

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

AR 622

In the Matter of

Rulemaking for Community-Based
Renewable Energy Projects.

JOINT COMMENTS OF THE
COMMUNITY RENEWABLE ENERGY
ASSOCIATION, THE RENEWABLE
ENERGY COALITION, AND OREGON
SOLAR + STORAGE INDUSTRIES
ASSOCIATION

INTRODUCTION

The Community Renewable Energy Association (“CREA”), the Renewable Energy Coalition (“REC”), and Oregon Solar + Storage Industries Association (“OSSIA”) (collectively the “Renewable Associations”) submit these Joint Comments on the Public Utility Commission of Oregon’s (“OPUC” or “Commission”) Notice of Proposed Rulemaking filed September 7, 2021 (“2021 NOPR”) for rules to implement the small-scale renewable project standard in Oregon’s Renewable Portfolio Standard (“RPS”), ORS 469A.210. As the 2021 NOPR explains, the proposed rules are intended to implement Section 14 of 2016 Senate Bill 1547 codified at ORS 469A.210, as amended by Section 37 of 2021 House Bill 2021.

The Renewable Associations appreciate the opportunity to comment on the Commission’s proposed rules for the small-scale renewable standard. This rulemaking is central to the mission of CREA, REC, and OSSIA because each organization’s mission includes advocating for policies that will lead to successful development and operation of small-scale renewable energy facilities in Oregon. Each of the Renewable Associations previously submitted comments in the informal rulemaking proceeding, and on the Commission’s previous

formal notice of proposed rulemaking filed December 27, 2018 (“2018 NOPR”).¹ This docket has now remained dormant for over two years. Without any further informal process or input from stakeholders, this new 2021 NOPR was published and included significant revisions from the 2018 NOPR. Pursuant to the Oregon Administrative Procedures Act, the Oregon Legislature declared that “it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules [and it] encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule.”² While, the Renewable Associations appreciate that the Commission has taken further action towards adoption of final rules on the RPS’s small-scale renewable standard by publishing proposed rules, the Renewable Associations would appreciate some additional process or at least a Staff workshop to explain how Staff came up with its proposal and to facilitate further stakeholder understanding.

The Renewable Associations have serious concerns with certain aspects of the version of the proposed rules contained in the 2021 NOPR and seek some clarifications on unclear or ambiguous language. In some important respects, the latest version of the rules eliminates certain aspects of the prior rules circulated by Staff in the 2018 NOPR that were critical to ensuring the small-scale renewable standard results in further development and continued operation of small-scale renewable facilities. As explained in detail below, the Renewable Associations recommend a limited number of discrete changes to the 2021 NOPR’s proposed

¹ 2019 January Or Bull Ch. 860 Or Pub Util Comm’n *In re Small Scale Renewable Energy Projects Rulemaking*, available at <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/6851015> (Attached herein as Attachment A).

² ORS 183.333(1).

rules. The Renewable Associations are not raising all positions and proposals previously made in the informal phase of the rulemaking and on the 2018 NOPR with the hope that a more limited and discrete set of proposals can be adopted into the final rule.

To summarize, the Renewable Associations make the following recommended changes to the rules:

- Proposed OAR 860-091-0030 should be revised on two important points, both of which were included in the 2018 NOPR:
 - Facility Location: Eligible small-scale renewable facilities should be limited to facilities located in Oregon, consistent with legislative intent to promote the benefits of small-scale and community-based facilities in Oregon.
 - Renewable Attribute Ownership: The utility should be required to own the renewable attributes of the facilities used to comply with the small-scale renewables standard.
- RPS Implementation Plans: The proposed rules should be revised to require that the utilities address plans for compliance in their RPS Implementation Plans, which was also included in the 2018 NOPR.
- Penalties for Noncompliance: The proposed rules should clarify that penalties will apply for non-compliance with the small-scale renewable standard.

COMMENTS

A. The Commission’s Rules Should Be Designed to Lead to New Development of Small-Scale Renewable Facilities.

At the outset, before diving in the details of the proposed rules, it is important to place the task at hand in context. Put simply, the goal of this rulemaking should be to adopt rules that are reasonably expected to result in development of small-scale renewable energy facilities in Oregon because that was the legislature’s clear intent in adopting and repeatedly reconfirming the small-scale renewable standard.

As the Commission is aware, legislative intent is critically important in interpreting Oregon statutory requirements and whether the administrative rules lawfully implement the statute. To determine the meaning of statutes, Oregon courts do not defer to an agency’s interpretation but instead interpret the statute to ascertain legislative intent.³ The court’s methodology is as follows: 1) examine the text and context, “which includes other provisions of the same statute and other related statutes”; 2) examine the legislative history; and, if the intent remains unclear, 3) consider general maxims of statutory construction.⁴

Even before enacting the small-scale renewables standard, the Oregon legislature has long expressed support for Oregon-based small-scale renewable facilities. As early as 1983, the legislature enacted provisions regarding Oregon’s implementation of the Public Utility Regulatory Policy Act of 1978 (“PURPA”),⁵ which states “[i]t is the goal of Oregon to . . .

³ *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or 606, 610, 869 P2d 1143 (1993), modified by *State v. Gaines*, 346 Or 160, 167-171, 206 P3d 1042 (2009); *Roats Water Sys. v. Golfside Invs.*, 225 Or App 618, 622-623, 202 P3d 199 (2009).

⁴ *Portland Gen. Elec. Co.*, 317 Or at 611.

⁵ ORS 758.505 *et seq.*

[p]romote the development of a diverse array of permanently sustainable energy resources using the public and private sectors to the highest degree possible”⁶

In the small-scale renewable standard at issue in this rulemaking, the legislature unambiguously proclaimed that “community-based renewable energy projects . . . *are an essential element of this state’s energy future.*”⁷ This provision was included with Oregon’s original RPS in 2007 and has been reconfirmed and strengthened each time the RPS has been amended.⁸ The Commission is the state agency that the legislature has charged with implementing this important requirement.

In light of the fact that community-based renewable facilities are “an essential element of this state’s energy future,”⁹ any ambiguities in the statute should be interpreted in a manner that will in fact lead to further development of such facilities *in the future*. The statute should not be interpreted in a manner that paradoxically leads to a conclusion that no further development of such facilities is necessary. This is especially true given the Legislature’s recent increase of the community-based renewables standard to eight percent to 10 percent. The Renewable Associations urge the Commission to adopt rules that will actually lead to further development of small-scale renewable facilities.

The specific statutory directive in ORS 469A.210 requires development of small-scale community-based renewable generation facilities of 20 megawatts (“MW”) of generating capacity or less and certain biomass cogeneration. This requirement was formerly identified in

⁶ ORS 758.515(2)(a).

⁷ ORS 469A.210(1) (emphasis added).

