’s aggregate electrical capacity).

## *2. Staff and Stakeholders’ Positions*

To calculate the numerator, Staff proposes to sum the total nameplate capacity of eligible projects. To calculate the denominator, Staff proposes to sum the total nameplate capacity of an electric company’s generating resources used to serve Oregon load. Staff also recommends that market purchases used to serve load should be included in the denominator and suggests that the electric companies include the maximum delivered amount of contracts. Staff recognizes that there are other potentially reasonable ways to implement both the numerator and denominator but relies on the most direct and natural reading of the statute to reach its recommendation, an approach that also yields symmetrical treatment between the numerator and denominator.

Most stakeholders agree with Staff that a supply-based denominator that is the sum of all generation resources serving Oregon load is the most appropriate estimate of total system capacity. Renewable NW, CREA-Coalition and PGE state that the plain language of the statute speaks to capacity, that the denominator should be a measure of supply rather than demand, and that there is symmetry with using nameplate capacity in the numerator and denominator.

Some stakeholders advocate that we interpret the statute according to a different way in which the word “capacity” is sometimes used in electricity planning. Generally speaking, a project’s “capacity value” or “capacity contribution” is a measure of how much energy it can be expected to produce during times of peak system load or other times of high system energy needs. CREA-Coalition assert that only the expected capacity contribution from small-scale projects should be counted toward meeting the eight percent requirement.

Staff does not favor using a project’s capacity contribution for the numerator. Although that measure is used when planning for projected capacity needs, Staff explains that measuring an individual project’s capacity contribution requires complex calculations that change over time. As the mix of generating resources changes, the timing of system energy needs will also change, creating a moving target for compliance. Staff recommends using nameplate capacity rather than a resource’s expected contribution to capacity needs because it is simple, consistent, and widely understood.

At certain points during the rulemaking process, participants advocated that the numerator be calculated according to nameplate capacity, but that the denominator be equal to the utilities’ peak load (or the peak load plus planning reserve margin). PacifiCorp states that peak load represents a measure of the capacity that the utility’s portfolio of resources must collectively be able to provide. PacifiCorp finds problematic the draft rules definition of aggregate electrical



capacity as the total nameplate capacity of resources allocated to Oregon retail customers. PacifiCorp states that meeting the 10 percent goal will be more challenging as utilities procure more resources with high nameplate capacity but low capacity factors. PacifiCorp is also concerned that the definition will penalize utilities for holding significant reserves that contribute to total nameplate capacity but are dispatched less frequently.

Staff declines to recommend peak load for the “aggregate electrical capacity” denominator because it does not reflect the statutory term “capacity,” which is a term that refers to resources, not loads. According to Staff, measuring the nameplate capacity of an aggregate portfolio of resources best matches the statutory language and achieves symmetry between Staff’s recommendations for the numerator and denominator.

An additional issue for PacifiCorp, which has a resource portfolio designed to serve customers in Oregon and five other states, is how to recognize Oregon’s share of aggregate electrical capacity. Staff recommends establishing the denominator as the total nameplate capacity of PacifiCorp’s system generating resources multiplied by Oregon’s generation allocation factor, which is how PacifiCorp’s multi-state cost allocation system assigns responsibility for generating resources to Oregon customers.<sup>2</sup> With this measure, the denominator represents the portion of PacifiCorp’s aggregate generating capacity that Oregon customers pay for in their rates.

### ***3. Resolution***

We adopt the use of nameplate capacity in both the numerator and denominator because we find that nameplate capacity is most consistent with the statutory language. We determine that this represents a straightforward interpretation of ORS 469A.210’s requirement for 10 percent of Oregon electric companies’ electric capacity to come from small-scale renewable energy projects, and find that using nameplate capacity of resources serving Oregon customers for both numerator and denominator best accords with the plain language of the statute.

We also consider it important to interpret the units of the numerator and the denominator symmetrically in order to achieve a fair and consistent percentage calculation. We consider this the most natural reading of a statute that does not specify distinct approaches to the numerator and denominator required to calculate the percentage, but rather calls for 10 percent of a single thing: the electric company’s “aggregate electrical capacity.” Although the term “capacity” can be used to refer to both maximum generating capacity (nameplate capacity) or as part of a technical term used in the planning process to predict the level of generation at times of system need (capacity contribution), it is plainly a term that refers to resources, not load.

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<sup>2</sup>Oregon’s System Generation factor from PacifiCorp’s 2021 Transition Adjustment Mechanism in Docket No. UE 375 is 26.456 percent.

