

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form.

Public Utility Commission	860
Agency and Division	Administrative Rules Chapter Number

Diane Davis	550 Capitol Street NE – Suite 215, Salem, Oregon 97301	(503) 378-4372
Rules Coordinator	Address	Telephone

**RULE CAPTION**

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

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

January 12, 2009	9:30 a.m.	Public Utility Commission, Main Hearing Room 550 Capitol St NE, Salem, OR	Patrick Power
Hearing Date	Time	Location	Hearings Officer

Hearing Date	Time	Location	Hearings Officer
<i>Auxiliary aids for persons with disabilities are available upon advance request.</i>			

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 860-083-0005 and 860-083-0050

**AMEND:** 860-038-0220 and 860-038-0300

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 756.040, ORS 757.659, ORS 469A.065, ORS 469A.150, ORS 469A.170

Other Auth.:

Stats. Implemented: ORS 757.600 – 767.667, ORS 469A.005, 469A.050-469A.055, 469A.065 – 469A.070, 469A.130-469A.170

**RULE SUMMARY**

The proposed new rules (OAR 860-083-0005 and 860-083-0050) are required to establish renewable energy certificates (RECs) that electric companies and electricity service suppliers (ESSs) may use to comply with a Renewable Portfolio Standard (RPS) under the Oregon Renewable Energy Act (Act). See ORS 469A.005 to 469A.210. The Act allows RECs to be carried forward or “banked” to meet RPS requirements in a future compliance year other than in the calendar year it was generated by the utility or ESS. See ORS 469A.005(1); ORS 469A.070.

Under the proposed rules, a utility or ESS may use a REC to comply with both the RPS and power source disclosures required by OAR 860-038-0300, only if both uses occur in the same calendar compliance year. In other words, a REC banked for future RPS compliance can be included in power source disclosures only for the year the REC is used for RPS compliance.

The proposed rule amendments (OAR 860-038-0220 and 860-038-0300) are required to align reporting on environmental claims under ORS 757.659, and portfolio options under ORS 757.603(2), with timelines and reporting required under the Act. *See* ORS 469A.070(2), ORS 469A.130 and ORS 469A.170.

The Commission encourages participants to file written comments before the hearing date, allowing time for other participants to consider and respond to the comments before the deadline. For information about how to file your comments, please contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372. Filed comments will be available online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=14193>.

To request a dial-in number to monitor the hearing by telephone (listen only), contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 before close of business January 8, 2009. If you wish to offer comment at the hearing, please plan to attend in person.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

January 12, 2009, 5:00 p.m.

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Diane Davis

11/12/2008

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Signature

Printed name

Date

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Public Utility Commission

860

Agency and Division

Administrative Rules Chapter Number

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

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

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

**Statutory Authority:** ORS 756.040, ORS 757.659, ORS 469A.065, ORS 469A.150, ORS 469A.170

Other Authority:

**Stats. Implemented:** ORS 757.600 – 767.667, ORS 469A.005, 469A.050-469A.055, 469A.065 – 469A.070, 469A.130-469A.170

Need for the Rule(s):

The Oregon Renewable Energy Act (Act) (codified at ORS 469A.005 to 469A.210) requires electric utilities and electricity service suppliers (ESSs) to comply with a Renewable Portfolio Standard (RPS). Large utilities must comply with the standard in ORS 469A.052, and small utilities must comply with the standard in ORS 469A.055. ORS 469A.065 specifies the standard for ESSs. The RPS generally requires an electric utility or ESS to sell to its retail electricity consumers certain percentages of “qualifying electricity” in a calendar year, with the percentage increasing over time. The primary way an electric utility or ESS may meet RPS requirements is through the use of “renewable energy certificates” (RECs).

The Act allows RECs to be carried forward or “banked” to meet RPS requirements in a future compliance year other than in the calendar year it is generated. *See* ORS 469A.005(1); ORS 469A.070. Under ORS 469A.140(3), a REC may not be used to comply with the RPS if it has been used, traded, sold or otherwise transferred.

Consistent with ORS 757.659(3), OAR 860-038-0300 imposes disclosure requirements on electric companies and ESSs relating to “price, power source, and environmental impact information necessary for consumers to exercise informed choice.”