⁸ 2007 Or Laws ch 301 § 24; 2010 Or Laws ch 68 § 1; 2016 Or Laws ch 28, § 14; 2017 Or Laws ch 452, § 1; 2021 Or Laws ch 508, § 37.

⁹ *Id.*

the original version of Oregon’s RPS, enacted in 2007, as a “goal” of achieving eight percent of energy supply from such small-scale renewable facilities by 2025, and the legislation stated “[a]ll agencies of the executive department as defined in ORS 174.112 shall establish policies and procedures promoting the goal declared in this section.”¹⁰ CREA was the lead sponsor of this provision, and it would not have passed but for CREA’s participation in the legislative process.

However, concerned that no formal policies had been adopted under ORS 469A.210 after nearly 10 years, CREA and REC engaged at the legislature in 2016, to, among other modifications, convert the eight-percent goal to an affirmative requirement no less significant than the RPS’s other compliance requirements.¹¹ In 2017, a further amendment clarified that the facilities meeting the eight-percent requirement must be small-scale community-based facilities that also qualify under the general RPS criteria in ORS 469A.025.¹²

Most recently, in Oregon’s landmark House Bill 2021 enacted this year, the Legislature again expanded the small-scale renewable standard. A major feature of House Bill 2021 is it sets a 100 percent clean energy standard by 2040.¹³ However, the legislature also revised the small-scale renewable standard to require that by 2030, at least 10 percent of the “aggregate electrical capacity” of covered electric companies, which include Portland General Electric Company (“PGE”) and PacifiCorp, must be composed of qualifying small-scale renewable facilities.¹⁴ This recent legislation thus increased the standard from eight percent to 10 percent, and delayed the compliance date from 2025 to 2030.

¹⁰ See 2007 Or Laws ch 301, § 24.

¹¹ See 2016 Oregon Laws ch 28, § 14.

¹² See 2017 Oregon Laws ch 452, § 1.

¹³ 2021 Or Laws ch 508, §§ 1, 3.

¹⁴ 2021 Or Laws ch 508, § 37.

The critical statutory language in the current version of ORS 469A.210 provides:

(1) The Legislative Assembly finds that community-based renewable energy projects, including but not limited to marine renewable energy resources that are either developed in accordance with the Territorial Sea Plan adopted pursuant to ORS 196.471 or located on structures adjacent to the coastal shorelands, are an essential element of this state’s energy future.

(2) For purposes related to the findings in subsection (1) of this section, by the year 2030, at least 10 percent of the aggregate electrical capacity of all electric companies that make sales of electricity to 25,000 or more retail electricity consumers in this state must be composed of electricity generated by one or both of the following sources:

(a) Small-scale renewable energy projects with a generating capacity of 20 megawatts or less that generate electricity utilizing a type of energy described in ORS 469A.025; or

(b) Facilities that generate electricity using biomass that also generate thermal energy for a secondary purpose.

(3) Regardless of the facility’s nameplate capacity, any single facility described in subsection (2)(b) of this section may be used to comply with the requirement specified in subsection (2) of this section for up to 20 megawatts of capacity.¹⁵

The legislative history of House Bill 2021 also demonstrates the clear intent to increase the amount of small-scale renewable energy projects. Representative Helm, a sponsor of the bill, spoke on June 25, 2021 about the bill in general and specifically the small-scale renewables standard. Generally, Representative Helm stated “House Bill 2021 will move state policy to promote non-emitting electricity to the maximum extent practicable.”¹⁶ Regarding the small-scale renewables standard, Representative Helm stated it “will help our Oregon communities”

¹⁵ 2021 Or Laws ch 508, § 37.

¹⁶ House Chamber Convenes 06/25/2021 10:00 AM, Oregon State Legislature (October 4, 2021), <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=202106118> (Transcribed testimony of Rep. Helm is attached herein as Attachment B).

and it is “intended as an ongoing requirement, with no backsliding below the 10% target allowed by utilities in years after 2030.”¹⁷

The small-scale community-based renewables standard was adopted to increase the amount of small-scale projects and to construct new facilities in the state of Oregon to realize the local benefits of locally sited renewable facilities. At the June 25, 2021 meeting, Representative Helm explained HB 2021 “provides additional direct benefit to communities in this state in the forms of creating and sustaining meaningful, living wage jobs.”¹⁸ Representative Helm also stated he interpreted the “language to mean that the renewable energy generation will be built where Oregon workers would get the jobs associated with the construction and operation of these facilities.”¹⁹ Representative Helm also pointed to the local environmental benefits that result from locally owned renewable energy facilities, stating:

And I’m talking about projects such as irrigation modernization projects where canals are piped, small scale hydroelectric facilities are included, water is saved by eliminating leakage through the canals, and therefore water put back into our streams to serve fish habitat, wildlife habitat, and other ecological needs, in addition to reducing our vulnerability from the endangered species act listing of threatened and endangered fish species. That’s a triple bottom line win, Madam Speaker, and that’s the kind of co-benefits that I think should be prioritized by the PUC and all other agencies that are intended to implement this bill.²⁰

Representative Pham, a Chief Sponsor of House Bill 2021, also discussed these benefits in testimony. For example, Representative Pham explained community-based renewable energy projects are needed to “adapt to a changing climate” as “Oregon has experienced unprecedented

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

wildfires, intense ice storms, and each summer the heats gets more and more intense.”²¹ Further, Representative Pham explained community-based renewable projects are a way to ensure “that at every stage of the way, low-income, BIPOC, rural, and coastal communities are shaping the transition to 100% clean electricity and are not left out of the benefits.”²² Thus, small-scale community-based renewable energy projects are intended to provide economic, environmental, and societal benefits to Oregon, and thus any rules the Commission adopts should ensure there is a need to build more of these project to be aligned with legislative intent.

These legislators’ comments on the benefits of locally owned renewable energy facilities are well supported. Small-scale community-based renewables are an important part of Oregon’s resource mix. Studies at Oregon State University, University of Minnesota, and the National Renewable Energy Laboratories have documented that locally owned projects provide greater economic benefit to the local community than that which would be provided by larger projects.²³ These studies have demonstrated that there can be a three to five-fold increase in economic returns and benefits to the local community over a larger, utility scale project. Simply put, with

²¹ Testimony in Support of HB 2021-46, Rep. Khanh Pham (May 13, 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/30209>.

²² Testimony in Support of HB 2021-46, Rep. Khanh Pham (May 13, 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/30209>.

²³ See E. Lantz and S. Tegen, National Renewable Energy Laboratory, *Economic Development Impacts of Community Wind Projects: A Review and Empirical Evaluation*, (April 2009), available online at <http://www.nrel.gov/docs/fy09osti/45555.pdf> (last accessed Oct. 12, 2021); M. Torgerson, B. Sorte, and T. Nam, Oregon State University, *Umatilla County’s Economic Structure and the Economic Impacts of Wind Energy Development: An Input-Output Analysis* (March 2006), available online at https://ruralstudies.oregonstate.edu/sites/agsci.oregonstate.edu/files/ruralstudies/pub/pdf/umatilla_sr1067.pdf (last accessed Oct. 7, 2021).

local investors the economic returns stays with the local community. Further, Representative Helm's comments regarding the many co-benefits of small-scale hydroelectric projects are well documented. For example, hydroelectric projects can be a part of integrated facilities that deliver critical irrigation and drinking water to citizens, businesses, and animals.

