ORDER NO. 21-203

ENTERED Jun 17 2021

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 617

In the Matter of Rulemaking related to the Use of Renewable Energy Certificates for Compliance with the Renewable Portfolio Standard.	ORDER

DISPOSITION: RULE CHANGES ADOPTED

I. SUMMARY

In this order, we adopt the rule amendments to align OAR 860-083-0300 with statutory requirements in ORS 659A.140 and ORS 659A.150, as amended by 2016 Chapter 28, Oregon Laws (SB 1547), and to clarify the application of the term "banked" Renewable Energy Certificates (RECs).

II. BACKGROUND

SB 1547 made various changes to Oregon's Renewable Portfolio Standard (RPS). The Commission instructed Staff to address the impact of these changes on compliance in a holistic set of RPS rulemaking dockets. On April 5, 2017, we opened AR 610 to commence this process.

On January 10, 2018, Staff and various interested persons participated in an AR 610 workshop to discuss the scope and process to address RPS rulemaking issues. Due to the complexity and significance of identified RPS issues, Staff proposed to address these issues in three separate rulemakings.

In Order No. 18-128, we directed this rulemaking docket on the use of RECs for RPS compliance be opened. Staff articulated three primary goals for the rulemaking: First, to make any necessary changes to align the REC banking rules with SB 1547; second, to

consider guidelines for the use of unbundled RECs; third, to consider amendments related to the allocation of RECs for multi-state utilities.

On December 11, 2019, Staff held a workshop to finalize the scope of AR 617 and inform Staff's development of a straw proposal and schedule for the rulemaking. In April 2020, Staff disseminated draft language to stakeholders.

On May 15, 2020, PacifiCorp and Portland General Electric submitted comments, which were supportive of Staff's position and suggested minor language changes. On December 10, 2020, Staff posted draft rule language, incorporating suggested language changes.

On December 16, 2020, Staff held a workshop to review proposed changes, discuss the effects of proposed changes to other RPS rulemaking dockets, and review an issue raised by Calpine Energy Solutions, LLC (Calpine) related to the status of RECs transferred to an energy service supplier (ESS) on behalf of direct access customers.

In a Staff report for the March 9, 2021 public meeting, Staff proposed that AR 617 proceed to formal rulemaking, ahead of AR 610, as the changes proposed in AR 617 do not rely on or influence the incremental cost of compliance addressed in AR 610, and parties were supportive of the proposed changes.

On March 5, 2021, Calpine and Albertsons Companies, Inc. (Albertsons), submitted comments requesting that the Commission clarify in this rulemaking that the Commission will approve the use of transferred freed-up bundled RECs as bundled RECs for RPS compliance when retired by the recipient ESS.

On March 9, 2021, we issued Order No. 21-076 and began the formal phase of the rulemaking process. On March 29, 2021, we filed a Notice of Proposed Rulemaking Hearing with Statement of Need and Fiscal Impact with the Secretary of State. On March 29, 2021, notice was provided to all interested persons on the service lists maintained pursuant to OAR 860-01-0030(1)(b) and to certain legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the April 2021 Oregon Bulletin, establishing a hearing date of April 22, 2021, and a comment due date of April 29, 2021.

During the formal phase of this rulemaking, we held a public comment hearing on April 22, 2021. Calpine and Albertsons provided both oral and written comments. No other comments were submitted.

III. DISCUSSION

We appreciate the stakeholders' efforts to develop and refine the processes contained within the proposed rule amendment. We note this was a lengthy process and stakeholders provided thoughtful comments during the informal and formal phases of this proceeding. Below, we provide a summary of each proposed rule amendment from Staff and a review of specific comments, where applicable. We provide our resolutions to outstanding issues and clarifications where appropriate.

This rulemaking makes three substantive changes to OAR 860-083-0300. First, we delete text of OAR 860-083-0300(3)(b)(B), removing the "first-in, first-out language" to conform to ORS 469.140(2), as amended by SB 1547. Second, we clarify the application of the "banked renewable energy certificate" definition in OAR 860-083-0300(3)(b). Lastly, additional language provides direction to address multi-state allocation of unbundled RECs through the addition of OAR 860-083-0300(4).

A. OAR 860-083-0300(3)(b)(B): "First In, First Out"

Staff's proposed change to this rule conforms OAR 860-083-0300 to ORS 469A.140. Previously, the rule required electric utilities and ESSs to use banked RECs from "first issued to last issued." SB 1547 section 7 removed this requirement from ORS 469A.140, and also established new guidelines for the eligible life of different types of banked RECs. Therefore, to guarantee consistency between rules, Staff proposes removal of the text of OAR 860-083-0300(3)(b)(B), the requirement requiring usage of banked RECs from "first issued to last issued."

