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November 5, 2021

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High St. SE, Suite 100
Salem, OR 97308-1088

Re: **AR 622 – PGE's Comments on Revised Proposed Rules**

Filing Center,

Portland General Electric Company (PGE) appreciates the opportunity to provide these comments in response to the Public Utility Commission of Oregon (Commission) Notice of Proposed Rulemaking to adopt rules In the Matter of Small-Scale Renewable Energy Projects Rulemaking.

PGE provides these comments in two parts. The first part of our comments relates directly to the Commission's rulemaking authority regarding ORS 469A.210. PGE believes that the Commission must first determine whether it holds rulemaking authority to adopt rules in this matter, something that the Commission does not have in this case. The second part of our comments relates to the rules themselves and asks the Commission to consider them, if after a review of its authority the Commission determines that it does have authority to adopt rules implementing ORS 469A.210.

I. Commission Rulemaking Authority Regarding ORS 469A.210

In written comments made in this docket on November 29, 2018, and in verbal comments made during the Staff led workshop on October 4, 2018, PGE raised concerns regarding whether the Legislative Assembly provided authority for the Commission to adopt rules to implement ORS 469A.210. We incorporate those comments here by reference.

Fundamentally an agency must have the authority to adopt rules implementing a statute, and, if that authority is lacking, the rules themselves can be called into question. ORS 183.400 (4) provides in part that a court may declare a rule invalid if it "(b) Exceeds the statutory authority of the agency." Our task then is to determine the statutory authority of the agency in regard to ORS 469A.210 and, if it is found that there is no such authority, further action on this rulemaking must cease.

In an Oregon Supreme Court case, *Coffey v. Board of Geologist Examiners* 348 Or. 494 (2010), the court considered "whether an agency is required to promulgate rules" and determined that the question is "a matter of statutory interpretation."

> "If an agency is required to adopt a rule through rulemaking proceedings, that requirement must be found through an analysis of the specific statutory scheme under which an agency operates and the nature of the rule that the agency wishes to adopt. When no statute expressly requires an agency to make rules… a reviewing court examines the statutory text and context pertaining to the agency's delegated responsibilities … to discern whether the legislature nonetheless impliedly intended to require the agency to make rules concerning the subject matter in question…." *Coffey* at 498.

The *Coffey* decision holds that agency authority can be explicit, where the legislature has provided directly for rulemaking, or implicit through the agency's general delegated authority and an indication that the legislature intended for rules to be adopted. The court went on to quote *Trebesch v. Employment Division*, 300 Or. 264 (1985) at length:

> "In the absence of an explicit directive, the breadth and kind of responsibility delegated to the agency by the statutory term (fact-finding, applying an ambiguous law, or developing policy) will be one, but not a dispositive, factor which may indicate an implicit directive from the legislature for rulemaking. In addition, the tasks the agency is responsible for accomplishing, and the structure by which the agency performs its mandated tasks, all of which are specified in an agency's authorizing legislation, must be examined as a whole in order to discern the legislature's intent with regard to rulemaking." *Trebesch,* 300 Or. at 270, 710 P.2d 136.

1) <u>The Legislature did not provide *implicit* authority to the Commission to adopt rules for ORS 469A.210</u>

We start by taking the second prong of this investigation first, to determine whether the legislature, absent an explicit direction "impliedly intended to require the agency to make rules." The Commission's general rulemaking authority is found in ORS 756.060 and it provides in part that:

> "the Commission may adopt and amend reasonable and proper rules and regulations relative to all statutes ***administered*** by the commission." (emphasis added)

It was our position in 2018, and continues to be, that while the legislature provided significant authority to the Commission within ORS 469A.005 to 469A.210, the legislature never implicitly directed the Commission to administer ORS 469A.210.[1] In this opinion, we look to the plain meaning of the word "administer" and use the Merriam-Webster definition "to manage or

[1] In *Couey v. Atkins,* 357 Or. 460 (2015), the Oregon Supreme Court was called to interpret the term "likely." After noting the question of statutory construction and the need to apply the familiar principles set out in *PGE v. Bureau of Labor and Industries*, 317 Or. 606 (1993), the court went on to notes that two newer cases, *State v. Dickerson*, 356 Or. 822, 829 (2015) and *Jenkins v. Board of Parole*, 356 Or. 186, 194 (2014), provide that the court assumes that for terms undefined in statute, it will assume that the legislature intended the term to convey its ordinary meaning and that if the term is not a term of art, it will ordinarily begin with its dictionary definition.

supervise the execution, use or conduct of."[2] PGE believes that the Commission may manage or supervise the execution of, and therefore adopt rules regarding, electric company compliance with a renewable portfolio standard (RPS) pursuant to the statutory structure of ORS 469A.005 to 469A.210, but ORS 469A.210 is not a renewable portfolio standard.

a) <u>The Oregon Legislature did not provide any agency with implicit authority to administer ORS 469A.005 to 469.210</u>

The Oregon Legislature carefully divided the authority to implement Senate Bill (SB) 838 (2007) (*codified* at ORS 469A.005 to 469A.210) between the Commission, the Oregon Department of Energy (ODOE) and the consumer-owned utilities. Both agencies received specific rulemaking and implementation authority numerous times throughout the bill. The specific instances of authority granted to the Commission are summarized below (emphasis ours):

- ORS 469A.065: The Commission "shall establish procedures for implementation of ***the renewable portfolio standards*** for electricity service suppliers."

- ORS 469A.075: "An electric company that is subject to ***a renewable portfolio standard*** shall develop an implementation plan for meeting the requirements of ***the renewable portfolio standard*** and file the implementation plan with the Public Utility Commission," and the commission "shall adopt rules … establishing requirements for the content of implementation plans" and the procedure for acknowledgement of those plans.

- ORS 469A.100: The Commission shall "establish the annual revenue requirement" for electric utilities used in the determination of the "incremental cost of compliance with ***a renewable portfolio standard.***"

- ORS 469A.150: The Commission shall adopt rules to "establish a process for allocating the use of renewable energy certificates by an electric company that makes sales of electricity in more than one state."

- ORS 469A.170: Each electric utility and electric service supplier "that is subject to ***a renewable portfolio standard*** [to] make an annual compliance report … to the Public Utility Commission."

- ORS 469A.180: The Commission shall "establish an alternative compliance rate for each compliance year for each electric company … that is subject ***to a renewable portfolio standard***."

- ORS 469A.200: The Commission may impose a penalty on an electric company or electricity service supplier "that is subject to ***a renewable portfolio standard*** under ORS 469A.005 to 469A.210" for failing "to comply with ***the standard***."

[2] Found online here: https://www.merriam-webster.com/dictionary/administer

In all of these, note that the Commission's authority, including rulemaking, related directly to implementation of, and compliance with, an RPS by an electric company or electricity service supplier. ODOE received authority, among other things, to adopt rules regarding low-impact hydroelectric facilities in ORS 469A.020, to adopt rules for types of energy sources that may be used to comply with a RPS in ORS 469A.025, and to establish the renewable energy certificate system in ORS 469A.130. Consumer-owned utilities received the ability, among other things, to: establish procedures for implementation of an RPS by electricity service suppliers (ESS) selling electricity in their service territory (ORS 469A.065), establish revenue requirements for the cost cap (ORS 469A.100), and establish their own compliance reports (ORS 469A.170).

Due to the split authority for implementation, in no instance was either agency given implicit authority to give effect to or administer the entire series of ORS 469A.005 to 469A.210. This is due to one very good reason: providing such general implicit authority would have meant creating direct conflicts between the Commission and ODOE or between the Commission and the consumer-owned utilities. Thus, instead the legislature opted to provide explicit authority multiple times to each agency and to the consumer-owned utilities. This structure made clear which statutes were to be given effect by which agency or by the governing boards of the consumer-owned utilities.

Therefore, in PGE's view, because the legislature was explicit where authority was granted, to avoid conflicts and to ensure that authorities did not incidentally overlap, it did not implicitly provide authority to administer ORS 469A.210. To interpret that structure differently, would fly in the face of the otherwise careful and methodical construction of ORS 469A.005 to 469A.210.

b) <u>ORS 469A.005 to ORS 469A.210 is not the Renewable Portfolio Standard and ORS 469A.210 is not a Renewable Portfolio Standard</u>

As noted above, in nearly every instance where the Commission was provided with authority, the language also provides that the authority relates to an entity subject to "a renewable portfolio standard." (See bold emphasized statutory excerpts above). If the series ORS 469A.005 to 469A.201 is an RPS or if ORS 469A.210 itself is a separate RPS, then arguably the Commission could have implicit authority to administer the statute. PGE believes however that neither the entire series nor ORS 469A.210 is an RPS.