In sum, the legislative intent is clear. The legislators clearly indicated the intent of the legislature is to build *more* small-scale renewable projects *in Oregon*, and the 10-percent mandate was one of the primary laws enacted to ensure that result. If the legislators intended for utilities to already be in or close to compliance with the mandate, then there would not be commentary on the creation of new jobs in Oregon and new environmental benefits in Oregon with respect to this small-scale renewable standard. In multiple sessions over the course of a decade, the legislature has expressed support for small-scale community-based resources to be part of Oregon's energy mix. Thus, the Commission's rules implementing the small-scale renewable standard should be designed to result in development and continued operation of such facilities in Oregon.

In the following sections, these comments will specifically address the discrete changes to the 2021 NOPR's version of the proposed rules that would more faithfully implement the legislative intent of promoting development of such facilities.

B. The Commission Should Revise the Proposed Rules to Require that Eligible Facilities Be Located In Oregon and that the Utility Own the Renewable Attributes.

The 2021 NOPR's version of OAR 860-091-0030 contains significant revisions to the prior proposal circulated by Staff, and if adopted, would seriously undermine the effect of the small-scale renewable standard. The Renewable Associations strongly recommend that this

proposed section be revised to require that eligible facilities be located in Oregon and to require that the utility own the renewable attributes of facilities used for compliance with the standard.

Specifically, the 2021 NOPR's proposed rule includes the following provision:

2021 NOPR's Proposed OAR 860-091-0030

Eligible Renewable Energy Projects

(1) Projects used to comply with the standard in ORS 469A.210(2) must be an Oregon Renewable Portfolio Standard-approved generator; and

(2) The eligible portion of a project's capacity used to comply with the standard in ORS 469A.210(2) is the percentage of annual project costs paid for by Oregon retail customers.

In contrast, the Renewable Associations support the prior proposal made in the 2018 NOPR, as follows:

2018 NOPR's Proposed OAR 860-091-0030

Eligible Renewable Energy Projects

(1) Renewable energy projects used to comply with the standard in ORS 469A.210 must be located in the State of Oregon.

(2) For each renewable energy project used to comply with the standard in ORS 469A.210(2), the electric company must show ownership of the renewable attributes of the energy generated by the project during the compliance year. A renewable energy project for which the electric company does not own the renewable attributes during the compliance year may not be used to comply with the electrical capacity standard in ORS 469A.210(2).

(3) Notwithstanding section (2), if the electric company owns the renewable attributes for only a portion of the energy generated by the renewable energy project, a share of the project's capacity that is proportionate to the electric company's ownership interest in the renewable attributes of the project's output can be used for compliance with the standard in ORS 469A.210.²⁴

²⁴ Attachment A at 6.

Relatedly, the 2018 NOPR contained a definition of “renewable attributes” that has been deleted from the 2021 NOPR’s version of the rule, but which is necessary to implement accounting of the renewable attributes. That definition was as follows:

2018 NOPR’s Proposed OAR 860-091-0010

* * * *

(3) “Renewable attributes” means the environmental attributes associated with energy generation represented by a renewable energy certificate that can be used to comply with Oregon’s renewable portfolio standards in ORS 469A.050 and ORS 469A.055. Renewable attributes do not include greenhouse gas offsets from methane capture not associated with generation of electricity and do not include environmental attributes represented by a thermal renewable energy certificate created under ORS 469A.132.²⁵

For the reasons explained below, the Renewable Associations continue to support Staff’s prior proposal for this section of the proposed rule, and urge the Commission to at least adopt two substantive changes included in the 2018 NOPR: (1) require the eligible facilities to be located in Oregon; and (2) require the utility to own the renewable attributes of the facilities.

1. Eligible Small-Scale Renewable Facilities Should Be Located in Oregon.

First, as discussed above, the legislative history and intent clearly requires that the eligible facilities be located in Oregon. The purpose of the small-scale renewables standard is to realize the Legislature’s determination that “community-based renewable energy projects . . . are an essential element of this state’s energy future.”²⁶ As the legislators commented earlier this year, the intent of the provision is to achieve local economic and environmental benefits of such facilities in Oregon communities. Allowing one of the state’s major utilities to point to solar

²⁵ Attachment A at 4.

²⁶ ORS 469A.210(1).

facilities in Utah – as PacifiCorp will do under the 2021 NOPR’s proposal – is inconsistent with the Legislature’s objective that small-scale facilities be an essential element of Oregon’s own energy future. Thus, Staff’s initial proposal in the informal phase, included in the 2018 NOPR, properly included an express Oregon-location requirement for eligible facilities.

However, the 2021 NOPR’s proposal eliminated the Oregon-location requirement and replaced it with a provision that appears to allow use of facilities located out-of-state. The provision now allows use of any facility otherwise qualifying under the RPS up to the “percentage of annual project costs paid for by Oregon retail customers.”²⁷ This edit has the potential to drastically reduce, if not completely eliminate, the practical effect of the small-scale renewable standard for PacifiCorp, which has numerous out-of-state small-scale facilities selling to it under PURPA. Such out-of-state facilities – which make no contribution to Oregon’s goal of achieving benefits of community-based facilities in Oregon – could be used by PacifiCorp to meet the small-scale renewables standard to the extent their costs are included in Oregon rates.

Yet the ultimate outcome of how the 2021 NOPR’s proposal would work remains unknown because it will turn on the interstate cost-allocation policies in effect in 2030 and thereafter. PacifiCorp’s multi-state protocol (“MSP”) is currently in a transitional period where the treatment of the primary small-scale renewable facilities – PURPA QFs – is likely to change between now and 2030. Whereas PacifiCorp’s QF costs were formerly allocated proportionally across its six-state system, the 2017 MSP introduced a situs assignment of the above-market costs of QFs, and the 2020 MSP appears to call for transition by 2030 to full situs assignment of

²⁷ 2021 NOPR’s Proposed OAR 860-091-0030(2) (Sept. 7, 2021).

such costs.²⁸ However, attempting to guess how such costs will be allocated in 2030 and thereafter is purely speculative. In addition, eligible small scale renewable facilities are likely to include facilities that are not selling as QFs, and such non-QFs may continue to be allocated on a system-wide basis under the 2020 MSP and into the compliance period after 2030. It is reasonable to assume that out-of-state small-scale renewable facilities will be allocated to Oregon, at least in part, thus undermining the intent and effect of the Legislature's 10-percent target if the 2021 NOPR's proposal is adopted.

