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**Subject:** AR 580 - SB 844 New Draft Rule Language  
**Date:** Thursday, March 20, 2014 11:22:32 AM  
**Attachments:** [Straw Man Rule-v8-4.docx](#)

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All,

Please find attached new draft rule language. I'm requesting comments back to me by Monday April 7<sup>th</sup>. This should allow plenty of time to provide substantive written comments. After I have received all the comments I will make an assessment about whether to hold another workshop before beginning the formal rulemaking process. I'm available by phone (503)-378-6667, and am willing to meet in person.

You'll find comments in the margins that attempt to explain certain sections or concepts.

As you read keep in mind that I was trying to construct a rule that follows general best practices found in other jurisdictions:

- Written project plans
- Verifiable and permanent savings

The rule is structured around these three principles. I believe the rule allows the greatest flexibility without compromising the above stated principles. I am, however, open to suggestions that provide better guidance or clarity or better structure but I do believe the above stated principle should remain intact.

I look forward to reviewing your comments and hearing from you over the next couple of weeks.

Thank you,

Jason

## SB 844 Proposed Draft Rule Language

### 1) Definitions:

“Additionality” means that the regulated emissions after implementation of a emission reduction project are anticipated to be lower than those that would have occurred in the most plausible alternative scenario to the implementation of the emissions reduction project A project meets the threshold determination of additionality if anthropogenic emissions are reduced below those that would have occurred in absence of the emission reduction project.

“Aggregate Rate Impact” is the projected cumulative net increase in annual revenue requirements from all projects covered by these rules divided by the projected annual revenue requirements at the time a project is proposed.

“Average revenue” to total revenue from all customer classes divided by therms of natural gas use by all customer classes.

“Business-as-Usual Scenario” means the set of conditions reasonably expected to occur within the emission reduction project boundary in the absence of the financial incentives provided by this program, taking into account all current laws and regulations, as well as current economic and technological trends.

“Conflict of Interest” means, a situation in which, because of financial or other activities or relationships with other persons or organizations, a person or body is unable or potentially unable to render an impartial emissions reduction verification or the person or body’s objectivity in performing verification services is or might be otherwise compromised.

“Customer Benefits” means those benefits that accrue to the customer of the utility conducting the emissions reduction project where such benefits can be attributed by a causal connection from the emissions reduction work, direct emissions reductions and indirect emissions reductions. Customer benefits may be reported as quantifiable and qualitative benefits.

“Direct Emission Reduction” means emissions reduction resulting from project emission sources that are controlled by the activity proposed.

“Emissions Reduced” shall be based to the maximum extent possible on the projected difference in regulated emissions between a scenario that includes the implementation of an project covered by these rules and a business-as-usual scenario.

“Emission Reductions Project” means all equipment, materials, items, or actions that are directly related to or have an impact upon emissions reductions, projected emissions within the emission reduction project boundary. An emission reduction project is a voluntary coordinated action with a private or public entity to implement activity or measures which lead to anthropogenic GHG emission reductions or net anthropogenic greenhouse gas reductions that are additional to any that would occur in the absence of the emission reduction project.

“Emission Reductions Project Boundary” includes all emission sources, emission sinks or emissions reservoirs that are affected by an emission reduction project and under control of the utility or utility emissions reduction project manager. Emissions sources, sinks or reservoirs not under control of the utility emissions reduction project manager are not included in the emission reduction project boundary.

“Emission Reduction Project Commencement” means, unless otherwise specified, the date of the beginning of construction, work, or installation for an emission reduction project involving physical construction, other work at an emissions reduction project site, or installation of equipment or materials. For an emissions reduction project that involves the implementation of a management activity, “emissions reduction project commencement” means, unless otherwise specified, the date on which such activity is first implemented.

“Emission Reduction Project Plan” is a report that sets forth the specific details of a proposed emission reduction project.

“Emissions Reduction Project Report” means the report prepared by the utility each year that provides the information and documentation required under this rule.

“Emission Reduction Verification” means a systematic, and documented process for evaluation of an Emission Reductions Project Report for calculating and reporting project baseline emissions, project emissions, and emissions reductions.