While colloquially known as "the Renewable Portfolio Standard," SB 838 as adopted was more than just an RPS, it was a "comprehensive renewable energy policy for Oregon."[3] The bill's title was actually "The Oregon Renewable Energy Act,"[4] (the Act) and was so named because it contained policies and directives other than RPS requirements, including: the goal for small-scale/community-based renewable energy projects, a requirement that all electric utilities adopt green power rates and a green jobs study. Any informal reference to the entirety of ORS 469A.005 to 469A.210 as "the RPS" is therefore, over-broad and incorrect.

[3] See the preamble to Senate Bill 838, found here: https://olis.leg.state.or.us/liz/2007R1/Downloads/MeasureDocument/SB838
[4] The preamble to Senate Bill 838 specified that "this 2007 Act may be cited as the Oregon Renewable Energy Act."

Oregon has three RPSs, two of which apply to utilities (ORS 469A.052 and ORS 469A.055) and one that applies to ESSs (ORS 469A.065). Where the Act uses the term "a renewable portfolio standard" it means one of three standards embedded in the larger Oregon Renewable Energy Act. The plain reading of the statutory framework supports the reading that the RPS that electric companies must comply with are one of those two, and that ORS 469A.210 is not an RPS that must be complied with:

"Electric utilities must comply with the applicable renewable portfolio standard described in ORS 469A.052 or 469A.055." (ORS 469A.050 (1)).

Perhaps no clearer example of how the legislature has viewed the small-scale/community-renewables requirement as separate and distinct from an RPS can be found in the amendments to ORS 469A.120 made by SB 1547 (2016). Prior to 2016, the language in ORS 469A.120 provided that electric companies could seek cost recovery for "all prudently incurred costs associated with complying with a renewable portfolio standard." In Section 11 of SB 1547, the legislature changed that language to read as it currently does: an electric company may recover in rates "all prudently incurred costs associated with complying with ORS 469A.005 to 469A.210." This change was necessary because the small-scale/community-renewables goal was modified into a mandate and would have been unnecessary if ORS 469A.210 was either part of an RPS or was itself an RPS. If that were the case, electric companies would have already had the ability to recover all prudently incurred costs.

The next legislative session, in 2017, the legislature adopted SB 339 to fix an issue caused by the adoption of Senate Bill 1547 (2016). The creation of the series ORS 469A.005 to 469A.210 ensures that definitions provided in ORS 469A.005 apply to terms found in ORS 469A.210. "Renewable energy source" as found in ORS 469A.005 means "a source of electricity described in 469A.025." In ORS 469A.025, those sources of electricity are those "types of energy [that] may be used to comply ***with a renewable portfolio standard.***" (emphasis ours).

Because there was concern that ORS 469A.210 was not a renewable portfolio standard, SB 339 added language to ORS 469A.210 (2)(a) that states that the 8% mandate may be met with generation sources that utilize "a type of energy described in ORS 469A.025." This language would not have been necessary if ORS 469A.210 was a part of a RPS or was itself an RPS. Thus, because the Commission's explicit authority in ORS 469A.005 to 469A.210 relates directly to implementation of an RPS, and because neither ORS 469A.210 is an RPS nor is the whole series an RPS, the granted authority does not extend to an implicit authority to administer something in the series that is not an RPS.

c) <u>The inclusion of ORS 469A.210 in the series ORS 469A.005 to ORS 469A.210 ensures only that definitions apply</u>

Statutory series are created by bill language and the codification process. Within SB 838 were a number of references to "sections 1 to 24 of this 2007 Act." When a bill goes through the codification process, those section numbers are assigned a series reference, in this case: ORS 469A.005 (formerly section 1) to 469A.210 (formerly section 24). The creation of a series does

not necessarily join the statutes together except as specifically provided, typically in relationship to definitions, penalties and other references. As stated in the Legislative Counsel's drafting manual:

> "A "series" is a consecutive string of ORS sections created by a bill with an explicit reference within the bill. When the provisions are codified during compilation, the reference to the sections (sections 1 to 10 of this 2007 Act) are replaced by ORS section numbers. Series may share penalties, definitions, rulemaking authority or other provisions applicable to the series to allow it to operate together as a coherent whole."[5]

Similarly, the preface to the Oregon Revised Statutes provides that notes regarding whether a statute is added to a series or a chapter are there to "remind the user that definitions, penalties and other references to the series should be examined carefully."[6]

The Act did not include generally applicable penalty provisions[7] or rulemaking authority[8] and thus the main value of the series creation in this case is that definitions in ORS 469A.005 are applicable to the entire the Act to "operate together as a coherent whole." The creation of the series does not indicate legislative intent to administer the whole series without more express language.[9]

d) <u>History behind the small-scale/community-based goal evidences that it was never part of an RPS.</u>

In the Renewable Energy Working Group ("REWG"), the Governor-appointed group that met through much of 2005 and 2006 to create the Act, the original 8% goal was a request of the "Community Caucus." That caucus met as a side group to the REWG and issued a report to the REWG in July 2006. In their report,[10] the caucus stated that it "discussed an 8% carve-out setting aside a portion of a Renewable Portfolio Standard for community-scale renewable energy" but decided that policy was not "ideal for Oregon." Instead, the caucus proposed a mix of actions[11] and the 8% goal that was drafted into the Act in 2007. In his report to Governor Kulongoski, the chair of the REWG, Mike McArthur, noted that the 8% goal was agreed to by the Community Caucus "in lieu of a carve out target"[12] wherein the small-scale requirement would have been

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[5] See the Oregon Legislative Counsel drafting manual, section 13.2

[6] See Preface to Oregon Revised Statutes at viii,

[7] ORS 469A.200 provides that the Commission may impose a penalty against an electric company or ESS that fails to comply with a renewable portfolio standard in the manner provided by ORS 469A.005 to 469A.210. This is not the same as providing a penalty for failing to comply with the entire series. See, e.g, ORS 757.656 which provides:

> "any person injured by an electric company's failure to comply with any provision of ORS 757.600 to 757.667 may file an action in the circuit court…."

[8] See, e.g., ORS 757.659, where the legislature directed the Commission to "adopt such rules as are necessary to implement ORS 757.600 to 757.667."

[9] Compare, e.g., ORS 757.659.

[10] See REWG's Community Caucus Report presented to the Oregon's Renewable Energy Working Group July 11, 2006 (included as an attachment)

[11] E.g., constraining the public purpose charge renewable energy portion to projects less than 20MW and extending the public purpose charge funding through 2025

[12] See, McArthur letter dated March 23, 2007 (included as an attachment).

part of an RPS. Thus, not only does the explicit language of the Act show that the 8% goal is not part of an RPS, the history behind the provision shows that the proponents of the language discussed including the 8% as part of the RPS as a "carve out" but intentionally chose not to pursue that path, creating a goal along with other policy changes as the means to accomplish development of small renewable projects.

In summary, the Commission has explicit delegated authority to direct electric companies in the manner of their implementation of the renewable energy requirement imposed by an RPS. Because the legislature divided responsibility for implementing the Oregon Renewable Energy Act between two state agencies and the consumer-owned utilities, the Commission should not assume that it has implicit authority over any statute section that is found in the series ORS 469A.005 to 469A.210. The direction in *Coffey* is to "to discern whether the legislature nonetheless impliedly intended to require the agency to make rules concerning the subject matter in question." Because the authority delegated related to an RPS and because ORS 469A.210 is not an RPS, PGE believes the legislature did not impliedly intend to allow the Commission to adopt rules through its general rulemaking authority in ORS 757.060 to effectuate ORS 469A.210 because there is no evidence that the Commission was directed to "administer" a requirement of the Oregon Renewable Energy Act that was not an RPS.

