

**BEFORE THE PUBLIC UTILITY COMMISSION**

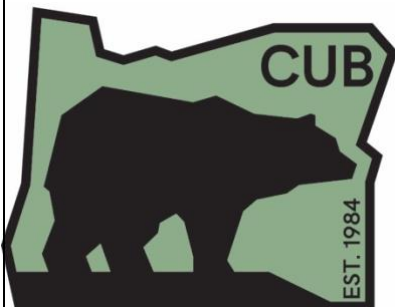
**OF OREGON**

**AR 622**

In the Matter of )  
 )  
Small Scale Community Based Renewable )  
Energy Projects Rulemaking. )  
\_\_\_\_\_ )

COMMENTS OF THE  
OREGON CITIZENS' UTILITY BOARD

September 28, 2018



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**I. INTRODUCTION**

The Oregon Citizens' Utility Board (CUB) provides these comments in response to an Oregon Public Utility Commission Staff (Staff) request for responses circulated via email on September 19, 2018 by the PUC Administrative Hearings Division. CUB appreciates the opportunity to provide written responses to help initiate this rulemaking proceeding. CUB's comments address each question in turn.

**II. RULEMAKING QUESTIONS**

1. *Should the PUC be engaged in this rulemaking? If not, what other type of process should the commission undertake in order to provide subject utilities with guidelines for compliance?*

Yes. CUB believes a rulemaking docket before the Commission is the proper venue in which to engage stakeholders to explore issues related to the community-based renewable energy requirements delineated in SB 838 § 24. A formal notice and comment rulemaking process will provide ample opportunity for participation by a diverse array of stakeholders to ultimately craft rules to effectuate the Legislature's intent. As an administrative agency, the Oregon Public

Utility Commission only has authority to the extent that it has been granted by the Legislature. SB 838 § 24 directs all state agencies to establish policies to promote the community-based renewable energy projects goal. Further, ORS 469A.210(1) declares these projects to be “an essential element of this state’s energy future.” There is clear guidance from the Legislature on this matter. As the government agency tasked with regulating the investor-owned electric utilities that serve the vast majority of the state, the Commission is the proper agency to promulgate rules to further the Legislature’s intent.

### **III. MEASUREMENT QUESTIONS**

- 2. Should the PUC define how the 8 percent requirement in ORS 469A.210(2) will be measured?*

Yes. Since Idaho Power Company serves fewer than 25,000 retail electricity consumers in the state, the provisions of ORS 469A.210(2) only apply to PacifiCorp and Portland General Electric. In this rulemaking, the Commission should work with stakeholders to establish clear rules regarding how these utilities will meet the eight percent aggregate electrical capacity requirement. For example, as written, the statute is unclear whether each utility will have to individually meet the eight percent requirement or whether one utility may lean on the other (i.e., one utility is at 6% and the other is at 10%). CUB believes rules that are prescriptive enough to ensure that one utility cannot lean on the other are the best way to make certain that the statutory requirement is met.

- 3. What does electrical capacity mean?*

Electrical capacity is total electrical, full-load sustained output that could come from a generating unit under ideal conditions (i.e., nameplate capacity or rated capacity).

- 4. What does aggregate electrical capacity mean?*

It is the sum total of the nameplate capacity of each generating asset in a utility's system, taken together with capacity contracts and other contracts for generating resources. This definition should be used in the calculation to demonstrate compliance in question 2 above.

5. *How should an individual project's capacity be measured?*

An individual project's capacity should be measured by its individual nameplate capacity. This aligns with the agreed-upon language in SB 1547 § 24(2).

#### **IV. PROJECT ELIGIBILITY QUESTIONS**

6. *Should the PUC determine which projects are eligible to count towards the 8 percent requirement?*

Yes. There is a clear Legislative directive and promulgating rules to effectuate this goal is within the Commission's quasi-legislative rulemaking authority.