There are administrative advantages to using nameplate capacity for both the numerator and denominator. One benefit is the simplicity of adding together eligible projects' nameplate capacities to form the numerator, and the companies' long-term portfolio resources' nameplate capacities to form the denominator. Both must be compiled from various sources, but this can generally be done by referencing the utilities' integrated resource plans (IRPs).

One complication that must be resolved for the denominator is determining which shorter-term contracts and market transactions—many of which are not readily tracked—are to be considered part of the electric company's aggregate electrical capacity. We find it appropriate to differentiate between short-term market purchases, which should be excluded, and longer-term market purchases through power purchase agreements, which should be included. IRPs generally track power purchase agreements with terms from three to 25 years. We also look to our competitive bidding rules at OAR 860-089-0100 that require a competitive process for certain resource acquisitions over five years. We find that power purchase agreements with terms of five years or more should be included in the denominator.<sup>3</sup>

For PacifiCorp's system, we agree with Staff's recommendation to look to how the multi-state cost allocation system assigns cost responsibility for generating resources to Oregon customers. Both the numerator and the denominator will represent the portion of PacifiCorp's aggregate generating capacity that Oregon customers pay for in their rates. Currently almost all generating resource capacity is allocated according to the most recent generation allocation factor (approximately 26 percent for Oregon). A very small amount of resources are adjusted to reflect full-situs allocation to Oregon, and the multi-state protocol provides that the situs allocation will increase for future qualifying facilities. PacifiCorp's compliance report can count the portion of projects whose costs are paid for by the utility's Oregon retail customers at the time of the compliance report. PacifiCorp's compliance report may also need to recognize when other states have compliance requirements for renewable capacity and explain how its avoiding making double claims regarding any renewable capacity being used for compliance with the requirements of ORS 469A.210.

## **C. Small-Scale Renewable Project Eligibility**

### ***1. Summary***

Under ORS 469A.210(2)(a), small-scale projects are eligible to count toward the standard if they are 20 MW or less and “generate electricity utilizing a type of energy described in ORS 469A.025.” For projects eligible under subsection (2)(a), the statute contains no other

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<sup>3</sup> A further complication is seasonal contracts, for which we establish no rules in advance. We require electric companies to make an effort to average seasonal contracts, and to explain how they did so. For example, a summer-only contract and a winter-only contract may be averaged to avoid overestimating aggregate capacity.

qualifications. Parties ask us to read into the statute a project location requirement, and also ask us to clarify whether a utility must hold or retire RECs in order to prove that a project uses “a type of energy described in ORS 469A.025,” which is part of Oregon’s RPS.

## *2. Staff and Stakeholders’ Positions*

### *a. Project Location*

CREA-Coalition-OSSIA and Staff recommend that eligible community-based renewable energy projects be limited to projects located within the State of Oregon because of the statute’s reference to community-based renewable energy projects as “an essential element of this state’s energy future.”<sup>4</sup> CREA-Coalition-OSSIA assert that an Oregon location requirement is consistent with legislative intent to promote the benefits of small-scale and community-based facilities in Oregon.<sup>5</sup>

PGE and PacifiCorp argue against this interpretation, asserting that the statute does not include locational restrictions and none should be inserted. PacifiCorp asserts that an in-state mandate would violate the dormant commerce clause by discriminating against out-of-state commerce. In interpreting the statute, PacifiCorp maintains there is no ambiguity in ORS 469A.210 to resolve by referring to legislative history, as the statute’s text has only one interpretation. If legislative history is referenced, PacifiCorp provides statements from SB 1547 development that describe a preference for Oregon projects but a recognition that an in-state mandate may have legal issues.

### *b. Requirement to hold RECs*

Stakeholders also considered whether the electric companies should demonstrate resources are “renewable” by showing ownership of the renewable attributes that are represented by an Oregon RPS-eligible REC generated by the project. This question generated substantial stakeholder discussion.

Staff recommends that eligibility be determined by whether a utility has contracted to receive electric capacity from a generator that qualifies as a renewable generator under the Oregon RPS. By keeping the claim associated with compliance narrowly focused on capacity, Staff concludes that we will mitigate, to the greatest extent possible, any controversies about renewable energy claims associated with the renewable energy and RECs generated and sold from projects counted toward compliance.

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<sup>4</sup> ORS 469A.210(1).

<sup>5</sup> Joint Comments of CREA-Coalition-OSSIA at 8-9 (Oct 13, 2021) (Representative Helm stated he interpreted the “language to mean that the renewable energy generation will be built where Oregon workers would get the jobs associated with the construction and operation of these facilities.”).

