

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: March 9, 2021**

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

**DATE:** March 1, 2021

**TO:** Public Utility Commission

**FROM:** Kim Herb

**THROUGH:** Bryan Conway, Diane Davis, and JP Batmale **SIGNED**

**SUBJECT:** PUBLIC UTILITY COMMISSION STAFF:  
(Docket No. AR 617)  
Request to open a formal rulemaking related to the use of Renewable Energy Certificates for compliance with the Renewable Portfolio Standard.

**STAFF RECOMMENDATION:**

Staff recommends the Commission issue a notice of proposed rulemaking to adopt the draft rule amendments described below and included as Attachment 1.

**DISCUSSION:**

Issue

Whether the Commission should approve issuance of a notice of proposed rulemaking to address issues related to the use of Renewable Energy Certificates (RECs) for compliance with the Renewable Portfolio Standard (RPS) by aligning rules with Chapter 28, Oregon Laws 2016 (SB 1547), and addressing other compliance issues identified in this docket.

Applicable Law

ORS 756.060 provides the Commission authority to adopt and amend rules relative to all statutes administered by the Commission.

Chapter 301, Oregon Laws 2007 (SB 838) created Oregon's Renewable Portfolio Standard by establishing incremental targets for utilities and electric service suppliers (collectively referred to as Energy Companies) to procure qualifying renewable energy. SB 838 established guidelines for RPS compliance, including limits on the cost of compliance, requirements for planning and reporting, and standards for the use of RECs as the primary compliance instrument.

Chapter 28, Oregon Laws 2016 (SB 1547) increased Oregon's RPS targets to achieve 50 percent qualifying renewable electricity by 2040 and made significant changes to the mechanics of compliance.

OAR Chapter 860, Division 83 contains the Commission's current rules to implement the RPS provisions in ORS Chapter 469A. OAR 860-083-0300 currently states:

(1) Each electricity service supplier subject to ORS 469A.065 must meet the requirements of 469A.052 unless a limit specified in section (2) or section (3) of this rule applies.

(2)(a) The cost limit under ORS 469A.100(6) for an electricity service supplier means four percent of the weighted average of the average retail revenues per megawatt-hour of the electric companies subject to 469A.052 in whose service areas the electricity service supplier sells electricity. The weights are the retail sales in megawatt-hours by the electricity service supplier in the service areas of electric companies subject to 469A.052 for a compliance year.

(b) If the average cost of compliance per megawatt-hour for an electricity service supplier subject to ORS 469A.065 exceeds the cost limit for a compliance year, the electricity service supplier is not required to incur additional costs to meet section (1) of this rule.

(3)(a) An electric company or an electric service supplier is not required to meet the renewable portfolio standards during each compliance year to the extent that:

(A) For the electric company, the total cost of compliance to meet the renewable portfolio standard exceeds the cost limit in ORS 469A.100(1); and

(B) For the electricity service supplier, the average cost of compliance exceeds the cost limit in section (2) of this rule.

(b) In determining compliance with the applicable renewable portfolio standard in ORS 469A.052 or 469A.065 and the applicable cost limits under 469A.100(1) and 469A.100(6), the following apply:

(A) Subject to the Commission's review under ORS 469A.170, an electric company or electricity service supplier may elect to use alternative compliance payments to comply with the applicable renewable portfolio standard. The Commission may also require an electric company or electricity service supplier to use alternative compliance payments to comply with the applicable renewable portfolio standard if the alternative compliance payments would not cause the electric company or electric service supplier to exceed the applicable cost limits in ORS 469A.100(1) and 469A.100(6).

(B) Each electric company and electricity service supplier must use, in chronological order from first issued to last issued, its banked renewable energy certificates under ORS 469A.140(2)(a) and (2)(b), subject to the limitations under 469A.145, before using certificates issued in the compliance year or between January 1 through March 31 of the year following the compliance year.

(C) Subject to the limitations under ORS 469A.145 and the cost limit under 469A.100, if the banked renewable energy certificates each electric company or electricity service supplier uses are not sufficient to achieve compliance with the applicable renewable portfolio standard, the electric company or electricity service supplier must use renewable energy certificates issued or acquired in the compliance year or between January 1 through March 31 of the year following the compliance year, or make an alternative compliance payment, up to the amount required for compliance with the applicable standard. Bundled renewable energy certificates must be used in chronological order from first issued to last issued.

(D) If the total cost of compliance exceeds the cost limit under ORS 469A.100, the electric company or electricity service supplier is not required to use additional renewable energy certificates or make an alternative compliance payment to meet the applicable standard.

(c) The costs of renewable energy certificates used to determine whether the cost limit has been reached must be from the applicable compliance report.

