

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**AR 518 – Phase III**

In the Matter of a Rulemaking to  
Implement SB 838 Relating to  
Renewable Portfolio Standard

**COMMENTS OF PORTLAND  
GENERAL ELECTRIC COMPANY**

Portland General Electric Company ("PGE") submits these comments regarding Staff's proposed rules OAR 860-083-0100, 860-083-0200, 860-083-0300, 860-083-0350, 860-083-0400, 860-083-0500, and proposed definitions in OAR 860-083-0010.

PGE appreciates the hard work of Staff and other participants on these proposed rules. We recognize the substantial effort Staff and other participants have expended developing these rules through an extensive informal process. We are thankful for Staff's willingness to engage in this informal process which has greatly improved the proposed rules. We support the rules with the following proposed changes.

**I. POWER SOURCE DISCLOSURE IS NOT "USE" OF A REC**

The proposed definition of "to use a renewable energy certificate" is inconsistent with the law. OAR 860-083-0010 (41). The proposed definition includes the use of a renewable energy certificate ("REC") "to meet or comply with a legal requirement in Oregon or in any other state, including, but not limited to, power source disclosure reporting under OAR 860-038-0300(8)." When combined with the proposed rule from Phase II of this proceeding, this would mean that if renewable generation is reported by a utility in a power source disclosure, then the associated RECs have been "used" and are not available for banking and for use in meeting the RPS. As we observed in our comments in Phase II of this proceeding, this is directly contrary to ORS 469A.140. which states that

(1) renewable energy certificates may be traded,

sold or otherwise transferred.

(2) renewable energy certificates that are not used by an electric utility or electricity service supplier to comply with a renewable portfolio standard in a calendar year may be banked and carried forward indefinitely for the purpose of complying with a renewable portfolio standard in a subsequent year.

Under this statute, a power source disclosure is not a use of a REC. The statute specifically provides that a REC "not used ... to comply with a renewable portfolio standard in a calendar year may be banked." The Commission may not, by rule, create a new "use" of a REC beyond that provided by law.<sup>1</sup>

## **II. APPLICABILITY OF ODOE RULES**

The participants in AR 518 have all assumed that the Oregon Department of Energy ("ODOE") regulations establishing the renewable energy certificate system for the RPS are applicable and will govern in any proceeding or filing at the Commission implementing the RPS. *See* OAR 330-160-005 through OAR 330-160-0030. In particular, participants have assumed the application of the ODOE regulations regarding the vintaging of RECs beginning on January 1, 2007. OAR 330-160-0030. For clarity sake, the final order in this docket or the final rules should confirm that the ODOE regulations will apply to any filing at the Commission pursuant to the proposed AR 518 rules.

## **III. INCREMENTAL COST OF COMPLIANCE**

The proposed rules contemplate the possibility that the incremental cost of compliance for long term qualifying electricity may be less than zero. While we do not propose a specific change, we question whether the incremental cost of compliance should be less than zero. On a common sense level, the RPS requires electric companies to retire RECs for compliance. At a minimum this imposes some opportunity cost. Without the need to comply with the RPS, the electric company could sell the RECs.

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<sup>1</sup> *See* PGE comments in Phase II of AR 518.

Moreover, we doubt the current rules adequately capture the resource planning decisions that would be made in the scenarios in which the incremental cost of compliance would be negative. The proposed rules calculate the incremental cost of qualifying electricity from long-term contracts or owned-facilities based on a comparison between (i) the cost of qualifying electricity and (ii) the cost of a corresponding proxy plant. Unless the Commission determines otherwise, the proxy plant is a gas-fired combined cycle combustion turbine ("CCCT"). In circumstances when a CCCT yields a negative incremental cost, we suggest that a CCCT is simply the wrong comparator against which the cost of qualifying electricity should be measured. If it is cheaper to generate electricity from a renewable resource than a CCCT or a market purchase, then utilities will not build CCCTs or make market purchases but rather generate electricity from renewable resources. In that case, the incremental cost of compliance is zero (because the cost of qualifying electricity is being compared against itself, i.e., the cost of renewable electricity) or more precisely the opportunity cost of the foregone REC sale. In any event, the incremental cost should not be less than zero.

#### **IV. SPECIFIC PROPOSED CHANGES**

Sections 4 and 5 of the implementation plan rule (OAR 860-083-400) require, under certain circumstances, the electric company to demonstrate "how the implementation plan is consistent with the integrated resource planning guidelines established by the Commission in Order Nos. 07-002, 07-047 and 08-339 and other planning guidelines set forth by the Commission." We believe this requirement is overly broad and imprecise. Many of the planning guidelines that apply to integrated resource plans do not on their face apply to implementation plans. For example, IRP guidelines concerning demand response (IRP Guideline 7), distributed generation (IRP Guideline 12), transmission (IRP Guideline 5), and conservation (IRP Guideline 6), to name just a few, have no relevance to

implementation plans. Moreover, the requirement to conform to "other planning guidelines" is unnecessarily vague and may cause confusion or foster disagreement in future filings.

Accordingly, PGE proposes that the rule identify the precise guideline that will be applied to implementation plans in the circumstances described by the proposed rules. Based on Staff's initial Phase III comments and discussions during the informal working group sessions, we believe that the intent is for the electric companies to explain how the implementation plan "would appropriately balance cost and risk as required by IRP Guideline 1.C. of OPUC Order Number 07-047." Staff's Initial Comments at 11. We therefore propose the following changes to Sections 4 and 5 of the implementation plan rule:

. . . the company must provide sufficient documentation to demonstrate how the implementation plan appropriately balances cost and risk as required by the IRP guideline in 1.C. of OPUC Order No. 07-047 as amended from time to time. ~~is consistent with the integrated resource planning guidelines established by the Commission in Order Nos. 07-002, 07-047, and 08-339 and other planning guidelines set forth by the Commission.~~

Finally, we propose the following clarifying change to Section 9(e) of the incremental cost rule (OAR 860-083-0100):

In its compliance reports, an electric company must use the amounts of actual qualifying electricity and the actual fuel prices for the period since ~~from the~~ most recently filed implementation plan unless Section (10) or (11) of this rule applies.

This would clarify that the actual amounts of qualifying electricity and actual fuel prices will be used in the compliance report for the period since the most recently filed implementation plan. We believe this is the intent of the proposed rule.

**V. CONCLUSION**

PGE appreciates the opportunity to provide these comments and respectfully requests that the proposed rules be adopted with the changes suggested above.

DATED this 14<sup>th</sup> day of May, 2009.

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## CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY** by e-mail and/or mailing a copy thereof, to each party that has not waived paper service, in a sealed, first-class postage prepaid envelope, addressed to each party listed below and depositing in the US mail at Portland, Oregon.

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