Moreover, determining the percentage of such allocations on a generator-by-generator basis for each facility that otherwise meets Oregon's RPS requirements and the 20-MW size cap will be an onerous and non-transparent process. Stakeholders will have exceptional difficulty forecasting PacifiCorp's current and future compliance with the small-scale renewable standard if the 2021 NOPR's proposal is adopted, which will undermine the usefulness of the provision for driving resource acquisition and important policy decisions at the Commission.

Unlike the other proposals made in the informal rulemaking and the 2018 NOPR, a forecast of PacifiCorp's compliance status under the 2021 NOPR's cost-allocation method was not provided to stakeholders. Additionally, stakeholders have not had an opportunity to reasonably evaluate the proposal and its impact on the compliance obligation under ORS 469A.210. The Commission should not move forward with a proposal that has an unknown compliance impact.

²⁸ *In re PacifiCorp Initiates Investigation into Multi-Jurisdictional Issues*, Docket No. UM 1050, Order No. 20-024 at 7-8 (Jan. 23, 2020).

For those reasons, the Renewable Associations continue to support the 2018 NOPR’s previously proposed Oregon-location requirement. An Oregon-location requirement is simple and easy to understand. It is the only proposal that faithfully implements the clear legislative intent.

The Commission should not be deterred by PacifiCorp’s threatening comments regarding the Dormant Commerce Clause in the informal phase. Specifically, PacifiCorp argued that Staff’s proposal for an Oregon-location requirement “creates a potential violation of the Dormant Commerce Clause of the United States Constitution.”²⁹ PacifiCorp claimed that Staff’s “proposed rules appear discriminatory on their face and ORS 469A.210 provides no legitimate local purpose (and is in fact silent on the topic) that can only be served through a discriminatory rule.”³⁰ But the Commission should not adopt a suboptimal rule out of fear of PacifiCorp’s argument, which is without merit.

An Oregon-location requirement to promote the benefits of community-based renewable energy does not violate the Dormant Commerce Clause. Under the Dormant Commerce Clause, “[a] state may not discriminate ‘against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently.’”³¹ But “regulations justified by a valid factor unrelated to economic protectionism are permissible, even if they benefit a state’s economy.”³² Thus, the courts have affirmed origin-based regulatory

²⁹ Informal Phase: PacifiCorp Comments at 2 (Nov. 28, 2018) (citing *New Energy Co. of Indiana v. Limbaugh*, 486 U.S. 269, 273-274 (1988)).

³⁰ Informal Phase: PacifiCorp Comments at 2 (Nov. 28, 2018).

³¹ *Am. Fuel & Petrochemical Mfrs. v. O’Keeffe*, 903 F3d 903, 911 (9th Cir 2018) (quoting *City of Philadelphia v. New Jersey*, 437 US 617, 626-27, 98 S Ct 2531, 57 L Ed 2d 475 (1978)).

³² *Id.* at 913 (internal quotation omitted).

schemes, including Oregon and California’s low carbon fuel standards, on the basis that such programs were enacted, in large part, to provide non-economic benefits.³³ The Commission also approved an in-state and in-utility service territory requirement for community solar projects explaining “we conclude that our decision to impose geographic restrictions on the location of both projects and participants represents a reasonable effort to balance these competing legal considerations and accomplish the intent of the legislation, ultimately achieving the best mix of risks and benefits in our approach to project location.”³⁴

In this case, the in-state requirement is the only way to achieve the statute’s express objective of making “community-based renewable energy projects . . . an essential element of this state’s energy future.”³⁵ The courts will generally “assume that the objectives articulated by the legislature are actual purposes of the statute” absent evidence otherwise.³⁶ As quoted above, legislators intended development and operation of small-scale facilities in Oregon to result in local social and environmental benefits, such as grid resiliency in Oregon and upgrades to irrigation systems and related ecological benefits. PacifiCorp’s out-of-state facilities do not provide Oregon the same social and environmental benefits as new small-scale facilities in

³³ *Id.* at 911-13 (affirming Oregon’s low carbon fuel standards); *Rocky Mt. Farmers Union v. Corey*, 913 F3d 940, 955-56 (9th Cir. 2019) (affirming California’s low carbon fuel standard, and stating that the “Constitution does not require California to shut its eyes to the fact that some ethanol is produced with coal and other ethanol is produced with natural gas because these kinds of energy production are not evenly dispersed across the country or because other states have not chosen to regulate the production of greenhouse gases.”).

³⁴ *In re Rules Regarding Community Solar Projects*, Docket No. AR 603, Order No. 17-232 at 3 (June 29, 2017).

³⁵ ORS 469A.210(1).

³⁶ *Am. Fuel & Petrochemical Mfrs.*, 903 F3d at 912 (internal quotation omitted).

Oregon would. Therefore, despite PacifiCorp’s claims, there is nothing that bars Oregon from promoting community-based and small-scale renewable energy development within its borders.

Therefore, as Staff previously proposed, the Commission should revise the rules before finalization to require that the eligible facilities be located in Oregon.

2. The Rules Should Require the Utility to Own the Renewable Attributes to Use a Facility for Compliance.

Second, as Staff and the 2018 NOPR previously proposed, the final rules should require the utility to own the renewable attributes of the qualifying small-scale facilities it uses for compliance. This treatment is consistent with the statutory language. The RPS expressly references the requirement in ORS 469A.210 when discussing the limitations on use of renewable energy certificates for other purposes. Most directly, the RPS states, “[a]n electric utility or electricity service supplier that uses a renewable energy certificate to comply with a renewable portfolio standard imposed by a state other than this state may not use the same renewable energy certificate to comply with a renewable portfolio standard established under ORS 469A.005 to 469A.210.”³⁷ It must also follow that, if a facility is claimed for compliance purposes, the utility or generator could not use the renewable attributes for some other purpose, such as sale to another party or compliance in another state, and the Oregon utility must itself own the renewable attributes used for purposes of complying with ORS 469A.210.

Additionally, if the utility could claim compliance while another party claims the renewable attributes, there would be a double-counting violation of Federal Trade Commission (“FTC”) regulations regarding environmental claims. Indeed, the Commission’s rules would be

³⁷ ORS 469A.140(5) (emphasis added).

in direct conflict with federal regulations promulgated by the FTC if it were to move forward with the 2021 NOPR’s proposal to allow the utilities to claim the renewable compliance benefits of facilities for which another party owns the renewable attributes. The FTC’s regulations state that if “a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.”³⁸ But the proposed rule in the 2021 NOPR allows PGE and PacifiCorp to do just that. Unless the proposed rule is revised, the utilities will claim that they use small-scale *renewable* energy for 10-percent of their aggregate electrical capacity, even though they either sold or never bought the renewable energy certificates for much or all of that energy.