“Emissions Reduction Verification Statement” means the final statement rendered by the utility, the utility’s project manager or where applicable the verification body, attesting whether an Emission Reductions Project Report is free of an emissions reductions material misstatement.

“Emissions Source” or “GHG Emissions Source” means any type of emitting activity that releases greenhouse gases into the atmosphere.

“Facility” means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas.

“Greenhouse Gas” or “GHG” means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

“Greenhouse Gas Emission Reduction” or “Emission Reduction” or “Greenhouse Gas Reduction” or “GHG Reduction” means a calculated decrease in GHG emissions relative to a project baseline over a specified period of time.

“Indirect Emission Reduction” means emissions reductions from sources not directly controlled by the proposed activity but related to the project activities by a causal chain of effect.

“Monitoring” means, the ongoing collection and archiving of all relevant and required data for determining the project baseline, project emissions, and quantifying emissions reductions or that are attributable to the emission reduction project.

“Project” means a single, or a set of interrelated measure(s), intended to reduce GHG emissions or result in net anthropogenic greenhouse gas reductions applied within a designated project boundary area defined in the baseline methodology. The applied approved methodology shall define whether the project is undertaken in a single facility/installation/land or undertaken in multiple facilities/installations/land.

“Project Baseline” means, an estimate of business-as-usual emission reductions.

“Project costs” means the sum total of all costs incurred in the pursuit and implementation of a voluntary emission reduction project. Where a project is undertaken as additive to an existing project because an emission reduction opportunity is present, project cost shall be all those associated additional costs incurred to capture emission savings opportunities presented by the addition of emission reduction activity. The project costs do not include incentives sought by the utility.

“Project Benefits” means those benefits, quantitative and qualitative, that accrue to customers of the utility conducting the emissions reductions project where such benefits can be attributed by causal connection from the emissions reduction work, direct and indirect emissions reductions.

“Project Emissions” means any emissions associated with the implementation of an emission reduction project that must be accounted for in the Emission Reductions Project Report.

“Rate Impact” is the percentage change in average revenues for all customer classes from the net effects of the emission reduction project including, but not limited to, the effects of increased or decreased sales from the project.

“Reporting Period” means, the period of time for which the utility or utility project manager quantifies and reports emissions reductions to the commission yearly in an Emissions Reduction Project Report.

“Verifiable” means that an emission reductions project report assertion is well documented and transparent such that it lends itself to an objective review by an accredited verification body.

“Verifier” or “Third Party Verifier” means an accredited firm which is able to render Emission Reduction Verification and an Emissions Reduction Verification Statement for the utility and the utilities project manager which is subject to providing assurance of the validity and credibility of an emission reductions project report under this program.

“Verification Protocol” means a documented set of procedures and requirements to quantify ongoing emission reductions achieved by a project and calculate the project baseline. Emissions reduction protocols specify relevant data collection and monitoring procedures, emission factors, and account for uncertainty associated with an emissions reduction project.

“Verification Statement” means a statement rendered by a utility or where applicable a verification body attesting with reasonable assurance that the submitted Emission Reduction Project Report is free of material misstatement.

## **2) Project Eligibility Criteria:**

To be eligible for a Commission determination, the project must satisfy the following minimum criteria:

- (A) That the entity proposing the project is a public utility that furnishes natural gas and that the project involves the provision of natural gas;
- (B) That the project directly or indirectly reduces emissions;
- (C) That the project benefits customers of the public utility;
- (D) That there are benefits received by the customer class or classes from the project;
- (E) That the public utility would not invest in the project in the ordinary course of business without the emission reduction program;
- (F) That the public utility involved stakeholders prior to filing the application; and
- (G) That the rate impact of the aggregate of all projects undertaken by the public utility has not exceeded and will not exceed the amount established by the Commission as the project cap; and
- (H) The project must be related by measure type and emission reduction strategy undertaken within the project boundary and within temporal proximity.