PGE, PacifiCorp, and Renewable NW agree with Staff's proposed rules on renewable attributes. Renewable NW admits that the statute refers to energy in its resource eligibility provision while at the same time establishing a capacity standard, leaving us to choose among several different potentially valid interpretations. Renewable NW compares interpreting the statute to "being asked to pound square pegs into round holes." PacifiCorp, similarly, recognizes the difficulty of reconciling the compliance and resource eligibility provisions. PGE, PacifiCorp, and Renewable NW conclude that holding RECs is not necessary for compliance, because the 10 percent requirement fundamentally refers to capacity, not to energy generated. PGE adds that requiring ownership of the renewable energy attributes associated with a project being used for compliance with the small-scale renewable capacity standard would result in a number of complicated REC-ownership and utilization issues and that the statute does not require REC ownership. PGE recommends not including any language in the rules regarding renewable attribute ownership, RECs, or the RPS.

CREA-Coalition-OSSIA state the rules should require the electric company to own the renewable attributes, consistent with the rest of ORS 469A—meaning, with the state's RPS. CREA-Coalition-OSSIA recommended the rules track PURPA qualifying facilities rules and the utilities could count small-scale projects during the renewable deficiency period.

The revised rules require that an eligible project be an Oregon RPS-approved generator. PacifiCorp suggests this requirement be removed because the RPS certification requirements are only necessary to certify that a generator is eligible for RECs, and RECs are not required for this standard. PacifiCorp states that small resources with nameplate capacities as low as 0.5 MW do not currently seek Oregon RPS certification because the administrative and financial burden outweighs the value of the minimal REC generation. PGE opposes the Oregon RPS-approved generator language because PGE believes the statute clearly defines the metes and bounds for project eligibility with a two-prong test: up to 20 MW in capacity and utilizing a type of energy contained in ORS 469A.025 or certain biomass projects.

Parties also discussed whether net-metering projects should count toward the standard. PGE and PacifiCorp assert that net metering projects should count toward the 10 percent requirement because they meet the only two standards stated in the statute: they are under 20 MW and they generate electricity from a renewable source. CREA-Coalition oppose net-metering projects because net metering facilities are not the type of utility-scale generation selling its entire net output to the utility that is envisioned in the statute; instead net metered projects are individually owned and generally serve the electrical needs of a single customer by offsetting that customer's usage over the year.

### 3. *Resolution*

#### a. *Project location*

We decline to adopt a location requirement for project eligibility. The statute does not contain a limitation on a project's location, requiring only that projects be less than 20 MW, generate electricity from a source listed in ORS 469A.025, and be part of the utility's "aggregate electrical capacity." Although we recognize that the legislative findings refer to "this state's energy future," the legislature did not specify an in-state location in the statute's operative provisions. The electricity grid is regional, and both electric companies subject to the standard provide service to Oregon customers from resources located outside the state of Oregon. Given that, our decision not to add a geographical limitation also promotes consistency between the numerator and denominator in calculating the 10 percent.

#### b. *Requirement to hold RECs*

The primary requirement for determining the eligibility of renewable energy projects to be used by a utility for compliance is that the project must be a generator whose energy could be used to comply with Oregon's RPS. We do not require a utility to procure or retain ownership of any renewable energy attributes associated with the electricity generated from an eligible renewable energy project in order for it to be used for compliance with ORS 469A.210. Instead, we require the small-scale generators be certified as RPS-eligible by the Oregon Department of Energy (ODOE).

The statute requires small-scale projects use a type of energy contained in ORS 469A.025, which lists those that are RPS-eligible. The RPS-eligible sources include: electricity generated from wind, solar photovoltaic, solar thermal, wave, tidal, ocean thermal, geothermal, certain types of biomass and biogas, municipal solid waste, and hydrogen power stations using anhydrous ammonia. Legislative history reinforces the plain language of the statute, as the Legislature adopted SB 399A with the intent to limit the generation eligible for compliance with the ORS 469A.210 standard to generation from resources that that are RPS-compliant.<sup>6</sup> To have a clear and straightforward verification process for project eligibility, projects should be on ODOE's publicly available list of RPS-approved facilities.