Parties asserted in the informal phase that a capacity-based RPS standard, such as that in ORS 469A.210, cannot be understood to require the utility to own the renewable attributes. But that is demonstrably wrong. As noted, Oregon’s RPS law expressly states that the renewable attributes used for compliance with its requirements, *including* ORS 469A.210, cannot be used for compliance with other state’s RPS laws.³⁹ In addition, in response to arguments by utilities that a project did not need to own the renewable energy certificates to qualify as renewable under ORS 469A.210, the community renewable standard was amended in 2017 to add the language expressly stating that eligible small-scale facilities must “generate electricity utilizing a type of

³⁸ 16 CFR § 260.15(d).

³⁹ ORS 469A.140(5).

energy described in ORS 469A.025. . . ”⁴⁰ The renewable energy certificate is what proves such facilities meet these criteria.⁴¹

Similarly, the suggestions previously made that capacity-based standards never require ownership of renewable energy certificates are incorrect. Montana’s community renewable energy standard was also a capacity-based standard that required acquisition of 50 MW of community-based facilities and, like Oregon’s RPS, required acquisition of the renewable energy certificates from such facilities.⁴² In the industry, it is generally understood that a party must own the renewable attributes in order to claim the benefits of those attributes, whether the claim is made for compliance purposes or otherwise. There is nothing inherently inconsistent between ownership of the renewable attributes of the generation and a capacity-based standard.

Parties have also previously pointed to the former solar capacity requirement in former ORS 757.370 as an example of a capacity-based standard that did not require ownership of renewable energy certificates.⁴³ But this comparison is inapt. Generally stated, ORS 757.370 created a solar capacity standard under which the electric companies were each required to acquire a proportionate share of a statewide 20 MW of nameplate capacity from large solar

⁴⁰ 2017 Or Laws ch 452, § 1.

⁴¹ See ORS 469A.130(1) (stating ODOE “shall establish a system of renewable energy certificates that can be used by an electric utility or electricity service supplier to establish compliance with the applicable renewable portfolio standard”).

⁴² *E.g.*, MONT. CODE ANN. § 69-3-2004(3)(b) (2019) (stating, “Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity”).

⁴³ This provision was in effect from 2009 to 2016, when the legislature repealed it in Senate Bill 1547. 2009 Or Laws ch 748, § 3; 2010 Or Laws ch 79, § 2; repealed by 2016 Or Laws ch 28, § 23, eff. Mar. 8, 2016.

systems by 2020.⁴⁴ Oregon’s solar capacity carve out was not contained in the RPS provisions and was not subject to the RPS’s statutory bar against using the renewable attributes for other purposes. Instead, the solar capacity standard was located at former ORS 757.370, and there was no express bar against using the renewable attributes with the solar capacity resources for other purposes. Thus, the comparison to the small-scale renewables standard in ORS 469A.210 is inapt.

There is also no basis to assume that the utilities could have complied with the solar capacity requirement without owning the renewable energy certificates. The issue was apparently never directly addressed in response to a compliance filing because the requirement was repealed before the 2020 compliance deadline. However, the former administrative rule anticipated that the utility *would* own the renewable energy certificates and allowed for those certificates to also be used in the RPS’s energy-based requirements, where it provided: “Each renewable energy certificate associated with the electricity produced by solar photovoltaic energy systems used to achieve, or exceed, the minimum solar photovoltaic capacity standards specified in OAR 860-084-0020 may be used to comply with the renewable portfolio standards established under ORS 469A.005 to ORS 469A.120”⁴⁵

Additionally, without requiring ownership of renewable attributes, both utilities will claim compliance through the use of net metering and community solar facilities, which directly

⁴⁴ See generally *In re Rulemaking Regarding Solar Photovoltaic Energy Systems*, Docket No. AR 538, Order No. 10-200 (May 28, 2010) (adopting rules for solar capacity standard).

⁴⁵ Former OAR 860-084-0070 (repealed by *In re Rulemaking to Repeal the Minimum Solar Energy Capacity Standard for Electric Companies*, Docket No. AR 613, Order No. 17-518 (May 19, 2017)).

contradicts clear legislative intent. In the legislative history, Representative Helm stated the intent was that the small-scale renewable standard could be satisfied with any RPS-eligible technology but not with net metered projects in ORS 757.300, solar photovoltaic systems in ORS 757.365, community solar projects in ORS 757.386, and coal generation facilities as defined under ORS 757.518(1).⁴⁶ Representative Helm specifically stated that even though these are the “types of projects that have been discussed before as being qualifying for accounting within the standard” they “should not be counted.”⁴⁷ Thus, those projects should not be included in any definition the Commission adopts in the rules. Requiring ownership of the renewable energy certificates would prevent this unreasonable use by utilities of net metering facilities and community solar facilities under the small-scale renewable standard. With net metering and community solar projects, the customers own the renewable energy certificates.⁴⁸ Thus, the Renewable Associations’ proposal is consistent with legislative history directing that the Commission should adopt rules that exclude net metering and community solar projects from being eligible resources.

Finally, if our proposal is adopted, the Renewable Associations continue to support the 2018 NOPR’s previously proposed treatment of the renewable energy certificate issue, which makes a distinction between “ownership” of the renewable attributes during the compliance year

⁴⁶ House Chamber Convened 06/25/2021 10:00 AM, Oregon State Legislature (October 4, 2021), <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=202106118>.

⁴⁷ *Id.*

⁴⁸ See ORS 757.386(8) (community solar rules); OAR 860-022-0075(2)(a) (net metering rules).

and retirement of the renewable energy certificates.⁴⁹ The distinction provided some flexibility in the ability to use the renewable energy certificates from the small-scale community-based facilities to also meet the general RPS requirements. The Renewable Associations also continue to support the 2018 NOPR’s proposed inclusion of the definition of “renewable attributes” (quoted above). The definition ensured consistency with the attributes conveyed to Oregon utilities under the Commission’s standard contract for renewable QFs during the renewable deficiency period. Thus, the 2018 NOPR, which the Renewable Associations continue to support on this point, allows the utilities to use purchases from renewable QFs at renewable avoided costs for compliance with the small-scale renewable standard. Therefore, the Commission should adopt the 2018 NOPR’s previous proposal on these important points.

3. Summary On Proposed OAR 860-091-0030

To summarize, the Commission should revise this critical provision to reinstate Staff’s proposed Oregon-location and renewable-attribute-ownership requirements, both of which were

⁴⁹ Attachment A at 8, containing 2018 NOPR’s Proposed OAR 860-091-0050, which provided:

Renewable Energy Attributes

(1) Use of a qualifying project’s capacity to meet the standard of ORS 469A.210 does not prevent the electric company from using the renewable energy certificates associated with qualifying projects’ output for purposes of meeting a renewable portfolio standard established under ORS 469A.050 during the compliance year.

