ORDER NO. 09-225

ENTERED 06/15/09

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 518 -- Phase II

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

DISPOSITION: MODIFIED RULES ADOPTED

I. INTRODUCTION

This proceeding was convened to establish rules for implementing the renewable portfolio standards. On November 12, 2008, the Public Utility Commission of Oregon (Commission) filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. Notice was provided to certain legislators specified in ORS 183.335(1)(d) and to all interested persons on the service lists maintained pursuant to OAR 860-011-0001 on November 13, 2008. Notice of the rulemaking hearing was published in the December 2008 *Oregon Bulletin.* The hearing was held on January 12, 2009.

Parties appearing at the hearing included the Commission Staff (Staff), Portland General Electric Company (PGE), PacifiCorp, d.b.a. Pacific Power (Pacific Power), and the Renewable Northwest Project (RNP).

Staff filed opening comments on January 7, 2009. PGE filed comments on January 9, 2009. After the hearing (before close of business on January 12), comments were received from Pacific Power, the Industrial Customers of Northwest Utilities (ICNU), and RNP, filing with the Citizens' Utility Board of Oregon (CUB) and separately. The Commission Staff also filed supplemental comments.

Staff and the utilities did not agree regarding what actions by the utilities would constitute a "use" of a renewable energy certificate (REC). We adopt the definition proposed by the utilities.

II. BACKGROUND

The Oregon Renewable Energy Act (the "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). The RPS requires an electric utility or ESS to sell to its retail electricity consumers specified (minimum) percentages of "qualifying electricity" in a calendar year, with the percentages increasing over time. The primary means by which an electric utility or ESS may meet its RPS requirement is through the use of RECs.

The Act provides for the Oregon Department of Energy (ODOE) to establish a system of RECs, in consultation with the Commission. To that end, ODOE promulgated rules set out in OAR 330-150-0005 to 330-150-0030.

As specified in ODOE's rules, RECs that are issued, monitored, accounted for and transferred by or through the regional renewable energy certificate system and trading mechanism known as the Western Renewable Energy Generation Information System (WREGIS) shall be the only RECs that can be used by an electric utility or ESS to establish compliance with the Oregon RPS.

All entities that wish to demonstrate compliance or participate in the REC system associated with the Oregon RPS must establish and maintain accounts in good standing with the WREGIS REC system.

A bundled or unbundled REC may be used to comply with the RPS when it is issued through the WREGIS REC system, is identified within the WREGIS as Oregon-eligible, and is otherwise consistent with the rules and requirements of the Oregon RPS. ODOE, acting through the appropriate WREGIS protocol, will identify those generating facilities eligible for creation of RECs that can be used to satisfy the Oregon RPS.

A bundled REC must include documentation that one megawatt-hour of energy was associated with the transfer of the WREGIS REC to the electric utility or ESS.

The system of RECs established through ODOE's rules may be used to comply with or participate in the Oregon RPS through the use of RECs with a vintage of January 1, 2007, or later.

A REC that derives from the WREGIS REC system with a vintage before January 1, 2007, is not eligible for compliance with the Oregon RPS.

RECs with a vintage of January 1, 2007, or later, both bundled and unbundled, may be held for future use within the WREGIS REC system to comply with the Oregon RPS.

III. THE PROPOSED RULES

The proposed rules are attached as Appendix A. As stated in the Notice of Proposed Rulemaking, the proposed new rules are required to establish RECs that electric utilities and ESSs may use to meet their RPS obligations. 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 year.[1] A REC banked

[1] OAR 860-038-0300 requires electric utilities and ESSs to provide price, power source, and environmental impact information necessary for consumers to exercise informed choice. It was established by the Commission pursuant to ORS 757.600 – 757.667 as part of the implementation of Direct Access.

for future RPS compliance may be included in the power source disclosures only for the year the REC is used for RPS compliance.

The proposed rule amendments 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.