2) <u>The Legislature did not provide *explicit* authority to the Commission to adopt rules regarding ORS 469A.210.</u>

We now turn to the primary prong of the analysis required by *Coffey,* "If an agency is required to adopt a rule through rulemaking proceedings, that requirement must be found through an analysis of the specific statutory scheme under which an agency operates and the nature of the rule that the agency wishes to adopt." *Coffey*, at 498.

a) <u>The Oregon Legislative Assembly did not provide explicit rulemaking authority for implementation of ORS 469A.210 to any agency.</u>

As mentioned above, the legislature provided specific direction within the Act to adopt rules at least five times within the original 24 sections of law. PGE does not find any specific direction to the Commission to adopt rules to implement the small-scale/community-renewables provision. On the other hand, PGE finds numerous explicit directions to the Commission to: adopt procedures for implementation of an RPS by electricity service suppliers; to adopt rules establishing requirements for creation of implementation plans; to adopt rules for allocating RECs for multi-state utilities; to adopt alternative compliance payment amounts; and to establish the revenue requirement to be used in calculation of the cost cap. In the context of the Oregon Renewable Energy Act, the legislature would have provided explicit rulemaking authority if it deemed it necessary for the statute to be implemented.

b) <u>The Oregon Legislative Assembly removed any explicit authority that the Commission had regarding ORS 469A.210 in adopting SB 1547 (2016).</u>

As ORS 469A.210 was originally adopted, it contained a provision that "[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."[13] The legislature removed that sentence when it amended the section to change the statewide goal into a mandate in the -A18 amendments to Senate Bill 1547 (2016). Mr. Irion Sanger (representing the Renewable Energy Coalition and the Community Renewable Energy Association (CREA)) in letter comments dated April 9, 2018, in a different rulemaking proceeding regarding the RPS – AR 610 – stated that "the Commission appears to have ignored the specific direction that it establish policies and procedures promoting the goal."[14] PGE assumes that these "policies and procedures" could have included rules, but this explicit authority was repealed when ORS 409A.210 was amended.

In the same session that the legislature repealed the direction to all state agencies, it also took no steps to clarify whether any state agency should receive implementing authority for the statute in the absence of that general direction. The new ORS 469A.210 is silent and the legislature must have understood that it was removing explicit authority.[15]

Senate Bill 1547 was the bill that ultimately passed in 2016, but the amendment work on that bill was done in the legislative debates over House Bill 4036. HB 4036 was "gut and stuffed" into SB 1547 and thus one must investigate the legislative history of that bill to understand what legislators understood about the amendments to ORS 469A.210. Highly relevant for the purposes of this discussion are the statements made by the proponents of the changes to ORS 469A.210. In submitted testimony by the Association of Oregon Counties,[16] Community Renewable Energy Association,[17] and Lake County,[18] all supporting the -A41 amendments that changed the goal to a mandate in ORS 469A.210, none mentioned that the Commission would acquire authority to enforce the provisions. In fact, no submitted testimony supporting the -A41 suggested adding specific authority for the Commission. Oral testimony in support of the community renewables change also does not support a reading of increased commission oversight. Brian Skeahan, then executive director of CREA, in the House Energy and Environment hearing on HB 4036 on 2/2/2016, merely suggested that the goal needed to be turned into a mandate to make it fair for smaller facilities to be able to compete against large-scale utility projects. Legislators were not presented with any request to amend Commission authority regarding this statute and PGE cannot find any evidence in the legislative record that they considered it when modifying ORS 469A.210 into a mandate.

c) <u>The legislature has declined on numerous occasions to provide explicit rulemaking or other authority to the Commission to implement ORS 469A.210.</u>

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[13] See Section 24, Senate Bill 838 (2007).
[14] *See* https://edocs.puc.state.or.us/efdocs/HAC/ar610hac113357.pdf
[15] ORS 174.020 (1)(a) provides that "in the construction of a statute, a court shall pursue the intention of the legislature if possible." PGE argues here that the intention of the legislature is clear, explicit authority to establish policies and procedures was repealed for all state agencies and should not therefore be read into the statute.
[16] https://olis.oregonlegislature.gov/liz/2016R1/Downloads/CommitteeMeetingDocument/88522
[17] https://olis.oregonlegislature.gov/liz/2016R1/Downloads/CommitteeMeetingDocument/88523
[18] https://olis.oregonlegislature.gov/liz/2016R1/Downloads/CommitteeMeetingDocument/88585

Through four additional regular legislative sessions (excepting special sessions), the legislature has declined to provide explicit implementation authority for ORS 469A.210. During that time, the legislature has considered a score of bills or amendments that would have modified ORS 469A.210 to include explicit rulemaking authority for the Commission or would have made the statute section part of ORS chapter 757, thereby subjecting it to the "administration" of the Commission.

In 2017, the legislature considered a number of bills either amending ORS 469A.210 or modifying authority related to that statue. As noted above, it adopted SB 339 but in so doing did not consider, nor did any entity propose amendments, that would have modified explicit rulemaking authority vis-à-vis that statute. The legislature rejected HB 2136, a bill that would have increased the small-scale/community renewables delivery requirement and would have amended ORS 469A.200 to provide penalty authority to the Commission for failure to comply with the new provisions. That bill failed to make it out of committee.

After PGE questioned Commission rulemaking authority in this matter in the October 2018, REC and CREA sought to change ORS 469A.210 to provide the Commission with explicit rulemaking authority. At their request, the legislature introduced and considered House Bill 2857 in 2019 that, in part, added a new subsection (6) that provided "The Public Utility Commission shall adopt rules as necessary to implement this section." The bill did not advance out of committee. Also in 2019, the legislature considered HB 3274, a bill that would have, in part, provided explicit rulemaking authority to the Commission. It too, failed to advance out of the first house, moving to Rules and remaining there until *sine die*.

In 2021, the legislature considered at least 16 amendments to House Bill 2021 that would have clarified that authority for implementation of ORS 469A.210 rested with the Commission.[19] Again legislators declined to adopt that change, leaving any such suggestion on the cutting room floor as it adopted changes again to ORS 469A.210.

We recognize that when interpreting statutes, inaction by the legislative branch lacks persuasive significance in most circumstances, because there can be many reasons why the legislative branch fails to act.[20] However, in this case, given the sheer volume of opportunities the legislature has had since 2016 to provide explicit authority to an agency, any agency, including through multiple legislative sessions, multiple bills, multiple proposed amendments and the two instances where the legislature actually took action to amend the section in 2017 and 2021, PGE believes inaction on this topic can be viewed in only one way: that the body is comfortable with the current regulatory structure that does not provide explicit authority for any agency to implement the statute.

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[19] These amendments were the -3, -6, -8, -10, -11, -17, -20, -24, -25, -26, -A32, -A35, -A36, -A37, -A38 and -A39 to HB 2021. PGE has not investigated amendments to other bills that may have also attempted to provide authority for the Commission to adopt rules and therefore this list may not be exhaustive.

[20] See, e.g., discussion of this topic in *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002 (2017); *Pension Ben. Guar. Corp. v. LTV Corp.*, 110 S.Ct. 2668 (1990).

II. Authority of Commission and of ODOE to ensure that electric companies are meeting the requirements of ORS 469A.210

Our position regarding Commission rulemaking authority notwithstanding, PGE is working diligently to ensure that it meets the requirements of the self-implementing requirement of ORS 469A.210. As reported to, and published by, ODOE during the 2021 legislative session, PGE currently has 409 MW of small-scale renewable energy projects providing energy to our customers and another 403 MW of small scale renewable energy projects that could be operational over the next few years. Since at least 2015, PGE has worked cooperatively with ODOE on a biennial basis to develop and produce reports specifying our progress toward meeting the mandate. We have provided detailed information on production of energy from owned and contracted facilities that meet the requirement and believe that this information is useful to the public in determining whether we are meeting the original intent of the Community Caucus. We will continue to dedicate time and energy toward this effort regardless of the outcome of this rulemaking.

Finally, PGE has concerns that the proposed pared-back rules accomplish little that could not be accomplished through other processes. The Commission has plenary authority to supervise and regulate utilities under ORS 756.040 and has the ability to open investigations under ORS 756.515 (1) under "any matter relating to any public utility." Within such an investigation, the Commission could request that PGE show its progress toward meeting the standard expressed in ORS 469A.210 and take testimony or receive other information that is the subject of the proposed rules. In fact, PGE has been quite open regarding our progress toward compliance with the standard and has already submitted detailed information regarding compliance in filings in this docket,[21] in addition to data periodically supplied to ODOE. PGE will continue to provide data, as requested by the Commission and ODOE, to show our compliance leading up to the 2030 compliance date expressed in ORS 469A.210.