(2) Use of a qualifying project’s capacity to meet the standard of ORS 469A.210 does not prevent the electric company from banking otherwise eligible renewable energy certificates associated with qualifying projects’ output for purposes of meeting a renewable portfolio standard established under ORS 469A.050 in a subsequent year.

were included in the 2018 NOPR. Resolution of this issue will have a significant outcome on the overall effect of ORS 469A.210. The Renewable Associations had hoped to provide graphical comparison of the impact of these changes, but there is insufficient data available to even do so. The lack of data alone should give the Commission pause. However, based on information previously distributed in this docket, there is no doubt that these two changes will seriously undermine the legislative objective of promoting small-scale and community-based renewable development in Oregon. If the utility could achieve compliance without owning renewable attributes of the facilities, PacifiCorp will argue it can meet the compliance requirement with existing facilities for which it pays only for brown power under PURPA contracts. PacifiCorp has numerous such facilities under contract in Oregon, and many additional such facilities in other states, which could potentially be used without the Oregon-location requirement. Additionally, PGE would be able to point to substantial net metering capacity on its system, even though the net metering was not intended to be used for compliance. The combined effect of these changes will directly diminish the number of small-scale renewable facilities developed in Oregon in the next decade

Thus, the Commission should revise proposed OAR 860-091-0030 to reinstate the Oregon-location and renewable-attribute-ownership requirements.

C. The Commission Should Revise the Proposed Rule to Require Utilities to Address the Small-Scale Renewable Standard in RPS Implementation Plans.

The 2021 NOPR's version of the rule inexplicably deleted the prior requirement in the 2018 NOPR that the utilities address their compliance status and plans for future compliance in RPS Implementation Plans. The final rule should include that important requirement.

Specifically, during the informal phase and in the 2018 NOPR, Staff had included a proposal in the rules as follows:

2018 NOPR’s Proposed OAR 860-091-0060

Implementation Plans

Starting in 2021 and every year thereafter, an electric company must incorporate its plan to achieve or exceed, and maintain, the standard in ORS 469A.210 into its renewable portfolio standard implementation plans filed pursuant to OAR 860-083-0400.⁵⁰

The Renewable Associations strongly urge the Commission to require inclusion of the small-scale renewable standard in the utilities’ RPS Implementation Plan filings. The 2021 NOPR provides no explanation why this important provision was eliminated. There has been a long history of a lack of transparency as to the compliance status and plans for compliance with this standard. Failure to require that the standard be addressed in RPS Implementation Plans will perpetuate that problem into the future. Therefore, the final rule should contain the requirement that the utilities address compliance plans in their RPS Implementation Plans.

D. The Final Rule Should Clarify the Penalties That Will Apply for Non-Compliance.

The 2021 NOPR’s version of the proposed rule does not address compliance and penalties, but such provisions should be clarified in the final rules. This is an issue that was raised in the informal rulemaking and in response to the 2018 NOPR, but it has not been addressed or resolved yet.

The RPS charges the Commission with penalizing electric companies that fail to comply with this requirement. It provides: “If an electric company or electricity service supplier that is

⁵⁰ Attachment A at 9.

subject to a renewable portfolio standard under ORS 469A.005 to 469A.210 fails to comply with the standard in the manner provided by ORS 469A.005 to 469A.210, the Public Utility Commission may impose a penalty against the company or supplier in an amount determined by the commission.”⁵¹ The small-scale renewable standard is part of the RPS, and thus the penalty provision should apply to violations. Without penalties and clarity in the rule, the affected utilities may elect to simply violate the statutory requirement and believe there will be no consequence for such non-compliance.

E. There Are Other Changes Made in the 2021 NOPR that Would Be Helpful for Staff to Clarify and/or Discuss Informally With Stakeholders.

In addition to the concerns identified above, there are several other changes from the 2018 NOPR to the current 2021 NOPR that would be helpful to clarify and discuss with Staff. As noted above, the Oregon Administrative Procedures Act strongly encourages agencies to informally work with affected stakeholders in the development of policies. As this docket has sat dormant for some time, it makes sense for Staff to engage with stakeholders to explain and clarify its proposals. For example, in the proposed OAR 860-091-0020, the rules refer to an “annual average” of resources acquired under power purchase agreements. The proposed use of the term “annual average” could lead to confusion because “annual average” implies a volumetric measure of generation as opposed to a measure of aggregate capacity. Such ambiguity could lead to future litigation. Thus, it would be helpful if Staff could clarify the intent of this language, as well as other changes made in the 2021 NOPR, so that stakeholders can offer appropriate feedback on terminology used. While this is just one example of confusing

⁵¹ ORS 469A.200.

language in these draft rules, the Renewable Associations see value in hearing more directly from Staff with respect to the Commission’s intended meaning and effect of each section of the 2021 NOPR and why this 2021 NOPR shifts so starkly from the rules previously published in the 2018 NOPR.

CONCLUSION

The Renewable Associations appreciate the opportunity to submit these comments and look forward to continued engagement on the small-scale renewable standard. For the reasons set forth above, the Commission should adopt the important revisions to the proposed rule set forth above.

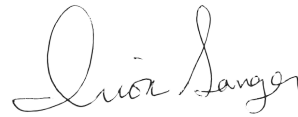
Dated: October 13, 2021.

Respectfully submitted,



Gregory M. Adams (OSB No. 101779)
Richardson Adams, PLLC
515 North 27th Street
Boise, ID 83702
Telephone: 208-938-2236
Fax: 208-938-7904
greg@richardsonadams.com

Of Attorneys for the Community Renewable Energy Association



Irion Sanger
Sanger Law, PC
4031 SE Hawthorne Blvd.
Portland, OR 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Renewable Energy Coalition and Oregon Solar + Storage Industries Association

Attachment A

2019 January Oregon Bulletin

Chapter 860 – Public Utility Commission

In the Matter of Small Scale Renewable Energy Projects Rulemaking

OFFICE OF THE SECRETARY OF STATE
DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 860
PUBLIC UTILITY COMMISSION

FILED
12/27/2018 4:20 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: In the Matter of Small Scale Renewable Energy Projects Rulemaking.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/21/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Diane Davis
503-378-4372
diane.davis@state.or.us

PO Box 1088
Salem, OR 97308

Filed By:
Diane Davis
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/14/2019

TIME: 1:00 PM

OFFICER: ALJ Sarah Rowe

ADDRESS: Public Utility Commission

Hearing Room

201 High Street SE

Salem, OR 97301

NEED FOR THE RULE(S):

These rules are needed to implement Section 14 of 2016 Senate Bill 1547 codified at ORS 469A.210 establishing a renewable energy project standard for electric companies that serve more than 25,000 customers in Oregon.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 622 on comments and attach them as a Word or PDF document to an e-mail addressed to the Commission's Filing Center at PUC.FilingCenter@state.or.us.

Interested persons may review all filings online at <https://apps.puc.state.or.us/edockets/docket.asp?DocketID=21555>. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=4027>.