IV. COMMENTS

A. Staff's Initial Comments

1. Proposed New Rule

Staff first cites OAR 860-038-0300, which imposes disclosure requirements on electric utilities and ESSs relating to "price, power source, and environmental information necessary for consumers to exercise informed choice." According to Staff, the Commission views the information provided in response to the rule as representing a statement by the electric company or ESS that the power sources shown were actually used to meet consumer consumption. Staff observed that, in adopting OAR 860-038-0300, the Commission found that the information required by the rule would "allow consumers to make informed decisions about the choice of electricity supplier." The rule "provides a sound framework for the important requirement of disclosure to all consumers of price, power source, and environmental impact. The consistency in format dictated by the rule will be of aid to consumers."[2]

According to Staff, the rule proposed in this proceeding is based on the same "power supplied" standard for power source reporting requirements as found in OAR 860-038-0300. The proposed rule treats power sources reported under the Direct Access statute as using those resources as that term ("used") appears in the Act. Accordingly, if an electric utility or ESS relies on a REC in its OAR 860-038-0300 reporting, that REC cannot be banked for later use.

According to Staff, the proposed rule is within the Commission's authority to adopt. It is consistent with the concept of "use," meaning "used" to meet actual consumer consumption, found in ORS 469.140(3) and the "power supplied" standard in OAR 860-038-0300.

Staff observes that PGE and Pacific Power have not included in power source disclosures RECs that the companies intend to bank toward their future RPS compliance. To the extent the companies sold, or otherwise transferred RECs generated in 2007, those RECs are no longer available to the utilities for compliance with their Oregon RPS obligations. To prevent disclosure of information in a manner inconsistent with the proposed rule, the Commission granted both utilities waivers from power source disclosure during the second and third quarters of 2008, when the companies would be reporting calendar year 2007 data.

[2] Order No. 00-596 at pp 11 – 12.

2. Proposed Amendments

According to Staff, the proposed rule amendments align timelines and reporting on portfolio options under the Direct Access legislation with timelines and reporting required under the Act.

The Act requires that a utility or ESS "true up" its RPS obligations for the compliance year by March 31 of the following year. OAR 860-038-0300 requires utilities and ESSs to file by April 1 each year an environmental claims reconciliation report for the previous calendar year for any claims made for power sources other than the net system mix. Staff recommends changing this date to June 1, to allow the utilities to account for the RECs they acquire through March 31. Staff also recommends the Commission require supporting documentation from the REC tracking system selected by ODOE for the Oregon RPS (WREGIS).

Regarding the voluntary renewable energy "portfolio options" under ORS 757.603(2),[3] the Commission previously adopted a two-year true-up period for a utility to acquire RECs to fulfill its sales to residential customers. Staff argues that this longer true-up period is inconsistent with "Green-e" standards for voluntary green power programs,[4] which require REC acquisitions within the compliance calendar years or in the three months following. Consistent with the Oregon RPS, Staff recommends the Commission require the utilities to acquire RECs by March 31 each year to fulfill consumer purchases through portfolio options for the proper calendar year.

B. PGE

PGE supports the proposed rules with one "important exception." The proposed rule "inappropriately" mixes "use" of RECs for RPS compliance with other non-RPS reporting requirements. PGE argues that the proposed rules are inconsistent with the Act.

PGE objects to defining the "use" of a REC to include "power source disclosure reporting under OAR 860-038-0300(8)." PGE observes that, under the proposed rule, if renewable generation is reported by a utility under the power source disclosure reports required by that Direct Access rule, then the REC has been "used" and is not available for banking. PGE argues that this result is directly contrary to the Act, which provides that RECs that are not "used" 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. (*See* ORS 469A.140.)

[3] ORS 757.603(2) provides "Not later than March 1, 2002, each electric company shall provide each residential electricity consumer that is connected to its distribution system a portfolio of rate options. The portfolio shall include at least the following options: (a) A rate that reflects significant new renewable energy resources; and (b) a market-based rate."

