

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: 10/25/2016**

REGULAR _____ CONSENT X EFFECTIVE DATE 10/25/2016

DATE: 10/17/2016

TO: Public Utility Commission

FROM: Michael Breish *MB*

THROUGH: *J* Jason Eisdorfer and *JC* John Crider

SUBJECT: PACIFICORP: (Docket No. UM 1782) 2015 Renewable Portfolio Standard Compliance Report.

STAFF RECOMMENDATION:

Staff recommends that the Commission find that PacifiCorp complied with the renewable portfolio standard (RPS) for the 2015 compliance period based upon the PacifiCorp 2015 RPS Compliance Report. Staff further recommends that the Commission direct PacifiCorp to retire the renewable energy credits (REC) identified in its 2015 Compliance Report, and to provide a Western Renewable Energy Generation Information System (WREGIS) retirement report to the Commission, subject to appropriate non-disclosure agreements, within 30 calendar days of its Order.

DISCUSSION:

Issue

Whether the Commission should find that PacifiCorp complied with the requirements of the RPS over the 2015 period.

Applicable Law

The RPS is codified at ORS 469A.005 through 469A.210. ORS 469A.170(1) and OAR 860-083-0350(1)(a) require that each electric company subject to Oregon's RPS provide an annual report demonstrating its compliance (or failure to comply) with the RPS standard.

Among the reporting details required by ORS 469A.170(2)(a-h) and OAR 860-083-0350(2)(a-s), the Compliance Report must contain a complete accounting of RECs used for compliance in the compliance year, separating the RECs into bundled or unbundled,

showing clearly which generating unit produced the RECs, the total cost of compliance, and a detailed explanation of any material deviations from the electric company's applicable acknowledged RPS implementation plan filed under OAR 860-083-0400.

ORS 469A.170(2) and OAR 860-083-0350(2) subsections (b-g) provide the Commission with the information necessary to determine whether an electric company may be considered in compliance with the RPS. These subsections require the electric company to provide a complete Compliance Report that shows the electric company has acquired and retired an appropriate number of valid RECs, bundled or unbundled, banked or unbanked, for the compliance year.

ORS 469A.100(1) provides that "[e]lectric utilities are not required to comply with a renewable portfolio standard during a compliance year to the extent that the incremental cost of compliance, the cost of unbundled renewable energy certificates and the cost of alternative compliance payments under ORS 469A.180 exceeds four percent of the utility's annual revenue requirement for the compliance year."

Discussion and Analysis

Background

RPS compliance must be demonstrated through the retirement of RECs that are maintained through the WREGIS.¹ RECs may be either bundled with energy or exchanged separately (unbundled).² One REC is issued per megawatt-hour of generation produced.³

RECs procured before March 31, 2016, may be used for the 2015 RPS compliance, and RECs were allowed to be banked and carried forward indefinitely for future compliance.⁴ However, only 20 percent of a regulated utility's RPS compliance obligation may be satisfied using unbundled RECs in any given compliance year.⁵

PacifiCorp's 2015 Compliance Report

PacifiCorp's total number of megawatt-hours sold to retail customers in 2015 was 12,862,461. RPS compliance requirements for 2015 direct PacifiCorp to retire 15 percent of this total in 2015, which amounts to 1,929,369 RECs.

¹ OAR 330-160-0020.

² OAR 330-160-0025.

³ OAR 330-160-0015(15).

⁴ See SB 1547 for new requirements regarding REC generation and banking privileges.

⁵ ORS 469A.145(1).

The following tables show how PacifiCorp reports retirement of the various types of RECs to meet the RPS compliance target for 2015 consistent with Oregon statutes and rules:

Type of REC	Number of RECs	Percentage of RPS
Unbundled – newly acquired	0	
Unbundled - banked	211,726	
Unbundled subtotal	211,726	11.0%
Bundled – newly acquired	0	
Bundled – standard banked	1,717,643	
Bundled subtotal	1,717,643	89.0%
Total	1,929,369	100%

PacifiCorp’s 2015 RPS Compliance Report demonstrates compliance with the RPS through the use of 1,717,643 bundled RECs and 211,726 unbundled RECs. PacifiCorp’s unbundled REC retirement amount falls under the 20 percent limit allowed by ORS 469A.145(1).

Staff reviewed PacifiCorp’s calculation of the total cost of compliance and the percentage of revenue requirement (0.27 percent) that the cost represents. This value is below the cost cap of four percent of revenue requirement established by ORS 469A.100(1). In the context of the incremental calculations prescribed in OAR 860-083-0100, Staff finds the calculations reasonable.

Comparison to the 2015-2019 RPS Implementation Plan

Electric utilities must file an implementation plan every two years that forecasts the resources expected to be used to meet the RPS targets and an estimate of the cost of compliance over a forward five-year period.⁶

PacifiCorp’s 2015 Compliance Report does not differ materially from the 2015-2019 Implementation Plan (UM 1681).⁷ PacifiCorp forecasted the 2015 megawatt-hour RPS requirement very close to the actual 2015 requirement; the difference was only 38,072 megawatt-hours. The difference between forecasted and actual unbundled REC is only

⁶ See ORS 469A.075
⁷ PacifiCorp’s 2015-2019 RPS Implementation Plan was acknowledged by the Commission in Order No. 14-267.

722 RECs, which is a product of the difference between forecasted and actual loads of previous years where unbundled RECs were also used to comply.