Participants wishing to monitor the hearing by telephone must contact Diane Davis at diane.davis@state.or.us or (503)

378-4372 by close of business February 13, 2019, to request a dial -in number. The Commission strongly encourages those planning to present oral comment at the hearing to attend in person.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 469A.200 - 469A.210 available online at https://www.oregonlegislature.gov/bills_laws/ors/ors469a.html

Oregon Utility Statistics, 2017 available online at <https://www.puc.state.or.us/docs/statbook2017.pdf>

FISCAL AND ECONOMIC IMPACT:

The rules are proposed to implement the renewable energy project standard outlined in Section 14 of 2016 SB 1547 (now codified in ORS 469A.210). Portland General Electric Company (PGE) and PacifiCorp, dba Pacific Power, are the electric companies subject to these rules. The law requires that by the year 2025, PGE and PacifiCorp must have 8 percent of electric capacity come from small-scale renewable energy projects or facilities that generate electricity using biomass that also generate thermal energy for a secondary purpose. Procurement of these resources, if the standard is not already met, would most likely begin in 2023 or 2024 and accordingly there is not an appreciable fiscal or economic impact anticipated before that time. Utility ratepayers will likely see the impact of any necessary procurements in their rates. However, this impact is the result of the law setting the standard, and not the rules implementing the standard. The potential magnitude of the fiscal impact cannot be estimated at this time because it is not yet known what procurements, if any, will be needed for compliance in 2025.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Electric companies that serve more than 25,000 customers (PGE and PacifiCorp) are subject to the renewable energy project standard set in ORS 469A.210. While qualifying projects require a non-trivial amount of time to identify, design, and build, it is not yet known what procurements, if any, will be needed for compliance in 2025. Accordingly, there should be little economic impact to anyone in the state before any required procurement begins, likely between 2023 and 2024. The costs associated with procuring eligible projects for this mandate will be paid by electric company ratepayers, including any state agency, unit of local government, or member of the public purchasing electricity from either PGE or PacifiCorp. Any increased prices due to this mandate will carry through to other sectors of the economy. As electricity use is very inelastic in the short-term (generally individuals use similar quantities of electricity, regardless of the price), consumption may decrease in other more elastic areas. Individually, this effect will be small, but aggregated across all ratepayers, this could have important effects on the economy as a whole.

(2) (a) According to the Oregon Utility Statistics 2017, available on the PUC's website, PacifiCorp and PGE had 76,860 and 108,122 commercial and industrial customers. As small businesses represent the overwhelming majority of

commercial and industrial firms in Oregon (as well as the United States), most of these firms are considered small businesses. Each of them could potentially see small increases in electricity rates.

(2)(b) The potential magnitude of costs for administrative activities or other professional services cannot be quantified at this time. However, these costs will only fall on PacifiCorp and PGE; there are no expected changes to administrative or professional costs to small businesses from these rules.

(2)(c) The potential magnitude of costs for professional services, equipment, supplies, labor and increased administration for compliance cannot be quantified at this time. However, these costs will only fall on PGE and PacifiCorp; there are not expected changes to these costs for compliance to small businesses as a result of these rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

PUC Staff invited participation in this rulemaking through a wide distribution list. All who wanted were able to fully participate with equal access to PUC Staff and all other information in the rulemaking docket. PUC Staff worked with the diverse group of participating stakeholders over the past six months to develop proposed rules to implement section 14 of 2016 Senate Bill 1547. Stakeholders included electric companies, electricity service suppliers, ratepayer groups, and environmental advocates.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

PUC Staff allowed the opportunity for stakeholder participation through multiple rounds of informal written comments. PUC Staff also held an informal workshop where stakeholders shared comments and concerns about the draft proposed rules.

RULES PROPOSED:

860-091-0000, 860-091-0010, 860-091-0020, 860-091-0030, 860-091-0040, 860-091-0050, 860-091-0060, 860-091-0070

ADOPT: 860-091-0000

RULE SUMMARY: This rule clarifies that the rules in this division implement the standard in ORS 469A.210.

CHANGES TO RULE:

860-091-0000

Applicability of Rules

(1) These rules implement ORS 469A.210.¶

(2) The rules contained in this division apply only to an electric company that makes sales of electricity to 25,000 or more retail electricity customers in this state.¶

(3) Upon request or its own motion, the Commission may waive any of the division 091 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

Statutory/Other Authority: ORS 756.060, 469A.200, 469A.210

Statutes/Other Implemented: ORS 469A.20

ADOPT: 860-091-0010

RULE SUMMARY: This rule adopts definitions for purposes of implementing the standard in ORS 469A.210.

CHANGES TO RULE:

860-091-0010

Definitions for Division 091 Rules

For purposes of OAR 860-091-0000 through 860-091-0070:¶

(1) "Electric company" has the meaning in ORS 756.005.¶

(2) "Nameplate capacity" means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Nameplate capacity is usually indicated on a nameplate attached to the individual machine or device.¶

(3) "Renewable attributes" means the environmental attributes associated with energy generation represented by a renewable energy certificate that can be used to comply with Oregon's renewable portfolio standards in ORS 469A.050 and ORS 469A.055. Renewable attributes do not include greenhouse gas offsets from methane capture not associated with generation of electricity and do not include environmental attributes represented by a thermal renewable energy certificate created under ORS 469A.132.

Statutory/Other Authority: ORS 756.060, 469A.200, 469A.210

Statutes/Other Implemented: ORS 469A.210

ADOPT: 860-091-0020

RULE SUMMARY: This rule clarifies the meaning of aggregate electrical capacity for purposes of complying with ORS 469A.210

CHANGES TO RULE:

860-091-0020

Aggregate Electrical Capacity

(1) For purposes of compliance with the standard in ORS 469A.210(2), each electric company's aggregate electrical capacity is the total nameplate capacity of the electric company's generation resources to serve Oregon load. ¶

(2) For electric companies making retail sales in multiple jurisdictions, the nameplate capacity of generation resources to serve Oregon load is the total nameplate capacity of the electric company's system generation multiplied by Oregon's generation allocation factor.

Statutory/Other Authority: ORS 756.060, 469A.200, 469.210

Statutes/Other Implemented: ORS 469A.210

ADOPT: 860-091-0030

RULE SUMMARY: This rule sets the eligibility requirements for projects used to comply with the ORS 469A.210 standard.

CHANGES TO RULE:

860-091-0030

Eligible Renewable Energy Projects

(1) Renewable energy projects used to comply with the standard in ORS 469A.210 must be located in the State of Oregon.

(2) For each renewable energy project used to comply with the standard in ORS 469A.210(2), the electric company must show ownership of the renewable attributes of the energy generated by the project during the compliance year. A renewable energy project for which the electric company does not own the renewable attributes during the compliance year may not be used to comply with the electrical capacity standard in ORS 469A.210(2).