We understand that some projects that are part of a utility's "aggregate electrical capacity" do not transfer their RECs to the utility, and that participants have raised concerns about the possible implications for those RECs when the underlying resource capacity is used to comply

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<sup>6</sup> House Committee on Energy and Environment, May 31, 2017, VR 1:10-2:09. (Amanda Dalton for CREA/REC/AOC: "The bill does mirror a bill you passed out a few weeks ago, HB 2123 and passed off the floor, except for one minor but significant change to our folks, which is on line 16 and ensures that these projects used to satisfy the 8 percent requirement also satisfy the elements in the definition of RPS eligible projects.")

with this capacity standard. We understand generally that using a resource for compliance with a capacity standard may have implications for the RECs generated by the project, including raising questions about whether they can be used in voluntary REC programs that require Green-e certified RECs or for compliance with another state's RPS or to satisfy obligations in a REC purchasing contract with another off-taker.

We are not in a position, however, to judge those potential implications nor are we prepared to rely on those potential implications in interpreting a statute that the Legislature very clearly chose to make a capacity-based standard. RECs signify the attributes of renewable energy delivery, and though they are required for Oregon's energy-based RPS standard, we find no support in ORS 469A.210 for requiring them to be held or retired for compliance with a capacity-based standard.

We note that there will be avenues for addressing any implications of our decision. An electric company has discretion whether to include or exclude certain resources in its compliance inventory for the ORS 469A.210 standard. Moreover, our requirement that a project be certified by ODOE as eligible for the Oregon RPS and included on ODOE's publicly available RPS facilities list gives a project some control over whether it is eligible to be counted towards this standard as a project that does not want to be counted can ask ODOE to remove it from the list.

*c. Eligibility of net metered projects*

Consistent with our determination that the numerator and denominator be calculated based on the utility's supply portfolio, we conclude that net-metered projects are not reasonably considered part of the utility's "aggregate electrical capacity." Net-metered projects exist exclusively on the customer side of the meter and, by definition, their generation nets against the customer's energy usage. Both utilities traditionally have viewed net-metered projects in their load-resource planning as decrements to load. As such, they are not considered part of the utility's resource portfolio. Rather, net-metered resources are generally viewed as customer-owned resources, reducing the utility's capacity needs, rather than a utility's resource for meeting load.

We recognize that utilities are evolving their approaches and orientation toward customer-sited distributed generation. In the future, such resources may be considered a more active part of the utility's capacity portfolio, and we are willing to revisit this determination upon a demonstration that this paradigm has changed in ways that make customer-owned resources part of a utility's supply portfolio. One potentially relevant change would be a showing that the utilities are more actively accounting for and tracking larger commercial net metered projects; another could be utility planning and procurement processes that explicitly plan to increase supply from and actively solicit net metered projects.

**D. Continuous Compliance after 2030*****1. Staff and Stakeholders' Positions***

ORS 469A.210 requires that “by 2030” electric companies comply with the 10 percent standard. Staff interprets the standard to be ongoing, not just a one-time requirement in 2030.

CREA-Coalition-OSSIA and Renewable NW agree with the proposed rules. These stakeholders state that ongoing compliance will promote development of renewable energy in Oregon, which aligns with the legislative intent. Renewable NW believes the legislature would have clearly stated its intent if this was a one-time requirement. CREA-Coalition state the intent is that projects become *and remain* part of the state’s energy future. CREA-Coalition-OSSIA explain that Representative Helm, a sponsor of HB 2021, stated it “will help our Oregon communities” and it is “intended as an ongoing requirement, with no backsliding below the 10% target allowed by utilities in years after 2030.”<sup>7</sup>

PacifiCorp and PGE disagree, stating that nothing in the statute requires compliance beyond 2030 and the use of “by the year 2030” creates a one-time compliance obligation. PacifiCorp and PGE contrast this language with other RPS provisions and greenhouse gas emissions standards that expressly create an ongoing obligation by using the phrase by 2030, “and for every subsequent year.” PacifiCorp and PGE conclude that the small-scale renewable standard should not be interpreted to impose an ongoing requirement when other sections of the RPS use explicit language.

CREA-Coalition-OSSIA raise two additional concerns. First, CREA-Coalition-OSSIA state the rules should be revised to require that the utilities address plans for compliance in their RPS implementation plans. Second, CREA-Coalition-OSSIA recommend the rules should clarify that penalties will apply for non-compliance with the small-scale renewable standard. CREA-Coalition-OSSIA explain that the RPS at ORS 469A.200 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 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.”

***2. Resolution***

Although the statute gives us little direction, we interpret the legislature’s use of the word “by” the year 2030, not “in” 2030, to require ongoing compliance with this standard. The word “in”

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<sup>7</sup> Joint Comments of CREA-Coalition-OSSIA at 7 (Oct 13, 2021).

points to a specific year, whereas the word “by” implies a continuing condition reached as of a particular date.