Staff has reviewed these differences and finds them reasonable. The 2015 RPS Compliance Report is consistent with the acknowledged 2015-2019 RPS Implementation Plan.

Stakeholder Comments

The Industrial Customers of Northwest Utilities (ICNU) restated its position regarding the improper calculation of incremental cost that it fully explained in Docket No. UM 1783, Portland General Electric Company's 2015 RPS Compliance Report. In summary, ICNU believes that PacifiCorp is misinterpreting ORS 469A.100 and calculating the incremental cost based on a methodology based on the cost of *RECs retired* rather than the cost of *electricity delivered* in the compliance year. ICNU recommends "that the Commission require PacifiCorp to recalculate its total cost of compliance to incorporate the cost of qualifying electricity that was delivered in 2015, not the cost of RECs retired in 2015."⁸

Additionally, ICNU finds that PacifiCorp's decision to not fully utilize unbundled RECs to meet the 2015 RPS requirement up to the statutorily mandated limit of 20 percent to be imprudent. PacifiCorp instead relied on banked bundled RECs to fill the gap that would have otherwise been met with additional unbundled RECs as shown in the table above. According to ICNU, its analysis demonstrates that unbundled RECs were cheaper than banked bundled RECs, resulting in an inflated cost of compliance for 2015. Furthermore, ICNU asserts that PacifiCorp's approach depletes available banked bundled RECs that could have been used in a future compliance year, increasing the likelihood of higher costs to comply because of a future bundled REC need.

PacifiCorp's Response

PacifiCorp argues that despite ICNU's allegations about calculating the incremental cost of RPS compliance, the Company's calculation methodology is consistent with the Commission's rules.⁹ PacifiCorp thus contends that ICNU's request that the Company recalculate incremental cost based on delivered power rather than retired RECs is unreasonable because "the Company must comply with regulatory requirements as they currently exist and cannot unilaterally decide that existing rules do not appropriately interpret statutory directives."¹⁰ Finally, the Company goes on to state that while it correctly calculated incremental cost under the Commission's rules, it supports the

⁸ ICNU Comments at page 3.

⁹ See OAR 860-083-0010(39); PacifiCorp Reply Comments at 3.

¹⁰ Ibid.

Commission opening a rulemaking proceeding to revise these rules, especially in light of the passage of SB 1547.¹¹

Regarding ICNU's argument that PacifiCorp imprudently complied with the 2015 RPS requirements by not using 20 percent unbundled RECs, the Company states its concerns about the Environmental Protection Agency's Clean Air Act draft Section 111(d) rule (CPP Section 111(d)) and the possibility of needing to procure physical renewable resources for compliance purposes resulted in a position to defer unbundled REC procurement in the 2015 integrated resource plan (IRP) action plan. Until the Company had additional certainty, it believed this was the lowest-risk option because of the possibility that renewable resources could comply both with the CPP Section 111(d) requirements and the RPS. PacifiCorp adds that it believes the RPS compliance reporting docket is not the forum in which the Commission should consider prudence of a utility's RPS compliance strategy.

Staff's Analysis

Staff agrees with ICNU on the point that the incremental cost calculation methodology does not reflect all costs ratepayers bear for RPS compliance in a given period. However, Staff finds that the Company correctly determined its 2015 RPS incremental cost based upon the definitions and instructions found in the Commission's applicable rules. Even assuming the rules may differ from the statute, a point that is not yet established, the rules are still instructive regarding the use of retiring RECs for purposes for RPS compliance and the rules are still the law. Because of this, Staff believes it cannot retroactively find the Company proceeded incorrectly by acting in accordance with current Commission rules. Regardless, this issue needs to be resolved and Staff anticipates exploring the issue further in a future rulemaking proceeding, where the impacts of SB 1547 can be further reviewed.

Current statute and rules pertaining to RPS compliance do not require the utilities to comply on a strictly least-cost basis. Rather, a utility must adhere to the four percent cost cap, alignment with the most recent IRP, and the first-in, first-out rule for retiring RECs. As PacifiCorp mentioned in its Reply Comments, the rules governing RPS compliance reports do not direct the Commission to consider if the utility pursued the absolute least-cost means of complying with the RPS. Therefore, Staff agrees that this is not the setting in which to consider prudence.

However, Staff is not convinced that PacifiCorp's reasoning regarding the deferral of unbundled RECs procurement for the purposes of 2015 RPS compliance is truly in the best interests of ratepayers. Both PGE's acquisition of unbundled RECs for the purposes of 2015 RPS compliance as well as the results of PacifiCorp's 2016 REC RFP

¹¹ PacifiCorp Reply Comments at page 3.

suggest lower-cost options could have been obtained. Therefore, Staff believes that a Commission finding in this proceeding that PacifiCorp complied with 2015 RPS should not reflect a finding concerning the prudence of the Company's actions.

Conclusion

Staff concludes that PacifiCorp has met the RPS compliance targets mandated by ORS 469A.052(1)(a) and will meet the RPS compliance reporting requirements mandated by OAR 860-083-0350 upon submission of the 2015 bundled REC incremental cost data.

PROPOSED COMMISSION MOTION:

- (1) Find PacifiCorp to be compliant with Oregon's Renewable Portfolio Standard during the 2015 compliance period; and
- (2) Direct PacifiCorp to retire the RECs identified in its 2015 Compliance Report, and to provide a Western Renewable Energy Generation Information System retirement report to the Commission, subject to appropriate non-disclosure agreements, within 30 calendar days of this Order.