(3) Notwithstanding section (2), if the electric company owns the renewable attributes for only a portion of the energy generated by the renewable energy project, a share of the project's capacity that is proportionate to the electric company's ownership interest in the renewable attributes of the project's output can be used for compliance with the standard in ORS 469A.210.

Statutory/Other Authority: ORS 756.060, 469A.200, 469A.210

Statutes/Other Implemented: ORS 469A.210

ADOPT: 860-091-0040

RULE SUMMARY: This rule requires electric companies to file a compliance report starting in 2025 and every year thereafter.

CHANGES TO RULE:

860-091-0040

Compliance Reports

(1) No later than June 1, 2025, and no later than June 1 for each year thereafter the electric company must file a report with the Commission demonstrating compliance or explaining in detail any failure to comply, with the standard in ORS 469A.210.

(2) The report required in section (1) of this rule must include the following information associated with each owned or contracted qualifying and eligible renewable energy project:

(a) The name of the facility;

(b) The location of the facility;

(c) The in-service date of the facility;

(d) The manufacturer's nameplate capacity rating;

(e) The execution date of any associated power purchase agreement; and

(f) The contracted capacity and output delivery period of any associated power purchase agreement; and

(g) Proof of the subject electric company's ownership interest in the renewable attributes of the project output during the compliance period.

(3) The report required in section (1) of this rule must include the following information regarding the electric company's generation:

(a) The total nameplate capacity of the electric company's generating resources.

(b) The total contracted capacity of all power purchase agreements.

(c) For an electric company making retail sales in multiple jurisdictions, the Oregon generation allocation factor from the most recently concluded Oregon general rate case.

Statutory/Other Authority: ORS 756.060, 469A.200, 469A.210

Statutes/Other Implemented: ORS 469A.210

ADOPT: 860-091-0050

RULE SUMMARY: This rule clarifies that renewable energy credits (RECs) for generation of renewable energy projects used to comply with the Standard in ORS 469A.210(2) may be used to comply with the Renewable Portfolio Standard (RPS).

CHANGES TO RULE:

860-091-0050

Renewable Energy Attributes

(1) Use of a qualifying project's capacity to meet the standard of ORS 469A.210 does not prevent the electric company from using the renewable energy certificates associated with qualifying projects' output for purposes of meeting a renewable portfolio standard established under ORS 469A.050 during the compliance year.

(2) Use of a qualifying project's capacity to meet the standard of ORS 469A.210 does not prevent the electric company from banking otherwise eligible renewable energy certificates associated with qualifying projects' output for purposes of meeting a renewable portfolio standard established under ORS 469A.050 in a subsequent year.

Statutory/Other Authority: ORS 756.060, 469A.200, 469A.210

Statutes/Other Implemented: ORS 469A.210

ADOPT: 860-091-0060

RULE SUMMARY: This rule requires electric companies to file implementation plans starting in 2021.

CHANGES TO RULE:

860-091-0060

Implementation Plans

Starting in 2021 and every year thereafter, an electric company must incorporate its plan to achieve or exceed, and maintain, the standard in ORS 469A.210 into its renewable portfolio standard implementation plans filed pursuant to OAR 860-083-0400.

Statutory/Other Authority: ORS 756.060, 469A.200, 469A.210

Statutes/Other Implemented: ORS 469A.200, 469A.210

ADOPT: 860-091-0070

RULE SUMMARY: This rule specifies the mechanism for cost recovery.

CHANGES TO RULE:

860-091-0070

Cost Recovery

An electric company may request recovery of its prudently incurred costs to comply with the Standard in ORS 469A.210 in an automatic adjustment clause proceeding filed at the Commission pursuant to ORS 469A.120.

Statutory/Other Authority: ORS 756.060, 469A. 200, 469A.210

Statutes/Other Implemented: ORS 469A.200, 469A.210

Attachment B

**Transcribed Testimony of Representative Helm from
06/25/2021 House Chamber Meeting**

HB 2021 Testimony
6/25/2021

<https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2021061180>

Testimony from Representative Helm

Rep. Helm: Thank you Madam Speaker, to the Bill

Speaker Kotek: To the Bill

Rep. Helm: I'm going to add some legislative history here, colleagues, and try to do it quickly. The bright spot for me in this bill is the community renewables section and that's what this legislative history is focused on. House Bill 2021 will move state policy to promote non-emitting electricity to the maximum extent practicable. And as stated in section 2 of the bill, in a manner that provides additional direct benefit to communities in this state in the forms of creating and sustaining meaningful, living wage jobs. I understand this language to mean that the renewable energy generation will be built where Oregon workers would get the jobs associated with the construction and operation of these facilities, and that goes to comments about having so much of renewable development occur out of state. Among its aspects, House Bill 2021 increases the existing community-based community solar small-scale renewable energy mandate in ORS 469A.210 moving from requiring 8% of aggregate electrical capacity by 2025 to requiring 10% by 2030 and onward, and I'd like to thank you Madam Speaker, Chair Marsh, and Chair Nathanson for going on that journey with me near the end of session to cement that requirement into this bill. It will help our Oregon communities. This same requirement is intended as an ongoing requirement, with no backsliding below the 10% target allowed by utilities in years after 2030. I also want to make clear that only, sorry about that, I also want to make clear that only resources that qualify for compliance with Oregon's renewable portfolio standard are intended to count toward electric company compliance, with the community-based renewable energy mandate in ORS 469A.210. Specifically types of projects that have been discussed before as being qualifying for accounting within the standard, should not be counted. That means net metering as described in ORS 757.300, in addition solo... solar photovoltaic systems as described in ORS 757.365. In addition, community solar projects as described in ORS 757.386, and any other generation facility inside or outside the state that is described in ORS 757.518 sub one. These should not be tallied in the accounting of the 10%. In addition, as

recognized in House Bill 2021 by the study of opportunities to encourage development of small-scale and community-based renewable energy projects, additional work is needed to ensure our communities see maximum benefits from Oregon's transition to cleaner energy. And depending on the study results, this work could include further strengthening of the requirements in ORS 469A.210. One final comment, madam speaker, the green tariff component of this bill is intended to help local communities identify green energy projects that they would like to build in their communities to serve their own needs. This could include lots of different things, anywhere from putting up a couple of wind turbines outside of town, to what I view as the much more beneficial projects that have multiple co... co-benefits. And I'm talking about projects such as irrigation modernization projects where canals are piped, small scale hydroelectric facilities are included, water is saved by eliminating leakage through the canals, and therefore water put back into our streams to serve fish habitat, wildlife habitat, and other ecological needs, in addition to reducing our vulnerability from the endangered species act listing of threatened and endangered fish species. That's a triple bottom line win, Madam Speaker, and that's the kind of co-benefits that I think should be prioritized by the PUC and all other agencies that are intended to implement this bill. With those statements of legislative intent, Madam Speaker, I urge and I vote.