PGE requests that the Commission close this docket without adopting the proposed rules.

III. PGE comments on the proposed rules

Notwithstanding PGE's comments in the preceding paragraphs regarding the authority of the Commission to adopt rules, if the Commission determines that it does have rulemaking authority, PGE would ask that the Commission consider the comments below.

PGE is supportive of the direction of the rules as compared to the proposed rulemaking filed December 27, 2018. Specifically, as compared to the 2018 rules, we support the removal of the requirement: (1) for the utility to own the renewable attributes from a project for the project to count towards compliance; (2) for projects to be located in Oregon for the project to count towards compliance; and (3) for the utility to address their small-scale renewable energy project compliance status and plans in RPS Implementation Plans. We addressed the reasoning behind these necessary and important proposed rule changes in our written comments made in this

[21] *See* https://edocs.puc.state.or.us/efdocs/HAH/ar622hah172322.pdf

docket on November 29, 2018 and February 21, 2019 and we incorporate those comments here by reference.

Even with the improvement to the proposed rules, as compared to the 2018 rules, further refinement is necessary if the Commission moves forward with adopting rules.

1. **Rule 860-090-0030 Eligible Renewable Energy Projects**

As proposed, Rule 860-090-0030 states "Projects used to comply with the standard in ORS 469A.210(2) must be an Oregon Renewable Portfolio Standard-approved generator." PGE is opposed to this language as the plain reading of the statute, subsection (2)(a), clearly defines the metes and bounds for project eligibility. They are: (1) facilities up to 20 megawatts (MW) in capacity; and (2) utilizing a *type* of energy contained in ORS 469A.025; or (3) certain biomass projects that also generate thermal energy for a secondary purpose. Project eligibility based on satisfying these requirements results in a clear and straightforward verification process, but the statute does not require a project to be an "Oregon Renewable Portfolio Standard-approved generator."

The requirement of ORS 469A.210 is not to take qualifying energy from facilities - that requirement would be created by a reference to ORS 469A.020 - but instead to take energy of a *type* that can potentially generate qualifying electricity if other criteria are met, such as age of the facility. The language in ORS 469A.025(1) is instructive: "Electricity generated utilizing the following types of energy may be used to comply with a renewable portfolio standard" - solar, wind, hydro, wave, geothermal, etc., can all be used. The legislature, through ORS 469A.210, sought to promote small-scale and combined heat and power biomass energy generation. The "renewableness" of the project is determined by its type, not whether it went through the certification process to become an "Oregon Renewable Portfolio Standard-approved generator." Pursuant to our interpretation, the acquisition of null power from a small scale facility could be used to meet the standard, acquisition of energy from a facility that declines to register as an "Oregon Renewable Portfolio Standard-approved generator" would qualify, a small-scale generator that was built prior to 1995, thus prohibited from registering as an "Oregon Renewable Portfolio Standard-approved generator" unless it is low-impact hydroelectric, would also qualify, and community solar and net metered projects could be used to meet the standard. All these projects meet the project eligibility criteria in ORS 469A.210(2) which creates a simple two-pronged test to determine project eligibility.

Additionally, PGE is opposed to CREA's and OSSIA's proposed language changes to Rule 860-090-0030 that they filed in their written comments on October 13, 2021. PGE supports the removal of the requirement that qualifying projects must be located in Oregon and the utility attribute-ownership requirements to comply with ORS 469A.210 and ORS 469A.210(2).

2. **Rule 860-091-0040 Compliance Reports**

As mentioned in previous filed comments made in November 2018 PGE believes the use of "compliance" in Rule 860-091-0040 is outside the scope of the authority provided to the

Commission by the legislature. PGE suggests revising this language to indicate a "status report" filing with the Commission for demonstrating progress toward the standard rather than compliance.

But more importantly, the statute is clear as to the time period of compliance (as 2030 and no further). The unambiguous language in ORS 469A.210 requires compliance "by the year 2030." The proposed rules, however, require a compliance report by July 1, 2029, and every year thereafter. This requirement is not supported by the language in the statute. Also, the legislature will affirmatively state its intent when establishing an ongoing requirement. As an example, the RPS for large utilities is explicit in the requirement for compliance to continue beyond a particular date as ORS 469A.052(2)(h) states "At least 50 percent of the electricity sold by an electric company to retail electricity consumers in the calendar year 2040 and subsequent calendar years must be qualifying electricity." The legislature did not include such an affirmative statement in ORS 469A.210(2).

PGE appreciates the hard work of Commission Staff and the Administrative Hearings Division to draft the proposed rules. Should you have any questions regarding these comments, please contact Brendan McCarthy at 503-464-7371. Please direct all formal correspondence and requests to the following email address pge.opuc.filings@pgn.com.

Sincerely,

/s/ Jay Tinker

Jay Tinker
Director, Rates & Regulatory Affairs

REWG's Community Caucus Report

Presented to Oregon's Renewable Energy Working Group, July 11th, 2006

The REWG should make recommendations to the Governor that pursue the benefits of both large-scale generation systems (like central station wind or geothermal) and community renewables (like solar, biomass, small hydro, geothermal and community wind). Neither approach by itself will achieve the optimal outcome of a sustainable energy system with broad statewide support.

Importance of Community Renewables

1. Community Renewables diversify Oregon's energy portfolio, providing increased system stability and reliability, and improved energy efficiency and environmental benefits.
2. Community Renewables create enhanced economic opportunities throughout Oregon and keep more energy dollars within the state.
3. Community Renewables keep Oregon competitive in emerging renewable energy industries.

Proposed Necessary Actions by the Legislature

1. Focus the renewable energy portion of the Public Purpose Charge (PPC) on funding a mix of community projects of 20 MW or less. Require the OPUC to ensure that implementation of PPC programs reflects this change in focus.
2. Endorse the OPUC's Legislative Concept to extend the PPC funding through the year 2022 or extend the PPC funding through 2025 to be consistent with the RPS policy.
3. Endorse the OPUC's Legislative Concept to authorize the OPUC to increase the PPC funding beyond the current 3% to provide more funding for renewables (currently at 0.51 percent) without taking money away from valuable energy efficiency projects. Furthermore, the 3% should be set as a floor below which the PPC should not be reduced.
4. Propose an Oregon version of the PURPA-type requirement that utilities have to purchase the power from projects of qualifying renewable projects of 10 MW or less using standard contracts, and over 10 to 20 MW using non-standard contracts. Such requirements would be regulated by the OPUC.
5. Require the OPUC to modify policies and procedures as appropriate to meet a goal of generating at least 8% of Oregon's electricity from a mix of community renewables by 2025.
6. Establish statewide uniform interconnection and enhanced net metering standards.

Process

The Community Caucus met extensively to discuss major barriers to significant development of community-scale renewable energy, as well as various policy changes to address those barriers. The Caucus considered several major policy concepts that would be new policy directions for Oregon. We discussed an 8 percent carve-out setting aside a portion of a Renewable Portfolio Standard for community-scale renewable energy, as other states have used, with a separate cost cap from the overall RPS cost cap. We also considered an advanced renewable tariff (ART), as European countries have used. The Community Caucus believes that neither policy is ideal for Oregon. Instead, we are proposing an Enhanced Public Purpose Charge consisting of incremental changes to the existing Public Purposes Charge (actions 1-3) combined with 3 other necessary actions (actions 4-6).

Date: March 23, 2007

To: Governor Ted Kulongoski

From: Mike McArthur, Chair of the Renewable Energy Working Group

RE: Progress Report from the Renewable Energy Working Group

You charged the Renewable Energy Working Group (REWG) with developing implementation strategies for *Oregon's Renewable Energy Action Plan*. The Plan, which was finalized in April 2005, includes goals to encourage the growth and development of renewable energy resources and technologies in the state of Oregon. The Plan's ultimate goal is to encourage and accelerate the sustainable production of energy from renewable resources, stimulate economic development, particularly in rural parts of the state, and improve the environmental future of the state. In the Plan, there are specific tasks that are designated for the REWG to consider, as well as tasks for other state agencies and Oregon universities.