The proposed *new* rules (OAR 860-083-0005 and 860-083-0050) are required to establish RECs that electric companies and ESSs may use to meet the RPS. Under the proposed rules, a utility or ESS may use a REC to comply with both the RPS and power source disclosures required by OAR 860-038-0300, only if both uses occur in the same calendar compliance year. In other words, a REC banked for future RPS compliance may be included in power source disclosures only for the year the REC is used for RPS compliance.

The proposed rule *amendments* (OAR 860-038-0220 and 860-038-0300) are required to align timelines and reporting on environmental claims under ORS 757.659, and portfolio options under ORS 757.603(2), with timelines and reporting required under the Act. *See* ORS 469A.070(2), ORS 469A.130 and ORS 469A.170.

Documents Relied Upon, and where they are available:

Oregon Revised Statutes available online at <http://www.leg.state.or.us/ors/>

Oregon Administrative Rules available online at  
[http://arcweb.sos.state.or.us/rules/OARS\\_800/OAR\\_860/860\\_tofc.html](http://arcweb.sos.state.or.us/rules/OARS_800/OAR_860/860_tofc.html)

Fiscal and Economic Impact:

Any fiscal or economic impact is the result of prior legislative action. The electric companies and ESSs are subject to ORS 469A.005 to 469A.210, which requires compliance with Renewable Portfolio Standards. Portland General Electric (PGE) and Pacific Power also must comply with portfolio option requirements under ORS 757.603(2) and (3). In addition, PGE, Pacific Power and the ESSs are subject to power source disclosure consistent with ORS 757.659. The Commission waived its rules on power source disclosure (OAR 860-038-0300(2) and (3)) for PGE and Pacific Power for the second and third quarters of 2008 to prevent disclosure of information in a manner inconsistent with the proposed new rule. During this period, the utilities saved the cost of providing this information to consumers.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The rules will impact the Public Utility Commission, the electric companies and electricity service suppliers. The proposed new rules will clarify renewable energy certificate eligibility and power source disclosure under Renewable Portfolio Standards, and the proposed rule amendments will streamline reporting on environmental claims, portfolio options and Renewable Portfolio Standards.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The three electric companies have a total of approximately 195,000 business customers. The Commission has certified five companies as electricity service suppliers.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The potential magnitude of costs for administrative activities or other professional services cannot be quantified at this time. The proposed rule amendments will streamline reporting on environmental claims, portfolio options and Renewable Portfolio Standards, thus minimizing the additional costs associated with reporting required under the Act.

c. Equipment, supplies, labor and increased administration required for compliance:

The potential magnitude of costs for administrative or other activities cannot be quantified at this time. The proposed rule amendments will streamline reporting on environmental claims, portfolio options and Renewable Portfolio Standards, thus minimizing the additional costs associated with reporting required under the Act.

How were small businesses involved in the development of this rule?

Staff first circulated to interested stakeholders its draft new rule and rule amendments in January 2008. The Commission maintains a service list for the rulemaking as well as a Web site where all documents considered in the rulemaking are posted ([http://www.oregon.gov/PUC/Senate\\_Bill\\_838.shtml](http://www.oregon.gov/PUC/Senate_Bill_838.shtml)). The draft new rules and rule amendments were discussed at workshops and meetings, and stakeholders had an opportunity to provide informal comments. A diverse group of stakeholders is participating in the Commission's AR 518 docket, including electric companies, electricity service suppliers, ratepayer groups and environmental advocates.

Administrative Rule Advisory Committee consulted?: No

If not, why?

Stakeholders representing a diverse group of stakeholders are participating in the Commission's AR 518 docket, including electric companies, electricity service suppliers, ratepayer groups and environmental advocates.

Fiscal and Economic Impact information provided by Lisa Schwartz, Staff, Public Utility Commission.

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	Diane Davis	11/12/2008
Signature	Printed name	Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

Division 083  
Renewable Portfolio Standards

860-083-0005

Scope and Applicability of Renewable Portfolio Standards Rules

(1) OAR 860-083-0005 through 860-083-0050 (the “Renewable Portfolio Standards rules”) establish rules governing implementation of Renewable Portfolio Standards for electric companies and electricity service suppliers provided under ORS 469A.005 through 469A.210.

(2) For good cause shown, a person may request the Commission waive any of the Renewable Portfolio Standards rules.

(3) As used in OAR 860-083-0050:

(a) “Electric company” has the meaning given that term in ORS 757.600.