## **3) Application Requirements**

An application filed under this rule shall include the following:

- (A) A description of how the project satisfies the minimum criteria set forth in the Project Eligibility Criteria section;
- (B) A description of the project including all project measures being employed to reduce emissions, the project timeline, the project’s location, the project boundary, an accounting of all anticipated costs including but not limited to: operations and maintenance costs, construction and installation costs, taxes, permits, infrastructure expenses, increased or decreased sales.

- i. The project description shall also include a discussion of the emission reduction strategy being utilized, why the approach is appropriate, timely and merits approval.
- (C) The projected amount of capital and operating costs necessary to complete and operate the project differentiated by amounts and costs proposed to be recovered in rates and amounts and costs not proposed to be recovered in rates.
- i. The utility shall in their project proposal submit the following information:
    - (A) Where a utility proposes recovery from one or more type of ratepayer the utility shall:
      - a. Propose the recovery percentage proportion by type of ratepayer and rationale for the proposed recovery.
        - i. The basis for the utilities rationale shall at a minimum address the following factors:
          1. Customers by type of ratepayer who benefit from the direct emissions reductions captured by the project.
          2. Customer by type of ratepayer who benefit from the indirect emissions reductions captured by the project.
          3. Economic benefits realized by customers of the public utility proposing the project.
            - a. Affecting and delineated by participating and non-participating customers.
          4. Health and safety benefits realized by customers of the public utility.
            - a. Affecting and delineated by participating and non-participating customers.
          5. How early action taken by the proposed project authorized under these rules may or may not off-set the cost of later action to reduce emissions.
          6. Net costs to participating and non-participating ratepayers.
          7. Other benefits realized by customers of the public utility.
    - ii. In addition to the factors addressed by the utility in its rationale for recovery by ratepayer type the utility when requesting incentives under this rule shall also address the following factors in their case for incentives:
      - (A) If new or emerging technology, or technology whose market entry has experienced barriers to adoption is used in the project, how the project might assist in market transformation of the technology utilized to reduce emissions.
      - (B) Risks and opportunities identified by the utility that helped lead the utility to propose the emission reduction project.
      - (C) Whether the proposed project may result in a competitive advantage for the utility in a currently established market.

- (D) Whether the proposed project may result in an unfair advantage over other companies in the market the utility may enter as part of the proposed project.
- (D) The potential of the project to reduce emissions not otherwise identified;
- (E) The emission reduction project commencement;
- (F) A requested method for recovery of costs incurred and investments made. The method may include:
  - i. Cost of service and cost allocation methodology
  - ii. Payment per unit of reduced emissions
  - iii. Preapproval for inclusion in the public utility's rates of costs prudently incurred and of investments prudently made;
  - iv. Return of investment and return on investment; and
  - v. Any other method approved by the Commission.
- (G) An explanation of why the public utility would not invest in the project in the ordinary course of business without the emission reduction program
- (H) Proof of stakeholder involvement which shall include at a minimum a demonstration that the utility conducted one or more stakeholder outreach workshops that included availability for stakeholder review of the project proposal anticipated to be submitted to the Commission for approval, to provide input on the proposed project, and to submit comments.
- (I) The projected rate impact of the currently proposed project and rate impact of all aggregated emission reduction projects.
  - i. The rate impact analysis must include the rate impact analysis of the utility's proposed project incentive.
- (J) A showing of how the current proposed project will affect the utility's overall project rate cap under this rule.
- (K) How the utility intends to meet the required reporting requirements
- (L) Each utility project proposal shall be accompanied by an Emission Reduction Project Plan and an Emissions Reduction Project Verification Plan.

#### 4) Project Threshold

- (A) Tier 1 project is one that has costs equal to or less than \$750,000 of the public utility's total revenue requirement and has an overall project cost per metric ton of reduced emissions less than \$39.
- (B) A Tier 2 project is one that has costs greater than \$750,000 of the public utility's revenue requirement or has an overall project cost per metric ton of reduced emissions greater than \$39.

**Comment [KJ1]:** This number is EPA's Social Cost of Carbon for 2015 with a 3% discount rate. We will open the rule and change number when necessary.