[4] Green-e administers a national certification program for voluntary renewable energy options.

According to PGE, a power source disclosure is not a use of a REC under the Act. PGE argues that the Commission cannot, by rule, create a new "use" of a REC, beyond that provided for in the statute.

PGE argues that the proposed rule is neither workable nor practical. According to PGE, the rule would cause its reporting of power generation to be inaccurate if it were to bank RECs, because it would be required to exclude those renewable resources from its power disclosure report – even though its rates would include the costs of the resources (likely in a line-item on PGE's bills).

PGE posits that the proposed definition of "use" may be inconsistent with other utility reporting requirements, citing both formal and informal reporting of its resources for different purposes. PGE supposes a "high likelihood" that it could inadvertently and unknowingly "use" a REC that it had intended to bank through its reporting of its renewable generation in other venues.

PGE states that it supports what appear to be the individual goals of the proposed rules: (1) describe the use of RECs for RPS compliance, (2) prevent inappropriate multiple applications of specific RECs to both RPS standards and another renewable energy product that makes an environmental claim, and (3) provide power supply source disclosures to allow consumers to make informed choices among electricity suppliers. PGE proposes to delete language from the proposed rule to resolve its concerns.

C. Pacific Power

While Pacific Power supports the intent of the power source disclosure requirements, it argues that Staff's proposed rules are not provided for in the Act, are not within Staff's authority to adopt, and are contrary to the intent of the Act. Pacific Power further argues that the proposed rules are inconsistent with the principles of power source disclosure requirements and fail to ensure that customers will be provided clear and concise price, power source, and environmental impact information necessary to make an informed choice about utility resources.

Pacific Power argues that the Act does not authorize the Commission to determine what constitutes a "use" of a REC, or to otherwise limit the use of banked RECs in the context of RPS compliance – much less in the context of power source disclosure requirements. According to Pacific Power, the Act established a comprehensive framework for the use of RECs, both bundled and unbundled. The Act does not bestow upon the Commission the authority to promulgate new "uses" for banked RECs, or otherwise to issue rules modifying the disposition of RECs authorized under the Act.

Pacific Power further argues that the proposed rules are inconsistent with the principles of power source disclosure requirements. According to Pacific Power, the proposed rules will not support or facilitate the distribution of clear and concise information to customers about price, power sources and environmental information. Instead, the proposed rule will lead to increased customer confusion and will not serve customer interests.

Pacific Power reports on its interactions with a working group of interested parties (including Staff, CUB, PGE, ODOE, and RNP) to develop disclosure information to be tested in customer focus groups. The objective was to evaluate the effectiveness of an approach to explaining the RPS and RECs to customers and to assess the strengths and weaknesses of alternatives for presenting and labeling the energy supply mix.

According to Pacific Power, it learned from the focus groups that customers prefer power source disclosures that demonstrate the growth of renewable energy generation over time. Customers appeared most interested in the amount of renewable generation currently reflected in rates, rather than the nuances of banking RECs.

Based on that feedback, Pacific Power believes that power source disclosures should include renewable resource generation, regardless of whether the REC is banked for future compliance purposes, because this approach allows customers to see the growth of renewable energy generation over time in Pacific Power's power supply mix.

Pacific Power recommends that the Commission not adopt Staff's proposed language that establishes the power source disclosure as a "use" under the Act. Pacific Power asks the Commission for permission to include in its power source disclosures renewable electricity associated with banked RECs, so long as there is clear disclosure clarifying that the RECs may be banked for future RPS compliance. Pacific Power offers proposed language for its disclosure.

D. ODOE

ODOE supports the proposed rules. "The proposed rules offer the best approach to prevent improper claims related to environmental attributes of electricity generated using renewable resources."