(b) “Electricity service supplier” has the meaning given that term in ORS 757.600.

(c) “Renewable energy certificate” has the meaning given that term in OAR 330-160-0015(8) (effective September 3, 2008).

(d) “To use a renewable energy certificate” means to employ, or exercise the rights to, a renewable energy certificate 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).

860-083-0050

Renewable Energy Certificates Eligible for Compliance With a Renewable Portfolio Standard

An electric company or an electricity service supplier may use a renewable energy certificate to comply with a renewable portfolio standard contained in ORS 469A.052, 469A.055, or 469A.065 in a calendar year as follows:

(1) The electric company or electricity service supplier has not previously used, sold or otherwise transferred the renewable energy certificate;

(2) The electric company has not previously used the renewable energy certificate to comply with requirements set forth in its own tariff that is in effect in Oregon or in another state, that are not related to an ORS 469A renewable portfolio standard or similar standard in another state;

(3) The electric company or electricity service supplier may use a renewable energy certificate to comply with both an ORS 469A renewable portfolio standard and with the

**power source disclosures required by OAR 860-038-0300 only if both such uses occur in the same calendar compliance year including renewable energy certificates issued or acquired on or before March 31 for the preceding calendar year as set forth in ORS 469A.070(2);**

**(4) A renewable energy certificate that has been used is not eligible to become a banked renewable energy certificate; and**

**(5) The renewable energy certificate complies with OAR 330-160-0005 through OAR 330-160-0030 (effective September 3, 2008).**

**Stat. Auth.: ORS 756.040, 757.659, 469.A.065, 469A.150, 469A.170**

**Stats. Implemented: ORS 469A.005, 469A.050 – 469A.055, 469A.065-469A.070, 469A.130 – 469A.170**

**History: NEW**

## **Proposed Rule Amendments in Alignment With SB 838 Reporting**

### **860-038-0220**

#### **Portfolio Options**

(1) An electric company must provide each residential consumer who is connected to its distribution system with a portfolio of product and pricing options. An eligible customer may enroll in or exit renewable resource options at any time, subject to any switching fees approved by the Commission under subsection (8)(e) of this rule. The minimum term for customers enrolling in a market-based option is 12 months. Portfolio options will not be offered to large nonresidential consumers.

(2) Sections (3) through (8) of this rule apply to residential portfolio product and pricing options.

(3) By July 1 of each year, the Portfolio Options Committee will recommend portfolio options to the Commission that will be effective January 1 of the following year. Each recommended portfolio option shall specify a service period from 12 months to 36 months. The Commission is not bound by the recommendations of the Portfolio Options Committee.

(4) The portfolio must include at least one product and rate that reflects renewable energy resources and one market-based rate. The Portfolio Options Committee will recommend the resource content of each renewable energy resource product. At least one renewable energy resource product will contain "significant new" resources. The Portfolio Options Committee will recommend a definition of "significant" based on an evaluation of resource availability, resource cost, and other factors. The portfolio options may include options for the collection of funds for future renewable resource purchases or collection of funds for energy related environmental mitigation measures such as salmon recovery.

(5) Each electric company is responsible for administering the options, including but not limited to marketing and billing.

(6) Each electric company must acquire the renewable supply resources necessary to provide the renewable energy resources product through a Commission-approved bidding process or other Commission-approved means. Each electric company may acquire the resources necessary to provide the other product and pricing options at its discretion.

(7) Four months prior to the implementation of the portfolio product and pricing options an electric company must file tariffs for its portfolio options.

(8) This section applies to residential and small nonresidential product and pricing options. An electric company must develop portfolio rates as follows:

(a) The portfolio rates must be based on the unbundled costs identified through the application of OAR 860-038-0200;



(b) The portfolio rates for any class of customer must be based on the unbundled costs to serve that class;

(c) The portfolio rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the portfolio rate option;

(d) The portfolio rates must exclude electric company costs that are avoided when a consumer chooses to be served under the portfolio rate option;

(e) An electric company may impose nonrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

(9) This section applies to small nonresidential portfolio product and pricing options. The Portfolio Options Committee will recommend portfolio product and pricing options, if any, to the Commission for approval. The electric company must implement small nonresidential portfolio product and pricing options adopted by the Commission.