The REWG began meeting in February 2006, with a membership comprised of 31 stakeholders and four legislators with interests in energy. The REWG representatives are affiliated with a broad range of stakeholder groups including: utilities, academia, industry, environmental advocacy, and agriculture.[1] Additionally, Oregon's congressional liaisons and staff from related state and federal agencies have attended and participated in the group's meetings.

This is a report of the activities and accomplishments of the REWG over the past year:

- The group met monthly across Oregon, including meetings in Portland, Bend, Eugene, Hood River, Newport, and Salem. The REWG received comments from interested members of the public at their meetings. Additionally, a website was maintained through the Oregon Department of Energy (ODOE) which contained information and recordings from the meetings.
- The group conducted an initial prioritization of the 50+ tasks that were specifically delegated to the REWG. Fifteen of the tasks were general renewable energy items and the rest related to specific renewable energy technologies. They also discussed the information needed in order to inform their deliberations.
- The REWG spent months discussing elements of an RPS for Oregon and working on an outline of a renewable portfolio standard (RPS) proposal for the Governor, which was their top priority task. The REWG was briefed by Dr. Ryan Wiser, a leading expert on RPS development from the Lawrence Berkeley National Laboratory, to begin their discussions. The REWG's work and deliberations on an RPS has formed the basis of your RPS legislation that is currently being brought before the Legislature. REWG members were not in complete agreement on all components of the RPS; however each of those issues is clearly outlined in the attached status report. [2]
- Subcommittees and discussion groups were formed in the areas of biofuels, economic incentives, cost cap aspects of the RPS, and community-scale renewables. These groups met to discuss your legislative proposals and made recommendations to the REWG. These subcommittees and discussion groups include:

[1] Appendix A contains a list of the current REWG members.

[2] The February 8, 2007 Status Report for the REWG Debate on Oregon's Renewable Portfolio Standard is attached as Appendix B and describes the key concepts within the RPS proposal.

    - The biofuels subcommittee worked on your legislative proposal to increase the production and use of biofuels in Oregon. The success that this proposal has had in the Legislature can be traced, in part, to the relative consensus on many issues that this subcommittee's work was able to generate
    - The economic incentives subcommittee met to discuss the Business Energy Tax Credit (BETC) and Residential Energy Tax Credit (RETC) programs and how your legislative proposals to improve these programs could be further enhanced. Their efforts helped to build a general consensus among REWG members that led to their endorsement of both of these proposals.
    - The "Community Caucus" focused on community-scale renewables and policy elements of the RPS that would encourage the development of a wide diversity of renewable energy sources. This discussion group also debated net metering policy and other policy barriers.
    - A small group was also formed to discuss the cost cap provisions of the RPS in detail. This "cost cap" discussion group came to consensus on some basic principles of cost cap design that helped generate final language in the RPS bill.
- Presentations from experts in the fields of renewable energy were delivered to the group. Topics included: RPS design issues and potential policy alternatives, cost comparisons of fossil and renewable energy sources, net metering policy, utility integrated resource planning, and the benefits of small-scale renewables.
- Additionally, the REWG communicated with specialized renewable energy working groups serving Oregon. These groups are working on many of the resource specific tasks designated in the Plan. Key highlights of their interaction with the REWG included:
    - February 2006: the REWG was briefed by Oregon's Wind Working Group, Geothermal Working Group, and Biomass Coordinating Committee, as well as ODOE staff working on solar and biofuels activities.
    - April 2006: the REWG considered and adopted six additional solar policy tasks that were presented by the Oregon Solar Coalition.[3]
    - January 2007: the Forest Biomass Working Group prepared a report and presentation to the REWG that identified obstacles and opportunities in biomass development for Oregon.
    - March 2007: the REWG adopted 11 key follow up action items from the Forest Biomass Working Group report in order to help support biomass utilization.[4]
- The REWG discussed net metering and developed suggestions for Oregon's net metering process in a letter that was transmitted to the Oregon Public Utility Commission.[5] While not unanimously supported, and thus not representing a consensus of the REWG, a majority of REWG members endorsed the letter.

Over the past year, the REWG worked on seven of the 15 cross-cutting tasks delegated to them in the Plan. A tremendous amount of time and energy was devoted to the largest task, the development of an RPS. In the upcoming months, the REWG will reassess and prioritize future tasks to accomplish and oversee from the Plan. The REWG will continue to coordinate with the other working groups and encourage collaboration and a partnership of efforts related to renewable energy.

[3] The Solar Policy Tasks are listed in the document attached as Appendix C.
[4] Appendix D contains the recommended forest biomass action items adopted by the REWG at the March 13, 2007 meeting.
[5] The letter to the PUC on net metering is attached as Appendix E.

Appendix A
Membership of the Renewable Energy Working Group (REWG)

Legislators: Sen. Kate Brown, Rep. Jackie Dingfelder, Sen. Ted Ferrioli, and Rep. Patti Smith

Chair of the REWG: Mike McArthur, Executive Director of the Association of Oregon Counties

Name	Affiliation	Title
Kevin Banister	Finavera Renewables	Director, Business Development
Jeremiah Baumann	Oregon State Public Interest Research Group	Environmental Advocate
Ted Bernhard	Stoel Rives LLP	Attorney, Technology Ventures Group
Jeff Bissonnette	Citizens' Utility Board of Oregon	Director, Fair & Clean Energy Coalition
Julie Brandis	Associated Oregon Industries	Legislative Representative; Energy
Barbara Byrd	AFL-CIO	Secretary-Treasurer
Kyle Davis	PacifiCorp	Environmental Policy Manager
Angus Duncan	Bonneville Environmental Foundation	Executive Director
Michael Early	Industrial Customers of Northwest Utilities	Executive Director
Bill Fashing	Oregon Economic Development Association	Board Member, Past President
Katie Fast	Oregon Farm Bureau	Associate Director of Governmental Affairs
David Shaw	Oregon Rural Electric Cooperative Association	Manager of Regulatory Affairs
Troy Gagliano	Renewable Northwest Project	Senior Policy Associate
Don Godard	Oregon People's Utility District Association	Executive Director
Michael Grainey	Oregon Department of Energy	Director
David Hackleman	Oregon State University	Linus Pauling Chair, Chemical Engineering
Cylvia Hayes	3E Strategies (Business Alliance for Sustainable Energy)	Executive Director
Jim Lobdell	Portland General Electric	Vice President, Power Operations and Resource Strategy
John Lund	Oregon Institute of Technology	Director, Geo-Heat Center
Jim Manion	Warm Springs Power Enterprises (Confed. Tribes of Warm Springs)	General Manager
Bob Maynard	Energy Outfitters	President/Founder
Carlos Reichenshammer	Reichenshammer Building & Design	President, Oregon Homebuilders Association
Tucker Ruberti	Idatech	Market Development Manager
Chris Taylor	Horizon Wind, Northwest Office	Director of Development
Jim Walls	Lake County Resources Initiative	Executive Director
Dick Wanderscheid	The City of Ashland Electric Department	Electric & Telecommunications Director
Peter West	Energy Trust of Oregon	Director of Renewable Energy Programs
Jonathan Williams	Intel	Government Affairs Manager
Scott Winkels	League of Oregon Cities	Staff Associate
Paul Woodin	Community Renewable Energy Association	President

Governor's Representative to the REWG: David Van't Hof, Governor's Sustainability Advisor (3/12/2007)