For rules with both intra- and intergenerational effects, agencies traditionally employ constant discount rates of both 3 percent and 7 percent in accordance with OMB Circular A-4. As Circular A-4 acknowledges, however, the choice of discount rate for intergenerational problems raises distinctive problems and presents considerable challenges. After reviewing those challenges, Circular A-4 states, "If your rule will have important intergenerational benefits or costs you might consider a further sensitivity analysis using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7 percent."

According to OMB's Circular A-4, it is appropriate to use the rate of return on capital when a regulation is expected to displace or alter the use of capital in the private sector. In this case, OMB recommends Agencies use a discount rate of 7 percent. When regulation is expected to primarily affect private consumption—for instance, via higher prices for goods and services—a lower discount rate of 3 percent is appropriate to reflect how private individuals trade-off current and future consumption.



**5) Project Cap**

- (A) The aggregate yearly costs to ratepayers for all of a public utility’s authorized projects shall be no greater than 4% of the utility’s total revenue requirement. The project cap shall include the incentives the utility proposes to recover under this rule.
- (B) The 4% of the utility’s total revenue requirement project cap shall be phased in such that the cap shall remain at 2% of the utility’s total revenue requirement until such time as the Commission approves its first Emission Reduction Report submitted by a utility after project commencement.
- (C) A utility may request a waiver from the project cap under the following circumstances;
  - a. Where a resulting unanticipated decrease in utility’s revenue requirement affects the over project cap established under this rule which in turn negatively affects the ability of the utility to recover prior authorized project costs and incentives.

**Comment [KJ2]:** This section may be removed. The AG’s office assures me waiver language may not be necessary as a general provision already exists.

**6) Project Proposal Structure**

A Project proposal shall consist of three parts:

- (A) A Project Plan;
- (B) An Emission Reduction Verification Plan; and
- (C) An Emissions Reduction Report.

**7) Emission Reduction Project Plan**

- (A) Each Emission Reduction Project Plan shall address the Project Eligibility Criteria and Application Requirements.
- (B) Each Emission Reduction Project Plan shall show how the activities that result in emission reductions are not required by law, regulation, or any legally binding mandate applicable in the project’s jurisdiction, and would not otherwise occur in a regulatory business-as-usual scenario;
- (C) Each Emission Reduction Plan shall include an explanation of how the project leverages the value of emission reductions to enable investment in a measure that would otherwise not be feasible to the utility, the ratepayers or the customer affected by the project. Projects must exceed the “business-as-usual” scenario and demonstrate that emission reductions would not occur without the opportunity afforded by the emission reduction program.
- (D) Each Emissions Reduction Project Plan shall estimate the impact of the proposed emissions reduction project on the project cap, where applicable this estimate shall include the aggregate impact of all current emissions reduction projects. This shall include a forecast of the project’s impact on the current project cap such that the Commission can discern if approval may affect the project cap in out-years.
- (E) A showing of the emissions reduced, the methodology used to calculate the emission reduction and the value of the emission. The calculations shall be

shown from a lifecycle project perspective. Where possible the utility should report yearly emissions data or data more granular than lifecycle emission data.

- (F) The Emission Reduction Project Plan shall show all known or anticipated project costs broken into at least the following cost categories,
- i. Establishment/development costs (Fixed costs)
  - ii. On-going/implementation costs (Variable costs) – Part of the utilities duties to update the commission on project effectiveness.
  - iii. Incentives sought by the utility
  - iv. Costs per ton of emissions reduced by the project for both direct and indirect emission reduction categories.

## 8) Emission Reduction Verification Plan

(A) Each utility operating an emission reductions project must submit an Emission Reduction Verification Plan, which delineates the verification methodology, how the methodology was developed, what relation, similarity and difference, the methodology has with verification methodologies used by California's Air Resources Board's Compliance Offset Program, the United Nations Framework Convention on Climate Change Clean Development Methodologies, or the Regional Green House Gas Initiative's accepted offset protocols, or those methodologies found in the voluntary offset market which include the Verified Carbon Standard, the CDM Gold Standard, Voluntary Offset Standard, Climate, Community and Biodiversity Standards and Green-e.