**(10) By March 31<sup>st</sup> for the prior calendar year, an electric company must acquire or issue renewable energy certificates in an amount at least equal to the electric company's sales of renewable energy certificates to residential and small nonresidential consumers for each renewable resource option.**

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 13-2004, f. & cert. ef. 8-31-04

## **860-038-0300**

### **Electric Company and Electricity Service Suppliers Labeling Requirements**

(1) The purpose of this rule is to establish requirements for electric companies and electricity service suppliers to provide price, power source, and environmental impact information necessary for consumers to exercise informed choice.

(2) For each service or product it offers, an electric company must provide price, power source, and environmental impact information to all residential consumers at least quarterly. The information must be based on the available service options. The information must be supplied using a format prescribed by the Commission. An electric company must also include on every bill a URL address, if available, for a world-wide web site where this information is displayed. The electric company must report price information for each service or product for residential consumers as the average monthly bill and price per kilowatt-hour for monthly usage levels of 250, 500, 1,000 and 2,000 kilowatt-hours, for the available service options.

(3) An electric company and an electricity service supplier must provide price, power source and environmental impact information on or with bills to nonresidential consumers using a format prescribed by the Commission. The electric company or electricity service supplier must provide a URL address, if available, for a world-wide web site that displays the power source and environmental impact information for the products sold to consumers. An electric company and an electricity service supplier must report price information for nonresidential consumers on each bill as follows:

(a) The price and amount due for each service or product that a nonresidential consumer is purchasing;

(b) The rates and amount of state and local taxes or fees, if any, imposed on the nonresidential consumer;

(c) The amount of any public purpose charge; and

(d) The amount of any transition charge or credit.

(4) For power supplied through its own generating resources, the electric company must report power source and environmental impact information based on the company's own generating resources, not the net system power mix. An electric company's own resources include company-owned resources and wholesale purchases from specific generating units, less wholesale sales from specific generating units. An electric company's own resources do not include the non-energy attributes associated with purchases under the provisions of a net metering tariff or other power production tariff unless the electric company has separately contracted for the purchase of the Tradable Renewable Certificates. For net market purchases, the electric company must report power source and environmental impact information based on the net system power mix. The electric

company must report power source and environmental impact information for standard offer sales based on the net system power mix.

(5) For purposes of power source and environmental impact reporting, an ESS should use the net system power mix for the current calendar year unless the ESS is able to demonstrate a different power source and environmental impact. An ESS demonstration of a different mix must be based on projections of the mix to be supplied during the current calendar year. Power source must be reported as the percentages of the total product supply including the following:

(a) Coal;

(b) Hydroelectricity;

(c) Natural gas;

(d) Nuclear; and

(e) Other fuels including but not limited to new renewable resources, if over 1.5 percent of the total fuel mix.

(6) Environmental impact must be reported for all retail electric consumers using the annual emission factors for the most recent available calendar year applied to the expected production level for each source of supply included in the electricity product. Environment impacts reported must include at least:

(a) Carbon dioxide, measured in lbs./kWh of CO<sub>2</sub> emissions;

(b) Sulfur dioxide, measured in lbs./kWh of SO<sub>2</sub> emissions;

(c) Nitrogen oxides, measured in lbs./kWh of NO<sub>x</sub> emissions; and

(d) Spent nuclear fuel measured in mg/kWh of spent fuel.

(7) Every bill to a direct access consumer must contain the ESS's and the electric company's toll-free number for inquiries and instructions as to those services and safety issues for which the consumer should directly contact the electric company.

(8) The ESS must provide price, power source, and environmental impact in all contracts and marketing information.

(9) The electric company must provide price, power source, and environmental impact in all standard offer marketing information.

(10) ~~Beginning April 1, 2003, and on April 1st thereafter~~ **On June 1<sup>st</sup>** for the prior calendar year, each electric company, and each ESS making any claim other than net

system power mix, must file a reconciliation report on forms prescribed by the Commission. The report must provide a comparison of the fuel mix and emissions of all of the seller's certificates, purchase or generation with the claimed fuel mix and emissions of all of the seller's products and sales. **The report must include documentation from the system under OAR 330-160-0020 (effective September 3, 2008) established for compliance with a renewable portfolio standard contained in ORS 469A.052, 469A.055 or 469A.065.**

(11) Each ESS and electric company owning or operating generation facilities shall keep and report such operating data about its generation of electricity as may be specified by order of the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 7-2005, f. & cert. ef. 11-30-05