7. *What process should the PUC follow to determine which projects are eligible?*

Guidance on project eligibility should be defined in this rulemaking proceeding, with appropriate input from stakeholders, and, ultimately, a Commission resolution. CUB believes that the rules should follow SB 1547's guidance on what constitutes a "renewable" resource. Additional definitions surrounding "community-based" and "small scale" should be explored in this rulemaking proceeding.

8. *Which renewable projects should be eligible?*

See answer to question 7 above.

a. *Can eligible resources be utility-owned?*

Yes. The language of ORS 469A.210 makes no distinction between utility-owned and non-utility-owned resources. Absent a clear delineation in the legislative text, CUB believes the Commission does not possess the requisite authority to make a distinction on resource ownership for project eligibility.

b. *Does a utility need to demonstrate a contract length beyond 2025?*

As written, ORS 469A.210(2) requires compliance *by 2025*. CUB believes Staff should work with stakeholders and consult the Department of Justice regarding whether a contract length beyond 2025 is needed. This is an unresolved legal question that will require a statutory construction analysis including an investigation of pertinent legislative history. Ultimately, the Commission can render a legal determination in a subsequent Order that will be subject to challenge and court review, if necessary.

c. *Do existing PURPA projects under 20 MW qualify?*

Yes, if the PURPA project meets the requirements in ORS 469A.210(2)(a) or (b).

d. *Do community solar projects qualify?*

Yes, if the community solar project meets the requirements in ORS 469A.210(2)(a) or (b).

e. *Do net-metered projects qualify? (Including the gross portion?)*

Net-metered projects present a different set of issues than the prior two questions because a large, uncertain, fluctuating portion of the energy is used on site and not delivered to the electrical system. To avoid unnecessary complication in the implementation of ORS 469A.210, CUB suggests that net-metered projects should not qualify. However, to the degree that they do qualify, only the exported energy portion should qualify for compliance purposes. CUB recognizes the inherent difficulty in parsing out total net-metered project capacity into energy used at the site and energy exported onto the grid.

9. *What locational restrictions are applicable?*

Even though the Legislature's intent is likely that these projects be located within the state of Oregon, constitutional issues regarding the Commerce Clause render a statute requiring a

project to be located in a specific state illegal. However, CUB believes the Commission can require that the energy from these projects be delivered in Oregon.

a. *How should PacifiCorp's multi-state service territory be addressed?*

See CUB's answer to question 9 above.

10. *Does a utility need to own the associated RECs of a qualifying project?*

The definition of qualifying renewable energy for RPS compliance purposes does not require utility ownership, but, from a policy perspective, CUB believes it would run counter to the Legislature's intent for the RECs from a qualifying project here to be used for RPS compliance elsewhere. Therefore, CUB believes that the utility must own the RECs of a qualifying project. CUB notes that while this is our preliminary position on this issue, we are open to reconsideration and exploring alternatives raised by Staff and other stakeholders. Staff should seek legal counsel on this issue.

## **V. COMPLIANCE QUESTIONS**

11. *Should the PUC determine compliance with the 8 percent mandate?*

Yes.

12. *When does compliance occur?*

Per ORS 469A.210(2), by 2025. While the statute is not explicit, CUB believes that the Commission should have authority to require utilities to ramp up to the 8% by 2025 compliance threshold in a similar manner to the RPS.

13. *How should the utility report progress?*

Through compliance filings with the Commission that provide opportunity for stakeholder review.

14. *How should a utility demonstrate compliance?*

After eligible resources are defined in the rulemaking, the utility should demonstrate that all resources to meet the threshold are eligible in its filings. Additionally, the utility must demonstrate that it is meeting the 8% threshold (or earlier, lesser threshold if applicable) by detailing the effect on its aggregate system capacity.

15. *What happens after 2025?*

This depends on the resolution of the outstanding legal issue addressed in question 8b, above.

Signed this 28<sup>th</sup> of September, 2018.



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