- i. Where a proposed project is significant enough in size to utilize the verification protocols recognized in section (A) above the utility shall seek to use to the greatest degree feasible and economical such applicable verification methodologies.
- ii. When a third party verification protocol and/or a third party verifier is used the utility need not conduct a full verification methodology each year of the project for purposes of submitting the Emission Reduction Report. A less intensive verification protocol may be followed such that site visits may not be required, attestation will not be required but some level of assurance must be given that the emissions reductions continue as outlined in the Emission Reduction Project Plan.
  - a. Third Party verification will only be required during the first reporting period and the once every 5 years for true-up purposes.
- iii. Where a proposed project is not of scale to merit or make feasible use of the verification methodologies outlines in sub-section (A) or a third party verifier the utility shall propose its own verification methodology in its Emission Reduction Verification Plan. The utility shall where possible utilizes the principles and best practices established in the methodologies referenced in sub-section (A). The utility shall make a showing to the Commission as to the rigor of the utility's proposed verification methodology, delineating risks and benefits of using the chosen verification methodology.

**Comment [KJ3]:** Currently these are placeholders. The intent is leverage the best practices and protocols used and recognized by other jurisdictions conducting emission reductions projects. Because Oregon has not conducted such projects we have not established best practices or our own protocols and verification methodologies.

If you have ideas on how this language can be streamlined or opinions on which verification methodologies are best to utilize or reference please contribute.

I will be speaking to the AGs office about whether the language here, as currently structured, presents an unlawful delegation.

I will also be speaking with PUC management and possibly each of the Commissioners about whether there is a need to create a best practice, protocols and methodologies council.

- a. The Commission may at its discretion lessen the yearly project verification requirements in cases when the utility employs its own verification methodology such that:
  - 1. The Utility may need only conduct a full verification of emission reductions during the first year after project commencement and then every five years.
  - 2. Attestation may not be required for each year that the Commission approves lessened yearly project verification requirements, but some level of assurance must be given that the emissions reductions continue as outlined in the Emission Reduction Project Plan.
  - 3. A utility may request the Commission grant less burdensome emission reduction verification reporting under this section in its project proposal.
- (B) Each Emission Reduction Verification Plan will establish project baselines that reflect an estimate of business-as-usual performance or practices for the project. The calculations must provide proof of additonicity.
- (C) Each Emission Reduction Verification Plan will accurately determine the extent to which emission reductions are achieved by the project;
- (D) Each Emission Reduction Verification Plan must delineate and account for any uncertainty in quantification factors for the project;
- (E) Each Emission Reduction Verification plan will track and show costs of measurement, verification and monitoring;
- (F) Each Emission Reduction Verification Plan will include information regarding the training or qualifications of personnel involved in developing the Emission Reductions Project Report and Emission Reduction Project Report;
- (G) Ensure emission reductions are permanent;
- (H) The project commencement date;
- (I) Existing actual or historical emissions, as applicable;
- (J) All required monitoring equipment must be maintained and calibrated in a manner and at a frequency required by the equipment manufacturer, unless otherwise specified.
- (K) The utility will include, as part of the project's Emissions Reduction Verification Plan, a monitoring plan that provides for:
  - i. The collection and archiving of all relevant data necessary for determining the baseline of anthropogenic emissions by sources of greenhouse gases within the project boundary during the project lifecycle;
    - a. If the project uses a control group for determining the baseline, the monitoring plan shall specify techniques and methods for sampling and measuring emissions by sources
  - ii. The identification of all potential sources of, and the collection and archiving of data on, increased anthropogenic emissions by sources of greenhouse gases outside the project boundary that are significant and reasonably attributable to the project activity during the project lifecycle;

- iii. The monitoring plan shall specify techniques and methods for sampling and measuring emissions by sources included in the actual net emission reductions that reflect commonly accepted principles and criteria.
- iv. Quality assurance and control procedures for the monitoring process;
- v. Procedures for the periodic calculation of the net emissions reductions.