We adopt rule language that requires compliance reports annually beginning in 2029 and continuing annually thereafter. Because we modified the compliance reports so they are forward-looking, we remove the proposed rules’ requirement for an implementation plan. We decline to add penalty language to the rules because the penalty authority is clearly stated in the statute and does not need further explanation in the rules.

#### **IV. NEXT STEPS**

This order concludes this rulemaking proceeding. Under our rules, the electric companies will file draft compliance reports that are forward-looking by July of the year before the compliance year, documenting an inventory of small-scale renewable projects for the upcoming year. The Commission will review the inventory prior to December 1 and the electric company will file its final compliance inventory no later than December 31.

At this time, we do not open a separate compliance docket. In 2029, the electric companies may begin working with Staff to file their first compliance reports by July 1, 2029, and compliance dockets will be opened at that time.

#### **V. ORDER**

IT IS ORDERED that:

1. OAR 860-091-0000 through 860-091-0040 are adopted as set forth in Appendix A to this order.



2. The rules become effective upon filing with the Secretary of State.

Made, entered, and effective \_\_\_\_\_.

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**Megan W. Decker**  
Chair

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**Mark R. Thompson**  
Commissioner

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**Letha Tawney**  
Commissioner

A person may petition the Public Utility Commission of Oregon for the amendment or repeal of a rule under ORS 183.390. A person may petition the Oregon Court of Appeals to determine the validity of a rule under ORS 183.400.

**Small-Scale Renewable Energy Project Standard Rules  
Chapter 860, Division 091**

**860-091-0000****Applicability of Rules**

Upon request or its own motion, the Commission may waive any of the division 091 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

Stat. Auth.: ORS 756.060, 469A.200, 469A.210

Stats. Implemented: ORS 469A.210

Hist.: NEW

**860-091-0010****Definitions**

For purposes of OAR 860-091-0000 through 860-091-0040:

(1) “Electric company” has the meaning in ORS 756.005.

(2) “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, 469A.200, 469A.210

Stats. Implemented: ORS 469A.210

Hist.: NEW

**860-091-0020****Aggregate Electrical Capacity**

(1) For purposes of compliance with the standard in ORS 469A.210(2), each electric company’s aggregate electrical capacity is the total nameplate capacity of the electric company’s generation resources to serve Oregon load. These resources include:

(a) All owned resources; and

(b) The annual average of all resources under a power purchase agreement with a term of at least five years.

(2) For electric companies making retail sales in multiple jurisdictions, the nameplate capacity of generation resources to serve Oregon load is the total nameplate capacity of the electric company's system generation allocated to Oregon retail customers.

Stat. Auth.: ORS 756.060, 469A.200, 469.210

Stats. Implemented: ORS 469A.210

Hist.: NEW

### **860-091-0030**

#### **Eligible Renewable Energy Projects**

(1) Projects used to comply with the standard in ORS 469A.210(2) must be an Oregon Renewable Portfolio Standard-approved generator; and

(2) The eligible portion of a project's capacity used to comply with the standard in ORS 469A.210(2) is the percentage of annual project costs paid for by Oregon retail customers.

Stat. Auth.: ORS 756.060, 469A.200, 469A.210

Stats. Implemented: ORS 469A.210

Hist.: NEW

### **860-091-0040**

#### **Compliance Reports**

(1) No later than July 1, 2029, and no later than July 1 for each year thereafter, the electric company must file a report with the Commission demonstrating compliance or explaining in detail any failure to comply, with the standard in ORS 469A.210(2).

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

- (a) The name of the facility;
- (b) The type of renewable resource;
- (c) In-service date of the facility;
- (d) The nameplate capacity rating;

(e) For multi-jurisdictional utilities, the percentage of each eligible small-scale facility's costs paid for by the electric company's Oregon retail customers; and

(f) Contracted resources should also include the delivery period and output of contracts.

(3) The report required in section (1) of this rule must include the following information regarding the electric company's aggregate electrical capacity that serves Oregon load during the reporting year:

- (a) The names of the facilities;
- (b) The nameplate capacity of the electric company's generating resources;

(c) The percentage of electric company generating resources allocated to meet Oregon load;

(d) The average total contracted capacity of all power purchase agreements over five years with delivery during the reporting year.

Stat. Auth.: ORS 756.060, 469A.200, 469A.210

Stats. Implemented: ORS 469A.210

Hist.: NEW