ODOE opposes the changes proposed by PGE. ODOE believes that a decoupled disclosure will mislead and confuse customers – the potential to mislead through a decoupled disclosure can do more harm than the potential misunderstandings regarding banked REC output.

ODOE posits a scenario in which a utility reports generation resources for a given year showing 9 percent wind generation. Some customers will make decisions based on this information, such as being less careful about their electrical use. Then if the market for RECs in a subsequent period is strong, the utility might sell RECs, diminishing that renewable aspect of their generation that those customers relied on in making their decisions.

ODOE urges all parties to be careful about how generation is discussed, to avoid making unfounded claims. The proposed rule does not restrict discussion of REC banking in a revised power source disclosure.

E. RNP

According to RNP, the "primary issue" is how best to inform utility customers regarding the sources of power providing their electricity. For customers to have an informed choice, they must have accurate information.

RNP states that, in the context of renewable energy, a megawatt hour from a power source cannot be "renewable" if the environmental attribute – the REC – is not bundled with that power. If a REC is unbundled from the power, that power source is considered to be "null power" and assumes the attributes of the average emissions of the electricity grid.

For a REC to be banked, the REC must be unbundled from the power. According to RNP, the power source from which a banked REC originated is no longer renewable energy and cannot be disclosed as such. The value of the REC cannot be claimed until the owner of the banked REC uses, or retires, that REC.

RNP states that Staff's proposal will ensure that customers have accurate information regarding the environmental attributes of the power serving them in any given year. RNP believes Staff's proposal is essential to preventing utilities from double counting the value of a REC.

F. CUB/RNP

CUB/RNP describe themselves as "champions of disclosure of power source and environmental impact for electric power." They support Staff's proposed rules.

According to CUB/RNP, the proposed rules are designed to protect the integrity of environmental disclosure and to prevent double counting of the environmental attributes of renewable power. Because utilities can bank RECs for future compliance with the RPS, it is essential that they not be allowed to claim the green attributes twice: once in the year that the power is generated (but the REC is banked), and once in the year that the REC is reported for compliance purposes.

G. ICNU

In its comments, ICNU addresses only the references in the proposed rules to OAR 330-160, adopted by ODOE to implement the Act. According to ICNU, ODOE has exceeded its statutory authority in adopting OAR 330-160-0030, and any inclusion of that rule in Staff's proposed rules and amendments is inappropriate and contrary to law.[5]

[5] ICNU's concerns arise from ODOE's adoption of OAR 330-160-0030(2), which provides that "No renewable energy certificate that derives from the WREGIS renewable energy certificate system with a vintage before January 2007 will be eligible for compliance with the Oregon RPS."

As noted by ICNU, the Act provides that electricity may be used to comply with the RPS only if it is generated by a facility that becomes operational on or after January 1, 1995 (ORS 469A.020(1)). ICNU argues that, because the Act does not provide for any other temporal restrictions on qualifying electricity or for RECs issued for such qualifying electricity, ODOE has exceeded its authority by adopting the rule excluding from eligibility RECs for all electricity generated prior to January 2007.

ICNU argues that the Act delegates to ODOE only the authority to establish a system for tracking RECs to establish compliance with the RPS. Any system of RECs must accommodate all qualifying electricity under the Act.

H. Staff's Supplemental Comments

Staff disputes the claims by PGE and Pacific Power that adoption of Staff's proposed rules would exceed the Commission's authority. Staff cites ORS 756.040, which gives the Commission's broad powers to protect utility customers and the public generally from unjust practices, and ORS 756.060, which authorizes the Commission to adopt "reasonable and proper rules and regulations relative to all statutes administered by the commission * * *."

Staff argues that the utilities have not cited any specific language in the Act that prohibits the Commission from defining the term "use." Staff states that the Commission would be "well within its authority" to declare in a rule that a utility's power source disclosure for a calendar year not include power represented by a REC, unless the certificate is actually used to comply with the RPS in the same calendar year.