**9) Emission Reduction Report**

- (A) Each subsequent year after the utility has commenced work on an Emission Reduction Project approved by the Commission the utility shall submit to the Commission an Emission Reduction Report which includes;
  - a. Updates to the data sets required under the Emission Reduction Verification Plan.
- (B) The Emission Reduction Report shall track the costs of the emission reduction project in a manner similar to the project proposal.
  - a. The Emission Reduction Report shall track costs of measurement, verification and monitoring.
- (C) The first Emission Reduction Report shall be submitted with the project proposal and shall give an estimate of the projects emission reductions at the most granular time intervals as reasonably possible.
- (D) A utility employing a third party verification must demonstrate that a conflict of interest does not exist between the third party verifier and the utility.
- (E) The utility shall submit an updated monitoring plan outlining the monitoring activities undertaken.
- (F) Each report shall include an Emission Reduction Verification Statement.
- (G) The utilities project manager or utility project designee shall attest in writing to the commission the following verification statement: "I certify under penalty of perjury under the laws of the State of Oregon that the emissions reductions for [project] from [date] to [date] are measured in accordance with the [appropriate verification protocol] and all information required to be submitted to the Oregon Public Utility Commission is true, accurate, and complete."
- (H) The commission shall approve or deny, with or without conditions, an Emissions Reduction Report not later than 90 days following receipt of a complete report.
  - a. The utility may grant the Commission more time to approve an Emissions Reduction Report.

**10) Ownership and Transferability of Emission Credits When Realized**

- (A) Emission reduction credit shall be held by the utility for the benefit of its ratepayers.
- (B) Emission reduction credits owned or under the control of the utility must be retired to ensure that the emissions reductions are real and not subsequently leveraged in another market mechanism.
- (C) The utility shall assure an unbroken chain of ownership.
- (D) Where split ownership arises, where the customer may be owner of some of or all of the emissions reductions the utility shall seek to work with the customer to assure proper retirement, registration and an unbroken chain of ownership.

**11) Registry**

- (A) The utility is required to work with entities that currently hold carbon offset registries such as The Climate Trust to ensure Oregon, and Oregon ratepayers receive appropriate as much recognized credit for the emission reductions funded as part of this program.
- (B) Where a project is large enough to justify and absorb the cost of third party verification the utility proposing the project must also seek registration of the emissions reductions through a recognized third party registry.
- (C) Where a project is too small to justify third party verification and/or third party registry the utility conducting the project shall work with the Commission to track the emission reductions associated with the project.
  - a. To this end the Commission shall keep a record of the emission reduction projects which includes; a unique project number, emissions reduction vintage, location of the project, lifecycle of the project, emission reductions of the project by the most granular calendar increments reasonable but no more granular than by year; the utility conducting the project, the projected overall cost of the project, the reported value of the emissions reduction or the value asserted by the utility for purposes of receiving an incentive, Commission order number approving the project, Commission approval date, project commencement date, the project associated yearly Emission Reduction Report, the Emission Reduction Verification Plan and the project Emission Reduction Project Plan.

**Comment [KJ4]:** This section may be removed and included as part of a commission order.

**12) Maximum allocation period**

- (A) The default initial emission reduction allocation period for any project approved under these rules will be 10 years unless otherwise specified by the Commission in the order approving the project. At the end of the initial default 10-year allocation period and upon a demonstration by the utility that the emission reductions continues to meet all applicable requirements under this rule, the commission may grant a second 10-year allocation period.
- (B) The Commission shall have the discretion to grant an allocation period longer or shorter than 10 years.

**13) Ineligibility due to noncompliance**

- (A) If at any time the Commission determines that a emission reduction project operated by the filing utility has not complied with the requirements of this rule, the commission may revoke and retire either of or both of the incentives paid to the utility for the project or the emissions reductions anticipated and reported by the utility conduction the emissions reduction project.
- (B) If at any time the Commission determines that an emission reduction project does not comply with the requirements of this rule, the commission may revoke any prior approvals issued in relation to the emission reduction project.

**14) Treatment of Emission Reduction Project for Purpose of the Utility Earnings Test**

- (A) The Commission shall have the discretion to determine that an Emission Reduction Project and the incentives granted to the utility not affect the allowed earnings of the utility, treated separately for the purpose of incenting activity under this rule.