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November 28, 2018

VIA ELECTRONIC FILING
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Public Utility Commission of Oregon
201 High Street S.E., Suite 100
Salem, OR 97308-1088

Attn: Filing Center

RE: AR 622 – PGE's Comments for Staff's Draft Proposed Language

Portland General Electric Company (PGE) appreciates the opportunity to provide these comments in response to Public Utility Commission of Oregon (Commission) Staff's draft proposed language for rulemaking regarding the implementation of community-based renewable energy provisions in ORS 469A.210.

As a threshold issue, PGE continues to have concerns regarding the propriety and scope of this rulemaking. As stated in the workshop held by Staff on October 4th, while PGE agrees that the Commission has the authority to review utility progress toward meeting the goal established in ORS 469A.210 and perhaps even establish standards for how a utility would report that progress, we continue to object to the assertion of agency authority over implementation of, or compliance with this statute. We believe that the Legislative Assembly has not provided clear authority for rulemaking in this context and that belief is bolstered by the legislative history behind this statute and the rest of ORS 469A.005-.210. Therefore, language in Rule 1 stating that the rules are intended to "implement ORS 469A.210" and provisions in Rules 3 and 6 expressing that the Commission will adjudge "compliance with the standard" are outside the scope of the authority provided to the Commission by the legislature.

Additionally, Staff notes that the solar capacity standard rules were used as a template for many of these draft rules for community renewables. By way of background, the solar capacity standard was enacted in 2009 with a rulemaking in 2010, and then repealed in statute in 2016 and in rule, in 2018 (AR 613). The standard required, by 2020, electric companies to build at least 20 MW of solar nameplate with systems of a size of at least 200kW and not to exceed 5 MW. PGE's share of that statewide standard was 10.9 MW. PGE does not believe it is appropriate to use the solar capacity standard rules as a template given the difference in the statutory frameworks. Further, the solar capacity standard was set forth in ORS 757.370 and explicitly provided authority to the Commission to adopt rules, stating "The commission may adopt rules implementing and enforcing this section." ORS 757.370(1). No such grant of authority exists in the community renewables legislation. The statutes explicitly provided in ORS 757.375(1) that the utility's actions to comply with the solar capacity carve out could be used as credit toward Renewable Portfolio Standards (RPS) compliance. Again, no such provision exists with the

community renewables. This statutory provision was repeated in the administrative rules (Division 84-0080) when the solar capacity standard rules were adopted. Those rules also included a provision for the RPS implementation plan to include the solar capacity standard. This makes sense given the explicit authority to count compliance with solar carve out as RPS compliance. The rules also included a provision that allows the Renewable Energy Certificates (RECs) to be double counted for RPS compliance if the solar PV system is operational before 1-1-2016, installed in Oregon, and met the rule standards. That mirrored the ORS 757.375 provision that allowed electricity from solar PV systems physically located in Oregon to be used by an electric company to comply with the RPS under ORS 469A.005-.210, and to count two times toward RPS compliance.

Our further comments will address four specific issues in the draft proposed language:

1) Rule 4 – Qualifying Projects and Oregon only requirement
2) Rule 5 – Eligible Projects and Rule 9 – RECs and Compliance with the RPS
3) Rule 7 – Compliance Report
4) Rule 10 – Implementation Plans

Issue #1: Rule 4 – Qualifying Projects and Oregon only requirement

The draft proposed language in Rule 4(1) states the following:

"To qualify for the standard in [Rule 3] energy projects must be located in Oregon, and…"

PGE is opposed to the requirement that qualifying projects must be located in Oregon for three primary reasons:

First, nothing in the plain text of the statutory language of ORS 469A.210 supports that qualification and the Commission should not read such a requirement into the statute.

Second, imposing an Oregon-only requirement is likely impliedly preempted by the so-called "Dormant Commerce Clause" of the U.S. Constitution. A detailed discussion of the constitutional principle cannot be had here. However, the principle provides that state laws must not discriminate against out-of-state actors or have the effect of favoring in-state economic actors unless the state has no other reasonable means of advancing a legitimate local purpose.