According to Staff, Pacific Power did not test Staff's proposed rules in its (Pacific Power's) focus groups. Study participants were suspicious of a utility's banking of certificates. However, participants became comfortable with the concept when they understood the Act allows banking to recognize renewable energy facilities acquired well in advance of enactment and to smooth the cost impacts of moving to higher levels of renewable energy. Staff argues that "well-crafted energy labels" that conform to Staff's proposal would make customers comfortable with the notion that utilities are not using certificates in the current generation year.

Staff claims that its proposed rule solves the "thorny issue" of what to show on energy labels in compliance years for RPS, beginning in 2011. If renewable energy is reported in the year it is generated, even though the RECs are not used that year but instead, banked, those RECs cannot be used again. In Staff's example, if a utility uses RECs generated in 2009 on energy labels for 2009, those RECs cannot be used in energy labels for 2011.

Staff states that the Commission addressed a similar power source disclosure issue when it decided how to treat renewable energy facilities where the RECs were sold. The Commission required that PGE clearly communicate to customers that "the renewable energy attributes have been sold when the company sells Tradable Renewable Energy Credits

. . . and that any renewable energy associated with Tradable Renewable Energy Credit sales will be based on net system mix for reporting purposes."[6]

Staff further argues that the utilities' proposal to report renewable energy in the year it is generated, including RECs banked for future compliance with the Act, causes problems in tracking RECs shown in power source disclosures, versus RECs tracked in WREGIS**.** Because WREGIS only allows a REC to be retired once, under the utilities' proposal a new and separate accounting system would be required to track the utilities' retail sales claims.

Finally, Staff observes that "energy labels are in large part designed to help consumers make informed choices about their power options, including basic service and renewable energy options." Staff argues that, without retirement of RECs on the participants' behalf, renewable energy options would be meaningless. Staff states that its proposed rule properly aligns power source disclosure for basic service with power source disclosure for the voluntary renewable energy options.

V. DISCUSSION

A. Staff/Utilities

We are not persuaded by the utilities' argument that Staff's proposed rule is inconsistent with the Act as a matter of law. However, we are persuaded that the Staff's proposed rule does not best reconcile the competing interests that we must balance in this decision.

There is substantial merit to both Staff's and the utilities' positions. Staff's position is clear and is consistent with the Act (and other statutes), but is less consistent with the purpose of the Act.

The underlying concern is confusion on the part of ratepayers/stakeholders. While confusion is possible under either formulation of the rule, the utility version is less problematic. If the Staff version of the rule was adopted, a utility would understate its renewable generation in its resource mix to avoid "using" RECs needed and banked for future RPS compliance. The potential confusion is reporting less renewables in the utility's resource mix than are reflected in the utility's rates. Under the utilities' version of the rule, confusion can occur when the utility satisfies the future RPS standard using banked RECs, but reports a resource mix that falls short of the standard. We adopt the utility version of the rule because explaining the nuances of banked RECs is less confusing at the time of RPS compliance.

In this regard our view is consistent with the results of Pacific Power's working group interaction. Pacific Power reported that customers prefer power source disclosures that demonstrate the growth of renewable energy generation over time.

[6] Order No. 07-083

Customers appeared more interested in the amount of renewable generation currently reflected in rates, than in the nuances of banking RECs.

Given the emphasis on renewable resources associated with the RPS and carbon emission reduction initiatives, customers are likely to expect to see a growth in renewable energy generation and to find that generation reflected in their rates. The utility version of the rule best accommodates those expectations.

We expect that utility disclosures will report accurately their use of and disposition of their RECs. Undue confusion would be grounds for the Commission to consider modifying the rule in the manner proposed by Staff.

B. ICNU

ICNU's concerns are properly raised before the Oregon Department of Energy and are beyond the scope of this proceeding.

VI. CONCLUSION

The rules, modified to incorporate the changes proposed by PGE and Pacific Power, are adopted. The adopted rules are shown in Appendix B.