Appendix B

February 8, 2007

Status Report: REWG Debate on Oregon's Renewable Portfolio Standard

Targets

Summary of Key Concepts	Areas of Agreement	Areas of Disagreement
General Structure The proposed renewable portfolio standard (RPS) for Oregon consists of three separate standards, tied together by a common set of implementation and compliance parameters that are based on the use of Renewable Energy Certificates (RECs) to serve as the compliance mechanism for the RPS. All utilities in Oregon would be subject to a primary or secondary standard, and Electricity Service Suppliers would have a related standard.	General consensus that use of RECs for RPS compliance is acceptable.	Some are fundamentally and philosophically opposed to the RPS or similar style mandates. Thus such disagreement would extend to every box below and the policy as a whole.
Primary Standard for Utilities Those utilities that are responsible for one percent or greater of total retail electric sales in Oregon would be required to ensure that by 2025 and beyond at least 25 percent of their retail sales come from renewable sources. Similarly, interim targets are set for 2011, 2015, and 2020 at 5, 15, and 20 percent, respectively. The target level remains in effect each year until the next target becomes effective, creating a minimum floor for compliance.	Most seem to agree that using percentage of retail sales as the metric of RPS applicability is acceptable.	Where threshold for RPS applicability should fall: Lower limit: ½ percent Upper: limit 5 percent. Number of "hard" targets: Lower limit: none Upper limit: every year Some would like standard to be load growth only.
Secondary Standard for Utilities Utilities responsible for less than one percent of total retail electric sales in Oregon would be required to meet the lesser burden of having either 60 percent of any growth in retail sales or 25 percent of their total retail sales come from renewable sources by 2025 and thereafter. To begin with in 2015 these utilities would be required to meet the lesser burden of having either 20 percent of growth in retail sales or 15 percent of their total retail sales come from renewable sources by 2015 and each year after until 2020. Similarly, by 2020 these utilities would be required to meet the lesser burden of having either 40 percent of growth in retail sales or 20 percent of their total retail sales come from renewable sources by 2020 and each year after until 2025.	Most seem amenable to the "lesser burden of " concept to avoid unwanted interaction effects between the Primary and Secondary standards (i.e., the burden of the Secondary surpassing that of the Primary in later years)	Some question need for Secondary standard. 60 percent of retail sales growth considered too high by some.
Standard for Electricity Service Suppliers (ESSs) ESSs are required to ensure that in each year the RPS is in effect the amount of their retail sales that come from renewable sources is equal to an amount that is calculated as if each of the ESS's customers were instead being served by their applicable utility based on the service territory in which those customers reside. Thus, this summation of retail sales obligations may include a mix of amounts from both the primary and secondary standards.	ESSs should be subject to a standard that creates a "level playing field" between utilities and ESSs in Oregon.	Some not sure of feasibility of implementing standard in this manner.
Federal Base System (FBS) Firm Power Exemption If RPS requirements would unavoidably displace firm FBS power preference rights for a consumer-owned utility in a given year then the obligation for that utility is reduced proportionally by an amount equal to that unavoidable displacement of power.	General consensus that preference rights to firm FBS BPA power should not be lost due to RPS obligations.	Belief that the same guarantee should extend to non-firm BPA power. Concern about slice customers.

RPS Obligations in Excess of Load Growth If the primary standard results in a utility having no other choice but to acquire power resources in excess of their load growth in a compliance year, and if the RPS obligation would result in the displacement of a power resource other than a fossil-fueled resource by the utility, the requirement for that compliance year is reduced by an amount up to such displacement.	Most seem to agree with the principle behind this provision.	Belief that only the second clause of this provision (regarding displacement of non-fossil fueled resources) should apply.
Mid-Columbia Hydropower Obligation Deferment For those consumer-owned utilities that have low-price hydro contracts with the Mid-Columbia non-federally owned dams the RPS obligation for a given year is reduced by an amount equal to the amount of power obtained under said contracts until those contracts are no longer in effect, or until those contracts can't be renewed at a substantially similar low-cost power rate.	Most seemed to accept logic that this situation is substantially similar to BPA power and deserves consideration.	Belief that the same deferment opportunity should extend to IOUs.
Cost Cap Off-Ramp Provision Utilities need only comply with the renewable portfolio standard in a given year up to the point where they expend a percentage (proposed as 4 percent) of their RPS-applicable portion of annual revenue requirements on the costs of RPS compliance.	General consensus that cost cap provision is an essential element to the RPS. Some agreement on very basic elements of cost cap structure.	Disagreement on retail revenues vs. power costs, need for additional cost effectiveness test, cost cap percentage, and a long list of other issues.
Movement From Secondary Standard To Primary Standard When a utility that was responsible for less than one percent of Oregon's total retail electric sales increases its share of those sales to one percent or more, then that utility becomes subject to the primary standard. However, its burden under the RPS is calculated under a timeline adjusted such that it has the same ramp-up of obligations as if it had been in the primary standard since the start date of the RPS program.	Most seemed to agree to this provision.	

Resources

Date of Eligibility Generating facilities using qualifying renewable resources must have been placed into operation on or after January 1, 1995.		Some would prefer no date, i.e., all qualifying resources eligible. For those that agree a date makes sense the range is: Lower limit: 1981 Upper limit: 1999
Facility Location Facilities using qualifying renewable resources must physically reside in the geographic boundaries identified by the North American Electric Reliability Council (NERC) Western Electricity Coordinating Council (WECC) region.	The geographic eligibility for the Oregon RPS need not extend beyond WECC.	Many would prefer it be limited to Pacific NW, others would like Oregon-only to the extent feasible.
Standard RPS Resources Electricity generated from wind, solar photovoltaic, solar thermal, wave, tidal, ocean thermal, and geothermal would all be RPS eligible.	General consent seemed to exist for all of these resources at the Eugene REWG meeting.	

Incremental or Proportionate Resources Both the renewable proportion of a multi-fuel generation process and the incremental improvement to a qualifying renewable energy generating unit (non-hydro) made through capital improvements after the qualifying date would be eligible.	After modifications, most seem OK with these resources.	Some would like efficiency and conservation measures to count as resources in RPS.
Hydrogen and Fuel Cells Electricity generated from the use of hydrogen reformed from or electrolyzed entirely from qualifying renewable resources would be eligible. The use of fuel cells, in and of themselves, would not necessarily qualify unless the hydrogen fuel in use qualified.	Most seem OK with this resource given the qualifications.	Some would like fuel cell use to not be dependent on renewable sources.
Biomass and Biogas Resources Includes biomass and byproducts from organic human or animal waste; solid organic fuels from wood, forests, and field residues; and dedicated energy crops. Includes spent pulping liquor. Includes biogas from organic sources, wastewater, anaerobic digesters, and municipal solid waste (e.g. landfills). Does not include wood treated with chemical preservatives or municipal solid waste combustion.	Most seem to agree with those resources described by the first sentence. General consensus with biogas range of inclusions.	Many disagree on including spent pulping liquor and/or excluding MSW combustion. Concern about the lack of sustainability criteria. Some question feasibility of excluding treated wood
Hydropower Any hydroelectric facility not located in a federally-protected area in effect upon the enactment of SB 1149, i.e., not on a river or stream area listed by the Northwest Power and Conservation Council as protected or considered a Wild and Scenic River by Congress.	General agreement that low-impact hydro should qualify.	Disagreement about nearly all aspects of what type of limits on hydropower to include.
Incremental Improvements to Hydropower Facilities The increment of improvement resulting from an efficiency upgrade to an existing hydropower facility, completed after the qualifying date, would qualify but there would be an upper limit on the use of BPA efficiency projects based on the proportion of FBS power that Oregon COU's receive relative to the total amount (i.e, from WA/ID/MT).	Most seem to agree that hydro efficiency projects should be included to some degree.	Disagreement as to whether BPA dam projects should be included, as well as on amount of projects that should be eligible. Problems with proportion calculation noted by some.
Determination of Additional Qualifying Resources An ODOE rulemaking procedure will be established to add new resources as necessary to the eligibility list for the RPS. Under no circumstances, however, will electricity derived from fossil fuel resources, nuclear, or the combustion of municipal solid waste be considered an eligible resource under the RPS.		Some feel that additional resource determination should be left to legislature.
BPA Renewable Energy Product Irrespective of any delivery requirement, Oregon RPS-qualifying RECs associated with BPA Environmentally Preferred Power (EPP) or a substantially similar product from BPA ("Tier II Renewable Product") would be eligible for the RPS.	Most agree that allowance should be made for BPA EPP-type product.	

Renewable Energy Certificates

Use of Renewable Energy Certificates (RECs) REC verification and tracking will come from the Western Renewable Energy Generation Information System (WREGIS).	No disagreement on using WREGIS system.	