Third, ORS 469A.210(2) states that "…at least eight percent of the aggregate electrical capacity of all electric companies that make sales of electricity to 25,000 or more retail electricity consumers in this state must be composed of electricity generated by…" This language uses retail electricity customers in Oregon as the basis for determining if a utility must meet the standard. PGE may build or buy the output of generating projects located outside the state to serve our retail electricity customers in Oregon. Thus, it is reasonable for the criteria used to determine qualifying energy projects also be based on sales of the generating output to retail electricity customers in Oregon, irrespective of facility location.

Additionally, PGE notes that the Oregon Legislative Assembly considered provisions to restrict the location of community renewable projects and has rejected those proposals each time it has

considered them. In 2016, the legislature considered the -18 amendments to HB 4036 (the bill that became SB 1547). Those amendments would have required that the community renewable projects be interconnected with a transmission or distribution system located in the state. This is a de facto Oregon situs requirement. In the same session, the -A3, -A4, -A5, -A6, -A8, -A11, -A17 amendments to SB 1547, containing the same interconnection requirement, were all rejected. In 2017, the legislature considered amendments to ORS 469A.210 through SB 339 and did not add a locational requirement. It also considered, but failed to adopt, HB 2136, which, among other things, would have required community renewable projects to have a first point of interconnection within the balancing authority of an Oregon electric company. This too, would have resulted in a de facto Oregon situs requirement. PGE believes that the failure by the legislature to adopt an Oregon situs requirement, after being presented with multiple opportunities to do so, should be considered for its value in this rulemaking.

PGE recommends that the Oregon requirement be dropped from the rule.

<u>Issue #2</u>: Rule 5 – Eligible Projects
Rule 9 – RECs and Compliance with the RPS

The draft proposed language in Rule 5 requires the utility to own or otherwise have the rights to the environmental attributes associated with the energy produced by an energy project to count that project toward the standard. Rule 9 provides clarifying language that RECs associated with a project whose capacity is used to meet the standard can still be used for banking, RPS compliance, or a voluntary renewable energy tariff.

PGE is opposed to both rules. The language in Rules 5 and 9 combine RPS compliance with the requirements stated in ORS 469A.210. These rules propose a proxy method that uses the environmental attributes and RECs tied to a project's renewable energy production, measured in megawatt-hours (MWh), as a means of determining if a project's capacity, which is measured in megawatts (MW), will be eligible to count toward the standard in ORS 469A.210. This proposal is inconsistent with the history behind the creation of RECs, the measurement of renewable energy production, and eligible projects language that is clearly stated in ORS 469A.210. Capacity is repeatedly used throughout ORS 469A.210. The statutory language explicitly states that the 8 percent standard is determined by electrical capacity and eligible renewable energy projects are measured by generating capacity. The requirements stated in ORS 469A.210 do not support Rule 5 or Rule 9.

Further, the language in Rules 5 and 9 suggests that the use of a REC for RPS compliance would not prevent the use of the same REC or environmental attribute to meet the requirements of ORS 469A.210. PGE has concerns that such language introduces confusion regarding the use of RECs to serve multiple purposes. For example, we note that OAR 860-083-0050 setting forth requirements for RECs used to comply with the RPS, states that the RECs cannot have previously been used. Oregon's community renewable requirement is not part of the RPS; it is not a "carve-out" but a separate standard based solely on *capacity*. For these reasons, PGE recommends the REC approach be deleted from the draft rules.

<u>Issue #3</u>: Rule 7 – Compliance Report

As previously mentioned, PGE believes the use of "compliance" in Rule 7 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.

Additionally, Rule 7(h) should be removed from the reporting criteria for those reasons stated in Issue #2.

Issue #4: Rule 10 – Implementation Plans

PGE has concerns that Rule 10 is outside the scope of the authority for this rulemaking as provided in Commission Order No. 18-322. The staff memorandum that proposed this rulemaking stated that the purpose for the rulemaking was to "clearly define" community-based, renewable energy projects and to determine how the "mandate in ORS 469A.210 will [] be implemented and evaluated." