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VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398

RE: AR 622—Small Scale Community Based Renewable Energy Projects Rulemaking

I. INTRODUCTION

As requested in the Public Utility Commission of Oregon's (Commission) September 7, 2021 Notice of Proposed Rulemaking, PacifiCorp d/b/a Pacific Power (PacifiCorp) offers these comments in response to the Commission's draft rules implementing Oregon Revised Statute (ORS) 469A.120 and Section 37 of House Bill (HB) 2021.[1] PacifiCorp appreciates the opportunity to comment, and provides both general comments on the nature of the community-based renewable energy goal and the Commission's authority to implement the statute, as well as specific responses to the draft rules.

II. GENERAL COMMENTS

A. ORS 469A.210 is not a renewable portfolio standard (RPS), so many requirements and restrictions in Chapter 469A do not apply to the statute.

As a threshold matter, PacifiCorp points out that ORS 469A.210 is not an RPS, and nor is it part of an RPS. This matters because a number of requirements in Chapter 469A relate to implementation of the RPS statutes. But because ORS 469A.210 is not an RPS, nor part of an RPS, those statutes do not apply to it.

Oregon has three RPSs, ORS 469A.052 (for large utilities), ORS 469A.055 (for small utilities) and ORS 469A.065 (for electricity service suppliers).[2] ORS 469A.210 is a self-described "goal for community-based renewable energy projects"—not an RPS. It's true that Chapter 469A is titled "Renewable Portfolio Standards," but chapter titles are not part of Oregon law.[3] And while it's also true that Senate Bill (SB) 838, which enacted the original version of Chapter 469A, is frequently referred to as "the RPS," colloquial monikers cannot displace the

[1] Citations to ORS 469A.210 should be understood to encompass the changes made to the statute in HB 2021, which were limited to changing the goal from eight percent to 10 percent, and changing the date by which the utilities must meet the goal from 2025 to 2030.
[2] ORS 469A.050.
[3] ORS 174.540.

plain language of a statute. Finally, the many examples of statutes in Chapter 469A referring to "a renewable portfolio standard established under ORS 469A.005 to 469A.210" cannot bring all of those statutes into the ambit of an RPS.[4] Those statutes describe the three RPSs that exist within that chapter, without evincing any intent to broaden the meaning of "a renewable portfolio standard."

As a consequence of ORS 469A.210 not being an RPS, there are many requirements in Chapter 469A that do not apply to the statute. For example, ORS 469A.200 states that "[i]f an electric company or electricity service suppliers that is 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 [Commission] may impose a penalty" (emphasis added). In this case, *the standard* is a "renewable portfolio standard under ORS 469A.005 to 469A.210," and as established, the only RPSs among those statutes are ORS 469A.052, 469A.055, and 469A.065.[5] This means that the penalty provisions in ORS 469A.200 can't apply to ORS 469A.210 for two reasons. First, by definition, ORS 469A.210 isn't an RPS. And second, no portion of ORS 469A.200 provides any contextual evidence that an interpreting body should ignore the plain text of the statute.

The planning requirements in ORS 469A.075 are another example of a statute in Chapter 469A that apply solely to the RPS statutes, and not ORS 469A.210. ORS 469A.075(1) states that an electric company "shall develop an implementation plan for meeting the requirements *of the renewable portfolio standard*…" (emphasis added). Again, because ORS 469A.210 isn't an RPS, this statute doesn't apply to implementation of the community-based renewable energy goal.

The average megawatt (MW) limits on use of certain types of hydroelectric generation for RPS compliance in ORS 469A.025(5) are a final illustrative example of requirements in ORS 469A.025 that do not apply to ORS 469A.210. That statute requires that projects "utilize[e] a type of energy described in ORS 469A.025."[6] One type of energy described in ORS 469A.025(5) is electricity from low-impact hydroelectric facilities, with limits on the number of average MWs of generation that can be "used to comply with a renewable portfolio standard."[7] Because ORS 469A.210 is not an RPS, the limits on generation in ORS 469A.025(5) cannot apply.

[4] *See, e.g.* ORS 469A.140(5). ORS 469A.010, 469.140, and 469A.300 have similar or identical references to ORS 469A.210, wherein they mention a "renewable portfolio standard under ORS 469A.005 to ORS 469A.210," or some variation thereof.
[5] The use of a definite article in the emphasized section of ORS 469A.200 above indicates that *the standard* refers back to "a renewable portfolio standard," because "the definite article, 'the,' indicates something specific, either known to the reader or listener or uniquely specified." *See State v. Lykins*, 357 Or. 145, 159 (2015). Within the context of ORS 469A.200, the standard that is "known to the reader [and] uniquely specified" is the one mentioned within the same sentence, *an RPS*.
[6] ORS 469A.210(2)(a).
[7] ORS 469A.025(5)(a) and (b).

B. A rulemaking may not be necessary to implement ORS 469A.210.

If the Commission proceeds to adopt rules implementing ORS 469A.210, the draft rules proposed in this docket represent a reasonable first draft, subject to certain changes discussed in the responses to the draft rules below. However, PacifiCorp is not confident that the Commission should adopt any rules to implement ORS 469A.210. Importantly, this does not mean that the Commission has no role in overseeing utilities' compliance with the requirements in ORS 469A.210. The Commission's plenary power under ORS 756.040 power to "supervise and regulate every public utility… in this state," in addition to the Commission's authority to inspect the records of utilities under ORS 756.075, 757.090 would provide the Commission the power to require a showing of compliance by order, or to request information regarding utilities' progress toward the goal.[8]

The Commission's rulemaking authority stems from ORS 756.060, which provides that the Commission "may adopt and amend reasonable and proper rules and regulations relative to all statutes *administered* by the Commission." A statute is administered by an agency if it provides the agency implicit or explicit authority to implement it.[9] The context of Chapter 469A indicates that ORS 469A.210 is not administered by the Commission. If so, the Commission lacks the authority to implement the statute by rulemaking.

Several statutes in Chapter 469A are administered by the Commission. For example, ORS 469A.200 allows the Commission to set penalties for failure to comply with an RPS. Because the penalty may be "in an amount determined by the Commission," the Commission has express authority to adopt rules setting the amount. Similarly, in ORS 469A.150 the Commission is provided the authority to "by rule establish a process allocating the use of renewable energy" for multistate utilities.[10] Other sections of Chapter 469A are administered by the Department of Energy.[11]

In contrast to the specific authorizations to implement sections of Chapter 469A in these sections, ORS 469A.210 contains no direction to any agency to implement it. The fact that many sections of Chapter 469A.210 expressly require agency action for implementation, while ORS 469A.210 does not, indicates that the Legislature knew how to delegate administrative authority to an agency within the chapter, and it chose not to in this case. Including those delegations of authority in different sections of Chapter 469A, while excluding similar language in ORS 469A.210, is evidence that the Legislature purposefully omitted it.[12] And it did not fail to provide that administrative authority just once: the Legislature has not added that authority to the

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[8] The Commission's plenary authority under ORS 756.040 does not extend to rulemaking, as a more specific statute, ORS 756.060, provides a more limited grant of authority.
[9] *See, e.g. Coffey v. Bd. of Geologist Examiners*, 348 Or. 494, 498 (2010), *Morgan v. Stimson Lumber Co*., 288 Or. 595, 598–600 (1980).
[10] Other sections of Chapter 469A administered by the Commission include ORS 469A.075 and 469A.100.
[11] *See* ORS 469A.029, 469A.025, 469A.130, and 469A.020.
[12] *See Bert Brundige, LLC v. Dep't of Revenue*, 368 Or. 1, 3 (2021).

statute, despite enacting three sets of amendments to the original language adopted in SB 838 in 2007.[13]

In fact, the Legislature has considered adding rulemaking authority to ORS 469A.210, and expressly elected not to. HB 2857, introduced but not passed in the 2019 legislative session, would have added specific rulemaking authority to ORS 469A.210.[14] That bill was introduced at the request of the Renewable Energy Coalition and the Community Renewable Energy Association, two members of the Renewables Associations that filed comments in this docket on October 13, 2021.[15] HB 2857 was also supported by the Oregon Solar and Storage Industries Association, the third member of the Renewables Associations.[16] Why seek to add rulemaking authority to a statute that allegedly already contains it?

If ORS 469A.210 is not administered by the Commission, it would not support a rulemaking to implement it. The Commission might consider alternative methods to oversee utilities' progress toward the goal in ORS 469A.210, including employing its plenary authority under ORS 756.040 to supervise utilities by order.

III. RESPONSES TO THE DRAFT RULES

A. Imposing a requirement beyond 2030 is not supported by statute.

The draft rules appear to require the utilities to comply with the community-based community renewables goal by January 1, 2030 and beyond, creating a requirement that apparently carries forward in perpetuity.[17] This approach is not supported by ORS 469A.210, and in fact is expressly contradicted by other sections of HB 2021 and other statutes in Chapter 469A.

The statutory language in section 37 of HB 2021 does not create an ongoing compliance obligation beyond 2030, but rather a requirement for utilities to show compliance "by the year 2030." By itself, that text plainly creates a one-time compliance obligation. The one-time nature of the community-based renewable energy goal is even clearer when contrasted with other statues enacted in the bills that have revised ORS 469A.210 twice. These differences indicate that ORS 469A.210 is a one-time requirement, because "the legislature intends different meanings when it uses different terms in a statute."[18]

First, Oregon's large utility RPS, enacted alongside changes to ORS 469A.120 in SB 1547 (2016), creates explicit ongoing obligations for RPS compliance. ORS 469A.052(2)(h)

[13] *See* SB 1547 (2016), SB 339 (2017), and HB 2021 (2021).
[14] HB 2857, section 1(6), *available at* https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/HB2857/Introduced.
[15] Joint Comments of the Community Renewable Energy Association, the Renewable Energy Coalition, and Oregon Solar + Storage Industries Association ("Renewables Associations Comments") (October 13, 2021).
[16] Now the Oregon Solar + Storage Industries Association. *See* Letter from Angela Crowley-Koch (March 26, 2019) *available at* https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/179778.
[17] *See* draft OAR 860-091-0040(1) (requiring annual reporting starting in 2029, with no end date).
[18] *State ex rel. Dep't of Transp. v. Stallcup*, 341 Or. 93, 101 (2006).

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."

Second, the more recent updates to ORS 469A.210 made in HB 2021 were enacted alongside new greenhouse gas emissions standards that also expressly create an ongoing obligation. Section 3(1)(c) of HB 2021 requires that "by 2040, *and for every subsequent year*," electric companies reduce their emissions by 100 percent from the baseline level. In contrast, sections 3(1)(a) and (b) of HB 2021 require reductions in emissions by 80 and 90 percent below the baseline level "*by 2030*," and "*by 2035*." Compliance with the 80 and 90 percent reductions is not required in intervening years. And in fact, HB 2021 as introduced did not include the "for every subsequent year" language following the 2040 target: this fix was made in the B-Engrossed version of the bill, in a change characterized by Climate Solutions and the Oregon Environmental Council as a "technical clean-up revisions that make clear that the 100% clean requirement starting in 2040 continues for every year thereafter."[19]

Interpreting ORS 469A.120 to impose an ongoing requirement would require the Commission to conclude that this statute imposes the same requirement as ORS 469A.052(2)(h) and section 3(1)(c) of HB 2021, despite the fact that ORS 469A.210 uses different language. It would also require the Commission to conclude that a "technical clean-up revision" was needed to clarify that the 2040 standard is perpetual, while a similar revision was not necessary in ORS 469A.210. Neither conclusion is supportable.

B. RPS approval for small-scale community projects should not be required.

Draft OAR 860-091-0030(1) requires that a project used to meet the community-based renewable energy goal "be an Oregon [RPS]-approved generator." PacifiCorp suggests that this requirement be removed. First, as discussed earlier in these comments, ORS 469A.210 is not an RPS, so the approval requirements in ORS 469A.027 and 469A.029 are irrelevant. Second, those certification requirements are only necessary to certify that a generator is "eligible for renewable energy certificates" (RECs)[20]—and RECs are not required for compliance with ORS 469A.210.[21]

From a policy perspective, PacifiCorp is concerned this requirement would disqualify many small, in-state resources—the development of which this statute is intended to encourage. PacifiCorp has resources with nameplate capacities as low as 0.05 MWs. Many of these resources do not currently seek Oregon RPS certification because the administrative and financial burden outweighs the value of extremely minimal REC generation. For example, PacifiCorp buys electricity from a 0.28 MW geothermal facility at the Oregon Institute of Technology under a 20-year Public Utility Regulatory Policies Act (PURPA) power purchase agreement. The small-scale, community-based project is not RPS approved, but helps Oregon

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[19] Letter from Meredith Connolly and Jana Gastellum, 2 (May 13, 2021), *available at* https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/30160.
[20] ORS 469A.027.
[21] *See* section III.5, *infra*.

Tech meet its Climate Neutral by 2050 goal, while benefitting from the sale of electricity to PacifiCorp. Under these draft rules, this project would not qualify as an eligible small-scale project.

C. "Aggregate Electrical Capacity" should be defined relative to the electric company's peak load.

Draft OAR 860-091-0020 defines "aggregate electrical capacity" as "total nameplate capacity of the electric company's generation resources," and for multistate electric utilities such as PacifiCorp, the "total nameplate capacity of the electric company's system generation allocated to Oregon retail customers." PacifiCorp suggests that the Commission instead define "aggregate electrical capacity" as a utility's peak load.

Using the total nameplate capacity of resources allocated to Oregon retail customers as the yardstick for the community-based renewable energy goal is problematic for several reasons. First, it will make meeting the community-based renewable energy goal more challenging as utilities procure more resources with high nameplate capacity, but lower capacity factors. Second, it will penalize utilities for holding significant reserves that contribute to the "total nameplate capacity" of all resources, but are dispatched less frequently.

D. The Commission's draft rules appropriately do not require resources to be located in state.

PacifiCorp appreciates that the draft rules do not require projects used for the community-based renewable energy goal be located in state. ORS 469A.210 does not create such a requirement and interpreting it in such a way would create significant legal uncertainty for these rules. PacifiCorp suggests that no changes be made to the rules on this topic, but takes this opportunity to respond to various arguments made by the Renewables Associations in their October 13, 2021 comments.

An in-state mandate would violate the dormant commerce clause.

There is no doubt that imposing an in-state mandate on compliance with the community-based renewable energy goal would violate the dormant commerce clause of the United States Constitution. Such an interpretation of ORS 469A.210 would be facially discriminatory against out-of-state commerce, and would be *per se* invalid unless the State could show that it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.[22] Economic protectionism is never a legitimate local purpose.[23]

[22] *Or. Waste Sys. v. DEQ*, 511 U.S. 93, 101 (1994) (internal quotations and citations omitted). In this case, HB 2021 offers a "reasonable nondiscriminatory alternative," in the form of $50 million of state funding for community renewable energy products. *See* HB 2021, sections 29-34. The Legislature could also choose to provide tax breaks for community-based renewables, speed their permitting, or even require the state to purchase their output itself under the market participant exemption to the dormant commerce clause. Any of these possibilities would advance the same local purpose, without burdening interstate commerce.

[23] *C & A Carbone, Inc. v. Town of Clarkstown,* 511 U.S. 383, 402 (1994).

The Supreme Court has specifically considered dormant commerce clause issues within the context of energy supply. In *Wyoming v. Oklahoma*, the Court invalidated an Oklahoma statute that required in-state power plants to burn at least 10 percent in-state coal.[24] The Court easily concluded that the statute, "on its face and in practical effect, discriminates against interstate commerce" because it "expressly reserves a segment of the Oklahoma coal market for Oklahoma-mined coal, to the exclusion of coal mined in other States."[25] "Such a preference… cannot be characterized as anything other than protectionist and discriminatory," because it excludes coal mined in other states based solely on its origin.[26] Excluding projects from out of state from use to meet the community-based renewable energy goal would similarly discriminate based solely on origin.

The Renewables Associations' citation to cases upholding low carbon fuel standards (LCFS) to support their arguments are unpersuasive and inapt.[27] In the leading LCFS case, *Rocky Mountain Farmers v. Corey*, the Ninth Circuit Court of Appeals found that California's LCFS did not violate the dormant commerce clause because the LCFS "does not control the production or sale of ethanol wholly outside California."[28] Similarly, Oregon's LCFS was upheld on similar grounds, with the Court noting that "out-of-state fuels are not necessarily disfavored."[29] In contrast, an in-state mandate for compliance with the community-based renewable energy goal would "necessarily disfavor" out-of-state resources, and in fact shut them out of the state's market entirely.[30] In other words, the LCFS programs considered in these cases were *not actually facially discriminatory*—but the Renewables Associations nevertheless attempt to rely on them to justify a *facially discriminatory policy*.

Finally, the Renewables Associations argue that the purpose of an in-state mandate would not be economic protectionism, but rather "local social and environmental benefits, such as grid resiliency in Oregon and updates to irrigation systems and related ecological benefits."[31] First, presuming that the Renewables Associations are correct, there are other, non-discriminatory ways to accomplish these purposes, which dooms a facially discriminatory law.[32] Second, to the extent small resources deliver increased grid resiliency, the nature of PacifiCorp's interconnected grid ensures that a resource just across the border in Washington or California would deliver the same benefits as one just inside Oregon.[33]

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[24] *Wyoming v. Oklahoma,* 502 U.S. 437, 455 (1992).
[25] *Id.*
[26] *Id.*
[27] Renewables Associations Comments at 15-16.
[28] 730 F.3d 1070, 1104 (9th Cir. 2013).
[29] *Am. Fuel & Petrochemical Manufacturers v. O'Keeffe*, 903 F.3d 903, 911 (9th Cir. 2018).
[30] The Renewables Associations also cite to the Commission's decision to allow an in-state and in-service-territory mandate for community solar programs as support for their position. Renewable Associations Comments at 16, *see In re Rules Regarding Community Solar Projects*, Docket No. AR 603, Order No. 17-232 at 3 (June 29, 2017). However, dormant commerce clause issues were never discussed in comments or briefing in that docket.
[31] Renewable Associations Comments at 16.
[32] *See* note 22, *supra*.
[33] Notably, the Supreme Court rejected a "resilience" argument in *Wyoming v. Oklahoma*, finding that diversifying Oklahoma's sources of coal and avoiding potential supply interruptions could not justify a facially discriminatory law. 502 U.S. at 456-57.

The legislative history does not, and cannot, show intent to create an in-state mandate.

In comments, the Renewables Associations cite statements from Representative Ken Helm to argue that ORS 469A.210 should be interpreted to require that resources be located in the state.[34] The value of these statements is questionable at best.[35]

First, there is no ambiguity in ORS 469A.210 to resolve by referring to legislative history, and the statute's text is truly capable of only one interpretation. This means that even the most persuasive legislative history should not affect interpretation of the statute.[36] To find an ambiguity regarding siting requirements in ORS 469A.210, the Commission would have to determine that the Legislature omitted words from the operative sections of the statute, because there's no hint of an in-state requirement in those sections.[37] The only part of the statute indicating a preference for in-state projects is ORS 469A.210(1), a legislative finding that community-based renewable energy projects "are an essential element of this state's energy future." This discussion of the "state's energy future" doesn't indicate any intent to build that future *to the exclusion* of out-of-state resources.[38] Plus, the relevance of the legislative findings is minimal, as findings are "reasons to vote for the bill, but they are not stated to be limits on the much broader wording of the operative section."[39]

Second, the statements from Representative Helm cited by the Renewables Associations were made during the development of HB 2021, just four months ago. HB 2021 changed exactly two parts of ORS 469A.210: it changed the goal from eight percent to 10 percent, and the compliance date from 2025 to 2030.[40] The underlying language dates to SB 1547, adopted by the Legislature in 2016. Accordingly, Representative Helm's statements should be given minimal weight, because "amendatory acts do not change the meaning of preexisting language further than is expressly declared or necessarily implied."[41] In this case, this means that the changes in HB 2021 should be understood to leave the preexisting intent of SB 1547 unchanged.

A review of the legislative history of SB 1547, which enacted the current structure and legal requirements of ORS 469A.210, shows that the intent of the Legislature was to encourage development of small resources in Oregon, within the legal confines of the dormant commerce

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[34] Renewables Associations Comments at 7-8, 10, 21.
[35] The Renewables Associations also cite to statements by Representative Khanh Pham in support of their position, but her statements do not actually contain any language about creating an in-state mandate. *Id.* at 8-9.
[36] *State v. Kelly,* 229 Or. App. 461, 466 (2009).
[37] *See* ORS 469A.210(2) and (3), *see also State v. Jones*, 298 Or. App. 264, 270, *review denied*, 365 Or. 658 (2019) ("courts are constrained not to insert words that the legislature chose to omit").
[38] Even if the legislative findings did create some ambiguity regarding an intent to create an in-state mandate, Oregon's policy of favoring constitutional interpretations of laws would weigh heavily in favor of finding that ORS 469A.210 does not create an in-state mandate. *See Merrick v. Bd. of Higher Educ.*, 116 Or. App. 258, 263 (1992).
[39] *Clackamas Cty. v. 102 Marijuana Plants*, 323 Or. 680, 688 (1996). Notably, the Renewable Energy Coalition - a member of the Renewables Associations - acknowledged that "*legislative findings*, goal and policies *do not have the same force and effect of law* as clean and unambiguous mandates" in comments supporting HB 2857 in 2019. *See* REC Comments Urging the Passage of HB 2857 and HB 3274, 2 (March 26, 2019) (emphasis added), *available at* https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/179394.
[40] See HB 2021, section 37.
[41] *Fifth Ave. Corp. v. Washington Cty.*, 282 Or. 591, 597–98 (1978).

clause. For example, Representative Barbara Smith Warner offered the following comment on February 25, 2016:

> Thank you madam chair… I just wanted to take a moment, I know that Representative Huffman asked about the numbers, but going back to Section four about the small scale renewables. My understanding is that it is the intent that those small scale projects are not utility owned and **we would like them to be made in Oregon, but I understand there're interstate commerce clause issues with that**. But I just wanted to speak to that we agree that those indeed are the goals and the intent of that language.[42]

And on the same date, Senator Lee Beyer stated:

> In all the discussions I've had with people, I think that's the understanding; that they would be. **Obviously the intent is that they would be in Oregon, that's the desire, and I think most everybody agrees with that. We do have a Constitutional issue, in that we can't mandate that they be in Oregon, because of the Commerce Clause.** But I think, these are relatively small projects, it's not likely that you would have them very far out of state.[43]

E. The Commission's draft rules correctly conclude that REC ownership is not required.

PacifiCorp supports the approach staff has taken in the draft rules to not require the electric company to purchase the RECs from an eligible renewable energy project. This is consistent with the law, because (1) there is no mention of RECs in the statute, and (2) RECs are based on energy production, and compliance with the statute is based on an eligible renewable energy project's capacity. This is a change from the prior version of the draft rules, and PacifiCorp appreciates the modification to align with the statute's intent. No changes are necessary regarding REC ownership, but PacifiCorp takes this opportunity to respond to certain arguments made by the Renewables Associations in their October 13, 2021 comments.

RECs are an instrument used for RPS compliance. As discussed in section II.A. of these comments, ORS 469A.210 is not an RPS or part of an RPS. This means that the arguments raised by the Renewables Associations regarding us of RECs under ORS 469A.140(5) are unavailing, because that statute only applies to compliance with an RPS.[44]

From a policy perspective, requiring RECs for compliance with the community-based renewable energy goal would be a poor choice. First, many of the smallest projects that stand to benefit from ORS 469A.210 do not generate RECs, because the costs and administrative burden

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[42] House Committee On Rules, February 25, 2016, *recording available at* *http://oregon.granicus.com/MediaPlayer.php?clip_id=10830*. Note that Representative Smith Warner's reference to section four should have been a reference to section fourteen.

[43] *Id.*

[44] Renewables Associations Comments at 17.

of doing so exceed the financial benefits. This would penalize both the smallest producers that are intended to benefit from the law, as well as the utilities that purchase their output. For example, PacifiCorp has resources that produce as few as 14 megawatt-hours (MWhs) annually, and many that generate just a few hundred MWhs. The WREGIS system and its requirements are designed to track RECs from very large utility-scale projects. The system is cumbersome and costly for small projects, particularly when the project owner's goals do not require the creation or tracking of RECs. It is most often the case for such small resources, the financial and administrative difficulties associated with WREGIS registration—installing proper metering equipment, monthly submission of revenue-grade meter data, and day-to-day WREGIS administration—outweigh the modest value of such a limited number of RECs.

Second, requiring purchase of RECs to qualify for the community-based renewable energy goal would be a solution in search of a problem. The Renewables Associations state that "PacifiCorp will argue it can meet the compliance requirement with existing facilities for which it pays only for brown power under PURPA contracts."[45] Tellingly, the Renewables Associations fail to highlight the fact that each qualifying facility *can choose* whether it sells its power at the "brown power" rate without the REC, or at the "green power" rate with the REC.[46] To the extent the Renewables Associations believe that a mandatory purchase obligation for RECs is necessary to "make community-based renewable energy projects… an essential element of this state's energy future," they already have one, and there is no need to construct another one where the law does not allow.

Finally, the arguments raised by the Renewables Associations regarding potential violation of Federal Trade Commission (FTC) regulations are at least spurious, if not outright misleading. First, they state that 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."[47] This is untrue. Electric utilities report fuel mix percentages and emissions data to the Oregon Department of Energy (ODOE) and Department of Environmental Quality (DEQ). Utilities' representations about the renewable nature of their products are based on those reports, which will not change as a result of this rulemaking. To the best of PacifiCorp's knowledge, the Renewables Associations have never argued that the ODOE and DEQ reports filed by PacifiCorp constitute violations of FTC regulations.

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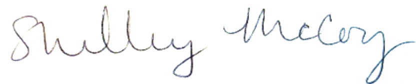
[45] Renewables Associations Comments at 23.
[46] OAR 860-029-0085.
[47] Renewables Associations Comments at 17-18.

IV. CONCLUSION

PacifiCorp appreciates the opportunity to provide these comments. Please contact Cathie Allen at (503) 813-5934 if you have any questions regarding these comments.

Sincerely,



Shelley McCoy
Director, Regulations