## Analysis

### *Background*

Various RPS issues have surfaced in Commission proceedings, stemming from SB 1547 and stakeholders' experience with RPS compliance. Throughout these other proceedings, the Commission instructed Staff to address RPS issues in a holistic set of RPS rulemaking dockets.<sup>1</sup>

On January 10, 2018, Staff and a number of interested persons participated in an AR 610 workshop to discuss the scope and process to address RPS rulemaking issues. Workshop participants acknowledged that there is an extensive range of issues within the scope, many of which are complex and interdependent. While participants did not reach consensus on the scope and schedule, Staff considered the input valuable in ordering and grouping the different issues, and developed the proposal for three separate rulemakings including AR 610, addressing the incremental cost of RPS compliance; AR 616, addressing the RPS planning process and reports; and AR 617, addressing Renewable Energy Certificates.

AR 617 was opened on April 12, 2018.<sup>2</sup> The original and primary goals of this rulemaking were to:

- 1) Make any changes necessary to align the REC banking rules with SB 1547;
- 2) Consider guidelines for the use of unbundled RECs; and
- 3) Consider amendments related to the allocation of RECs for multi-state utilities.

Staff held a workshop on December 11, 2019, to finalize the scope of AR 617 and to inform Staff's development of a straw proposal. Staff circulated draft language in April 2020, and received comments from PacifiCorp and Portland General Electric, who were supportive of Staff's position and suggested minor language changes, which were incorporated. Staff posted the draft language to the docket on December 10, 2020.

On December 16, 2020, Staff held a workshop to review the proposed changes, discuss how the proposed changes related to the other RPS dockets, and to discuss an outstanding issue raised by Calpine Energy related to the status of RECs transferred to an Energy Service Supplier on behalf of Direct Access customers.

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<sup>1</sup> See, e.g., In the Matter of Portland General Electric's 2016 Revised Renewable Portfolio Standard Implementation Plan, Order No. 17-166, Docket No. UM 1788 (May 15, 2017) and In the Matter of PacifiCorp dba Pacific Power 2017-2021 Renewable Portfolio Standard Implementation Plan, Order No. 17-010, Docket No. UM 1790 (January 13, 2017).

<sup>2</sup> Order No. 18-128

### *Summary of the Proposed RPS Rules*

The proposed rule amendment makes three substantive changes to OAR 860-083-0300: 1) it strikes the “first-in, first-out language” to conform with ORS 469A.140(2), as amended by SB 1547; 2) it clarifies the application of the “banked renewable energy certificate” definition; and 3) it provides direction on addressing multi-state allocation of unbundled renewable energy certificates.

### **REC Banking: “First In, First Out”**

SB 1547 §7 amended ORS 469A.140 by removing the requirement in ORS 469A.140(2) that electric utilities and energy service suppliers use banked RECs in order from first issued to last issued, and established new guidelines for the eligible life of different types of banked RECs. OAR 860-083-0300(3)(b)(B) stated that utilities need to use banked RECs from “first issued to last issued.”

Proposed Amendment:

Delete text of OAR 860-083-0300(3)(b)(B) to conform to the revised statute.

### **Banked REC Clarification**

ORS 469A.005(2) defines a banked renewable energy certificate as “a bundled or unbundled renewable energy certificate that is not used by an electric utility or electricity service supplier to comply with a renewable portfolio standard in a calendar year, and that is carried forward for the purpose of compliance with a renewable portfolio standard in a subsequent year.” Staff proposed a rule amendment to OAR 860-083-0300(3)(b) to clarify the distinction between a calendar year, a compliance year, and a subsequent year for purposes of determining compliance.

Proposed Amendment:

Add “For the purposes of this rule, banked renewable energy certificates do not include a renewable energy certificate generated in the same calendar year as the compliance year for which its use is attributed.”

### **Unbundled & Multi-State RECs**

ORS 469A.150 directs the Commission to establish a process for allocating the use of RECs by an electric company that makes sales of electricity to retail customers in more than one state. The rules do not currently specify a process. Due to the limitations on

the use of unbundled RECs, Staff proposes an amendment to guide a REC allocation process for multi-state jurisdictions.

Proposed Amendment:

Add OAR 860-083-0300(4): “For purposes of this rule, the electric company’s multi-state allocation of renewable energy certificates shall be informed by the most recent inter-jurisdictional protocol adopted by the Commission.”

### *Stakeholder Positions*

All stakeholder comments have been supportive of both the scope and content of Staff’s proposed rule amendment. However, the bundled or unbundled status of RECs transferred to an Energy Service Supplier (ESS) for direct access customers was an issue that had been raised and discussed, but not resolved, in the course of the informal rulemaking process.

### **Status of ESS RECs**

Calpine Energy Solutions (Calpine) raised the issue regarding whether RECs transferred from an Investor Owned Utility (IOU) to an ESS on behalf of direct access customers could retain their ‘bundled’ status after the transfer. This item was added to the December 16, 2020, workshop agenda for discussion. As was discussed at the workshop, Staff does not believe RECs may be considered “bundled” under the statutory definition of a bundled REC after an IOU transfers RECs to an ESS without transferring the associated energy.<sup>3</sup>

However, Staff recognizes that this may exacerbate an ESS’s challenge in meeting its RPS obligation because the use of unbundled RECs for RPS compliance by an ESS will soon be capped at 20 percent.<sup>4</sup> Staff proposed that to address the challenge ESSs face in RPS compliance, a legislative change to the definitions of bundled and unbundled RECs would be necessary, or the legislature may consider raising the 20 percent cap

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<sup>3</sup> See ORS 469A.005(4): “Bundled renewable energy certificate’ means a renewable energy certificate for qualifying electricity that is acquired:

- (a) By an electric utility or electricity service supplier by a trade, purchase or other transfer of electricity that includes the renewable energy certificate that was issued for the electricity; or
- (b) By an electric utility by generation of the electricity for which the renewable energy certificate was issued.”

See also ORS 469A.005(14): “‘Unbundled renewable energy certificate’ means a renewable energy certificate for qualifying electricity that is acquired by an electric utility or electricity service supplier by trade, purchase or other transfer without acquiring the electricity that is associated with the renewable energy certificate.”

<sup>4</sup> ORS 469A.145(4).

on unbundled RECs for ESSs. Either of these approaches would require a change in statute and would need to be addressed by the legislature.

Calpine's representative stated during the workshop that he did not agree that the statute is as restrictive as Staff portrayed, and that his concern was primarily about returning the "stranded benefit" value of the REC to the direct access customer. It should be noted that Calpine has sought clarity from the Commission on this issue through various dockets, stating that these RECs should be considered bundled.<sup>5</sup>

Staff does not propose amendments to address this issue as it believes the available options require legislative action. Any interested party may comment on this issue as this docket moves to the formal rulemaking process and in the public comment period once a notice of proposed rulemaking has issued.

#### *Related Dockets*

Staff had intended that the three RPS rulemaking dockets proceed such that AR 610 would be the first docket launched, and that it would inform AR 616 and AR 617. However, because the changes proposed in AR 617 do not rely on or influence the incremental cost of compliance being addressed in AR 610, and because parties were supportive of the proposed changes, Staff proposes that AR 617 proceed to formal rulemaking, ahead of AR 610.

#### Conclusion

Staff recommends the Commission issue a notice of proposed rulemaking to adopt the draft rule amendments described above and included as Attachment 1, consistent with any policy direction provided by the Commission.

#### **PROPOSED COMMISSION MOTION:**

Approve issuance of a notice of proposed rulemaking to adopt the draft rule amendments in Attachment 1.

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<sup>5</sup> See Calpine Solutions' Response Comments, *In the Matter of Calpine Solutions LLC, 2019 Renewable Portfolio Standard Compliance Report*, Docket UM 2104, (August 13, 2020).

**\*\*NOT FOR PUBLICATION\*\***

The following draft administrative rules have been prepared as a working draft for purposes of discussion. These rules have not been approved for publication or for any other use by Staff or the Public Utility Commission of Oregon. A notice of proposed rulemaking has not been issued on this subject.

**Draft Rule Changes, AR 617:****OAR 860-083-0300****Compliance Standards**

(1) Each electricity service supplier subject to ORS 469A.065 must meet the requirements of 469A.052 unless a limit specified in section (2) or section (3) of this rule applies.

(2)(a) The cost limit under ORS 469A.100(6) for an electricity service supplier means four percent of the weighted average of the average retail revenues per megawatt-hour of the electric companies subject to 469A.052 in whose service areas the electricity service supplier sells electricity. The weights are the retail sales in megawatt-hours by the electricity service supplier in the service areas of electric companies subject to 469A.052 for a compliance year.

(b) If the average cost of compliance per megawatt-hour for an electricity service supplier subject to ORS 469A.065 exceeds the cost limit for a compliance year, the electricity service supplier is not required to incur additional costs to meet section (1) of this rule.

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(b) In determining compliance with the applicable renewable portfolio standard in ORS 469A.052 or 469A.065 and the applicable cost limits under 469A.100(1) and 469A.100(6), the following apply:

(A) **For the purposes of this rule, banked renewable energy certificates do not include a renewable energy certificate generated or acquired in the same calendar year as the compliance year for which its use is attributed.**

(B) Subject to the Commission's review under ORS 469A.170, an electric company or electricity service supplier may elect to use alternative compliance payments to comply with the applicable renewable portfolio standard. The Commission may also require an electric company or electricity service supplier to use alternative compliance payments to comply with the applicable renewable portfolio standard if the alternative compliance payments would not cause the electric company or electric service supplier to exceed the applicable cost limits in ORS 469A.100(1) and 469A.100(6).

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(c) The costs of renewable energy certificates used to determine whether the cost limit has been reached must be from the applicable compliance report.

**(4) For purposes of this rule, the electric company's multi-state allocation of renewable energy certificates shall be informed by the most recent inter-jurisdictional allocation protocol adopted by the Commission.**