We adopt this change.

B. OAR 860-083-0300(3)(b): Banked REC Clarification

This proposed rule amendment clarifies the application of the term "banked" REC. ORS 469A.005(2) defined a banked REC 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."

To clarify the distinction between a calendar year, a compliance year, and a subsequent year, Staff's rule amendment adds "[f]or 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."

We adopt this change.

1. Status of ESS RECs

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 transfer. This issue was discussed further during the December 16, 2020, Staff workshop as well as the April 22, 2021, public comment hearing.

Calpine requested the Commission clarify in this rulemaking if the Commission will allow the usage of transferred bundled RECs as bundled RECs for RPS compliance standards when retired by an ESS.[1] Calpine argues bundled RECs should retain their bundled nature when retired by an ESS. Calpine's main concern is returning the "stranded benefit" value of the REC to the direct access customer.

Under the statutory definition of a bundled REC, Staff does not believe RECs may be considered "bundled" after an IOU transfers RECs to an ESS without transferring the associated energy.[2] Staff does recognize this issue may exacerbate an ESS's challenge in meeting RPS obligations because the use of unbundled RECs for RPS compliance by an ESS will soon be capped at 20 percent under ORS 469A.145(4).

Staff states that the only way to address these challenges for ESS's RPS compliance is a legislative change, including changing the definition of bundled and/or unbundled RECs, or changing the 20 percent cap on bundled RECs for ESSs.

Calpine states Staff is interpreting applicable statutes too narrowly. Calpine highlights the language of ORS 469A.130(2), illustrating the RPS expressly rejects a requirement of "source-to-sink"[3] delivery of the qualifying electricity to the load. By construing the RPS to allow bundled RECs to retain their bundled nature upon retirement by an ESS, Calpine argues direct access customers will be ensured the full stranded benefit. Without such a provision, the direct access customer would have to pay again for additional RECs the ESS would be required to acquire. Calpine and Albertsons request that we clarify in this rulemaking that we will approve the use of transferred freed-up bundled RECs as bundled RECs for RPS compliance purposes, when retired by the recipient ESS.

We decline to adopt the clarification as proposed by Calpine and Albertsons. We find that Calpine and Albertson's request for clarification is inconsistent with the underlying statute.

---

[1] *See* Calpine Energy Solutions, LLC's and Albertsons Companies, Inc.'s Rulemaking Comments (Apr.29, 2021).
[2] *See* ORS469A.005(4).
[3] *See* Calpine Energy Solutions, LLC's and Albertsons Companies, Inc.'s Rulemaking Comments at 8-9.

ORS 469A.130(2) reflects that a bundled REC includes both the REC and the energy, but that the specific electrons cannot be tracked in the utility system. For example, a utility may sell a bundled REC transferring both the REC certificate and energy to another entity and that REC is still considered bundled even though the electrons transferred may not have been the electrons generated by the facility associated with the REC. Similarly, bundled RECs can be banked for use in a future compliance year even though the renewably generated electrons are already on the grid. These arrangements do not invalidate the bundled nature of the REC under ORS 469A.130(2). In the situation presented by Calpine and Albertsons, a REC is received but no energy accompanies it, and a transfer of a REC without transfer of energy does not meet the definition of a bundled REC found in ORS 469A.005(4).

Accordingly, the statutory distinction between bundled and unbundled RECs would be eliminated should we explicitly state in rule that transferred bundled RECs, not accompanied by any energy resource, should be considered a bundled resource for RPS compliance purposes.

C. OAR 860-083-0300(4): Unbundled & Multi-State RECs

Staff's rule amendment conforms OAR 860-083-0300 to ORS 469A.150. 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.

To conform OAR 860-083-0300, the rule amendment adds OAR 860-083-0300(4), which states: "[f]or purposes of this rule, the electric company's multi-state allocation of renewable energy certificates shall be informed by the most recent interjurisdictional protocol adopted by the Commission."

We adopt this change.

IV. ORDER

IT IS ORDERED that:

1. The rule amendments for OAR 860-083-0300 are adopted as set forth in Appendix A of this order; and

2. The rule changes become effective upon filing with the Secretary of State.

Made, entered, and effective Jun 17 2021.

Megan W. Decker
Chair

Letha Tawney
Commissioner

Mark R. Thompson
Commissioner

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

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.

(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) 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).

~~**(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.

(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.

Statutory/Other Authority: ORS 756.040, 757.659 & 469A.065
Statutes/Other Implemented: ORS 469A.050, 469A.052, 469A.065, 469A.070, 469A.100, 469A.140 & 469A.145