ORDER

IT IS ORDERED that:

1. Oregon Administrative Rules 860-083-0005 and 860-083-0050 are adopted, as shown in Appendix B.

2. The modifications to Oregon Administrative Rules 860-038-0220 and 860-038-0300 are adopted, as shown in Appendix B.

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

Made, entered, and effective JUN 15 2009.

Lee Beyer
Chairman

Ray Baum
Commissioner

Dissenting opinion of Commissioner John Savage:

I dissent from the majority opinion on the renewable portfolio standard rules.

Staff and the non-utility interveners got it right.

At worst, under the staff proposal, we're facing one or two years of possible customer confusion that could easily be remedied with a simple explanation on the label. As staff explained in it supplemental comments:

> (W)ell-crafted energy labels that conform to staff's proposed rule would make customers comfortable with the notion that utilities are not using certificates in the current generation year but are banking them for future compliance. The utilities can clearly describe the renewable energy facilities these banked certificates come from. PacifiCorp's study indicated that the types, location and growth of new renewable resources are of interest to consumers.

Under the utilities' proposal adopted by the majority, we're trading off possible, but unlikely, customer confusion in 2009 and 2010 for near-certain customer confusion for the entire period that matters, when the utilities must show compliance with the renewable portfolio standard. Previously disclosed, banked certificates will not be available for power source disclosure in the year they are actually being used for compliance with the standards. Staff describes the result with an example:

> Staff expects consumers would be greatly concerned about energy labels for compliance years that do not clearly show the utility met the renewable portfolio standard for that year. The more aggressive renewable energy standards in the Act take effect beginning 2015. In or after that year, energy labels reporting only actual generation (without banked certificates already shown in the power source mix for the year in which they were generated) would incorrectly indicate the utilities fell short of the renewable portfolio standards.

There are two other problems with the utilities' proposal. First, it will require a new and separate accounting system to track utility retail sales claims (on the retail label) to ensure the utility did not later sell or transfer the certificate. As staff points out in its supplemental comments, we will not be able to rely on WREGIS for such tracking.

Second, the utilities' proposal is not aligned with certificate treatment for voluntary green power options. Under the rule amendments we adopt in this order for portfolio options, certificates used for green power options must be retired in the year shown on the label or three months thereafter, in order to align with certificate retirement timelines in Senate Bill 838 and national Green-e standards for green power programs. Allowing

utilities to show certificates on the label for Basic Service when they are not retired that year creates a mismatch with the related policy for voluntary green power options. Power source disclosure was created in large part to help consumers choose between Basic Service and green power options, so consistent certificate treatment among both is important.

Finally, the majority opinion references PacifiCorp's focus groups on energy labels. I heavily discount the findings from the groups for two reasons. First, as staff pointed out, "The Company did not test approaches that would comply with staff's proposed rule, available well in advance of the study."

Second, as staff relayed, much of the initial "negative feedback on the labeling options PacifiCorp presented to study participants" was related to banked certificates. Staff explains that study participants were "suspicious" of the entire concept of banking but that "participants became comfortable with the concept when they understood the Act allows banking to recognize renewable energy facilities the utilities acquired well in advance of enactment and to smooth the cost impacts of moving to far higher levels of renewable energy."

John Savage
Commissioner

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

Staff's Proposed Rules

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 31st 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 CO2 emissions;

(b) Sulfur dioxide, measured in lbs./kWh of SO2 emissions;

(c) Nitrogen oxides, measured in lbs./kWh of NOx 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 1st** 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

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

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 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 CO2 emissions;

(b) Sulfur dioxide, measured in lbs./kWh of SO2 emissions;

(c) Nitrogen oxides, measured in lbs./kWh of NOx 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~~** **By June 1** 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.

(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

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).

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) A renewable energy certificate that has been traded, sold or otherwise transferred is not eligible to become a banked renewable energy certificate; and

(4) 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