Timing of Bundled REC Creation A bundled REC is considered to be created at the point when qualifying renewable power hits the first point of interconnection with the BPA control area, the Northwest Power Pool (NWPP) control area, or any Oregon RPS-obligated utility's transmission system. This has important implications for shaping and firming resources, as it allows unlimited substitution of the power component of a bundled REC as it makes its "journey" from that first point of interconnection to an Oregon RPS-obligated utility.	Most seem amenable to accepting this definition, along with the implications for allowing shaping and firming resources.	
Usage of Unbundled RECs for Compliance No more than 20 percent of compliance within a given compliance year for the Primary standard can be met with unbundled RECs, but these RECs can come from anywhere within the WECC. No upper limit exists for the Secondary or ESS standard. Exemptions for certain RECs from smaller projects can raise the upper limit.	Most seem OK with the inclusion of some level of unbundled RECs	Geography: WECC vs. Pacific NW (noted above) Upper limit: Some want unlimited, others closer to 5 to 10 percent limit
Usage of Bundled RECs for Compliance Bundled RECs will comprise the majority of compliance with the RPS. Eligible bundled RECs derive from facilities located with the WECC and that deliver power to Oregon RPS-obligated utilities through a path involving the BPA control area, the Northwest Power Pool (NWPP) control area, or any Oregon RPS-obligated utility's transmission system, or a combination of the above systems.	Most seem comfortable with WECC region for bundled RECs as an outer boundary.	Some would prefer to get rid of delivery language and simply base eligibility on physically located within WECC.
RECs Funded from the Public Purpose Charge In cases where RECs derive from projects funded by the public purpose charge and are then retired on behalf of ratepayers those RECs will be credited to the utility serving those ratepayers.	General consensus (once this got fixed) seems to exist on this.	
RECs from Small-Scale Renewable Energy Projects The ceiling on unbundled RECs is raised by one MWh for each bundled REC purchased from a PURPA "qualifying facility" located in Oregon. Unbundled RECs from WREGIS-qualifying off-grid and customer-sited resources located in Oregon are RPS eligible and also exempt from the ceiling on unbundled RECs.	Most seem OK with this.	Some believe that Oregon-only part of language might cause legal issues.
RECs from Voluntary Green Energy Utility Programs RECs obtained by utilities and used to satisfy voluntary retail green pricing tariff programs ("green power programs") are not eligible for RPS compliance. RECs transferred to customers by such a program may, at the customer's sole discretion or through voluntary contract, be transferred back to the utility for RPS use.	Most seem OK with Gov's Office idea of "returning" RECs from state facilities back to utilities for RPS use.	Disagreement as to whether such policies may be applied to COUs.
REC Integrity RECs used for the Oregon RPS can't be used for other states' RPS programs. No disaggregation (removing one or more individual attributes) of RECs is allowed. In future legislation mechanisms will be devised to allow RECs used for compliance with the Oregon RPS to comply with any potential carbon cap legislation that emerges.	Most seem OK with these concepts.	
Multi-state Allocation of RECs for RPS Compliance For a multi-state IOU decisions on the share of bundled RECs allocated to Oregon will reflect the above-market costs paid by Oregon ratepayers and a fair allocation of RECs for market (or cheaper) cost purchases as determined by OPUC proceedings.	Unknown.	

Compliance

Route of Compliance Utilities and ESSs request that RECs be retired in the WREGIS system to achieve the desired level of annual compliance.	Most seem to be fine with use of WREGIS.	
Flexibility in Reaching Annual Compliance RECs may be retired up to 90 days past the year in which they are intended to satisfy compliance, and my be banked for an unlimited amount of time. However, banked RECs must be retired on a first in, first out (FIFO) basis so that the oldest RECs being banked are used prior to any newer RECs being used.	Most seem fine with 90 day "true up" period.	Some believe that a "shelf life" (i.e., a time limit on the use of RECs) should be put on banked RECs.
Minimum Level of Annual Compliance for Primary Standard Each utility must retire enough RECs every year to satisfy the target in effect for that year. At a minimum, enough RECs must be retired to meet the last interim or final target in effect or the interim or final target that goes into effect that year. This "step function" creates a minimum floor of compliance for utilities.		
Minimum Level of Annual Compliance for Secondary Standard Each utility must retire enough RECs to meet their obligation as determined by the percentage target in effect that year and the increase in retail sales (if any) for that utility during that year.		
Minimum Level of Annual Compliance for ESS Standard Each ESS must retire enough RECs to meet their annual burden as determined through the aggregation of their customer's relevant utility obligations as described in the target section.		
Filing of Compliance Plans Each utility must submit a compliance plan every two years to ODOE (for COUs) or OPUC (for IOUs and ESSs) that specifies exact "soft" targets above the minimum compliance floor for which the utility will strive to achieve. For IOUs this reporting process will be aligned with IRP protocols to the extent possible.		Disagreement as to whether COUs should have to submit compliance plans.
Compliance Letter All utilities and ESSs will submit a letter to ODOE (for COUs) or OPUC (for IOUs and ESSs) noting their level of compliance for a given year and any reasons for not meeting either the minimum level of compliance or a "soft" target for a given year.	Most agree that a notification on whether a utility has complied or not is reasonable.	Disagreement as to whether ODOE should require compliance letters from COUs.
Compliance Determination After submission of the compliance letter ODOE (for COUs) or OPUC (for IOUs and ESSs) will make a determination as to whether the utility or ESS is in compliance for a given year.		Disagreement as to whether ODOE should have the right to make such determinations.

Compliance Shortfalls

Option1: Alternative Compliance Payments		
Alternative Compliance Payment Mechanism If alternative compliance payments are included as a mechanism then any shortfalls in compliance using RECs could be addressed by paying a dollar per MWh payment total to a designated entity (or into a special fund) to be used for acquiring eligible resources in the future.		Inclusion of the alternative compliance payment mechanism is highly controversial.
Designation of Alternative Compliance Payment Amount The alternative compliance payment amount would be an amount higher than, and indexed to, the incremental costs associated with eligible resources, as determined by the PUC or the applicable governing body for consumer-owned utilities.		For those that support the alternative compliance payment mechanism, there is a large degree of debate as to where the level should be set.
Option 2: Penalties		
Penalty Determination for Primary Standard Penalties are only applied if the compliance determination finds that the minimum floor of compliance is not achieved in a given year between targets or, for each interim target year and beginning with the final target year, after an additional three-year averaging test is applied and the results of that average also indicate a level of compliance below the target for that year.	Most seem OK with idea of applying 3-year average before making penalty determination.	Concern with delay involved if the 3-year average test is used. Disagreement about penalties for COUs. Some support alternative compliance payment scheme in lieu of penalties.
Penalty Determination for Secondary and ESS Standard If a utility or ESS is found not to have retired sufficient RECs to be in compliance in a given year then penalties will be applied		Disagreement about penalties for COUs. Some support alternative compliance payment scheme in lieu of penalties.
Penalty Amount and Appeal Process A penalty of $45 per MWh of shortfall will be assessed on any utility or ESS deemed out of compliance after the appropriate test. This penalty will be non-recoverable in rates for IOUs. A penalty hearing process will be created through rulemaking so that in exceptional hardship cases penalties may not be applied.	General consensus that penalties, if used, should be non-recoverable.	Disagreement as to amount of the penalty and the applicability to COUs of such penalties.
Penalty Recipient Penalties from IOUs will be paid to the NGO sub-contracted to the OPUC to manage public purpose charge funds and used for renewable energy projects. Penalties from COUs will be paid to a similar entity (to be determined through rulemaking by ODOE) for renewable energy projects in consumer-owned utility territory or territories.	Most seem to agree that it is fine for IOU penalties to go to PPC entity.	Disagreement on dispatch of COU penalties to third party entity.

Task Force

Periodic Task Force A task force will be convened by the Governor after each of the Primary interim target years to evaluate the RPS and report back to the Legislature if there are items that need to be addressed.	Most seem to agree that some sort of feedback mechanism is appropriate.	Some disagreement about timing and scope of authority.

Public Purpose Charge

Renewable Energy Component of the Public Purpose Charge Focus the renewable energy portion of the Public Purpose Charge on funding a mix of projects of 20 MW or less and exclude funding of projects larger than 20 MW. Require as part of this statute that the OPUC will ensure that implementation of public purpose charge programs reflects this change in focus.	Community Caucus agreed to this provision (among others) in lieu of a "carve out" target for small-scale renewable energy.	Some do not feel this should be part of RPS. Some think 20 MW is too big.
Extension of the Public Purpose Charge (PPC) Extend the public purpose charge through 2025 so that the PPC will be consistent with and serve as a complement to the RPS policy to promote a diversity of renewable energy sources.	Part of Community Caucus agreement.	Disagreement as to whether PPC should be extended to any degree.

Related Energy Policy

Cost Recovery for Investor-Owned Utilities Compliance with the RPS is not considered an above-market cost as defined in ORS 757.612(1). In addition, all prudently incurred costs associated with RPS compliance are recoverable under the RPS, including those associated with transmission and delivery of renewable energy to customers in Oregon.	General consensus that this seems reasonable.	Concern about cost recovery aspects of early-stage renewable development activity.
Mandatory Green Power Program for all Utilities All utilities will be required to offer a voluntary green power purchasing program to their customers. Program details are largely left to the discretion of the utility		Disagreement as to necessity and desirability of such a mandate.
State PURPA Reinstatement Modify ORS 757.612 (4) to require PGE and Pacific Power to meet state PURPA Statute ORS 758.505 to 758.555.	Part of Community Caucus agreement.	Disagreement as to whether this should be part of package.
Non-binding Goal for Community Energy A non-binding goal will be included in the RPS that at least eight percent of Oregon's retail sales should come from a mix of small-scale renewable energy projects by 2025. Direction to state agencies to try and help achieve this goal through appropriate policies and programs would also be included.	Community Caucus agreed to this provision (among others) in lieu of a "carve out" target for small-scale renewable energy.	Disagreement as to whether goal is necessary or appropriate. Arguments about semantics in regard to the word "goal". Some support multiplier for small-scale projects.
Changes to ORS for People's Utility District RPS Compliance 1) Authority to operate on REC market. 2) Revise ORS to exempt renewables from cost effective test. 3) PUDs eligible for renewable energy development zones. 4) Change various facets of public voting for PUDs. 5) Change various facets of financing for PUDs. 6) Change taxations status for PUD partially owned projects. 7) Change public contracting requirements for renewables. 8) Allow PUDs to participate in Joint Operating Agencies. 9) Allow PUDs to form LLC's for renewables development. 10) Revise ORS regarding PUD's and judicial validation.	No objections noted at Portland meeting when the group was queried.	

Appendix C

Solar Policy Tasks

Recommendations for the Renewable Energy Working Group
by the Oregon Solar Coalition

This document was developed by in consultation with the members of the Oregon Solar Coalition to provide the Renewable Energy Working Group (REWG) with a short list of key steps that should be taken to advance solar photovoltaic (PV) and solar thermal (ST) businesses in Oregon. The REWG should consider to take action on each of the following items.

1. Workforce Development

The combined efforts of the Energy Trust of Oregon (ETO) and the Oregon Department of Energy (ODOE), Lane Community College (LCC) and the Oregon Solar Energy Industries Association (OSEIA) have established fledgling workforce training and development programs. The problem is that the industry is spread across the entire state without sufficient training opportunities for those unable to access training in Eugene or take time off during normal business hours.

Specific Action Needed – Recommend state workforce development grants be used for training programs that can build a qualified workforce across the state. Special emphasis should be given to those programs that can enable distance or non-work hour education and involve current higher education and research centers.

2. Improve Net Metering

Annualized net metering is simpler and less costly to administer than monthly programs. It enables consumers using a seasonal resource like solar to bank summer surplus credit to meet winter time energy use. Annualized net metering is available in two-thirds of the states that currently offer net metering. It is essential for widespread market adoption of utility interactive PV systems.

Specific Action Needed – Recommend the Oregon Public Utility Commission (OPUC) adopt net metering rules that require PGE and PacifiCorp to implement annualized net metering and to increase the maximum allowable system size. No legislative change is needed.

3. Oregon Manufacturing

The worldwide market for PV and ST is now in excess of $30 billion per year. The California market alone will exceed $1 billion in 2006. Manufacturing investments needed to meet world demand are estimated at $10-20 billion in 2006. Oregon should not miss the opportunity to attract and support development of a solar energy industry “cluster” or multiple clusters within the state.

Specific Actions Needed – Provide financial incentives or reduced risk for manufacturers of solar equipment that locate in Oregon. Potential mechanisms:

- Establish a PV manufacturing grant
- Increase BETC maximum eligible project size to $20 million
- Provide bond financing specific to PV manufacturing
- Require new state buildings to include Oregon built PV or ST technologies

4. Streamline Codes and Interconnection Standards

Significant barriers and uncertainty remain for the installation company selling and bidding on a project caused by inconsistent interconnection, permitting and inspection standards.

Specific Action Needed – Recommend the Oregon Department of Energy host a stakeholders' workshop to help establish statewide uniform interconnection, permitting and inspection criteria for solar equipment with recommendations submitted to Governor's office and state legislature.

5. New Construction

New construction offers the most logical opportunity for solar energy technologies to be successful without the need for incentives. They provide energy at retail rates, increase the value of the home or building, and offset peak load most effectively. Unfortunately, the current incentive structures are primarily targeted at retrofit applications. Builders have little or no interest taking all the risk of installing solar equipment when the incentives and benefits go the homebuyer. Moreover, if the homebuyer is from out of state, they cannot use the incentive, even though the equipment is placed in service in Oregon.

Specific Action Needed – Recommend legislation that enables speculative home builders to use state business energy tax credits for new residential construction that incorporates solar energy technologies which results in "zero net energy" homes.

6. Continue Existing Levels of Financial Support

The past five years have seen significant growth in both the scale and maturity of the Oregon solar energy industry. The reason for this has been consumer access to significant financial support for installing PV and ST systems. Incentives have reduced simple paybacks on these technologies to less than 10 years.

Specific actions – Include PV and ST set aside in financial support recommendations.

Appendix D

Forest Biomass Working Group (FBWG) Report
Key Federal & State Actions
Presented to the Renewable Energy Working Group
March 13, 2007

Key Federal Actions in FBWG report:

1. Call for Congress to fully fund and support development of the US Forest Service Biomass Strategic Plan and the commensurate Bureau of Land Management plan.
2. Request that the US Department of Energy offer solicitations for funding research focusing on the conversion of biomass, such as poplars and grass straw, to cellulosic ethanol.
3. Build a cellulosic ethanol commercial demonstration facility in Oregon within the next two-and-a half years using public/private funds. Public funds could come from USDA Rural Development Agency's 9006 or 9008 programs.
4. Expedite forest stewardship contracting on federal lands through increased appropriations to staff federal lands management agencies.
5. Address the cost of forest biomass, by encouraging funding of the existing federal transportation credit for biomass that was authorized by Congress.
6. Address inequity in the federal production tax credit. Currently the credit for energy generated from biomass is less than for other renewable sources, and the credit is renewed for too short a time period to send the right signal to investors.

Key State Actions in FBWG report:

1. Provide funding for a coordinator to facilitate community forums to increase understanding of benefits and consequences of biomass utilization (2 FTE currently in Governor's budget for Oregon Department of Forestry (ODF) to further forest biomass development.)
2. Build on harvesting and research projects that have already been completed and fund new studies to fill in the information gaps (Oregon State University budget).
3. Support action that will help coordinate research and development advances in forest biomass utilization with commercial technology development (Renewable Energy Signature Research Center, SB 580 currently being considered).
4. Continue to develop administrative collaboration under Enrolled Senate Bill 1072 - 2005 session. Points to funding needs for ODF and other state agencies as articulated in the Governor's budget.
5. Consider developing/ expanding Oregon incentives to off-set capital cost of biomass energy facilities. (HB 2210, HB 2211 being considered in 2007 session)

Appendix E

Oregon Renewable Energy Working Group Recommendation RE: Net metering

The Oregon Renewable Energy Working Group believes that net metering is essential to the advancement of small scale renewable energy systems. It recommends the Oregon Public Utility Commission implement net metering rules for PGE and PacifiCorp that meet the following key criteria:

1. Remains simple for utilities to implement and consumer friendly
2. Establishes Oregon as a leader in net metering policy
3. Requires annualized net metering
4. Prior to setting a size limit the PUC should review the New Jersey net metering standard. Currently NJ has established the leadership position with regard to net metering policy.

Presented to the Renewable Energy Working Group by REWG members:

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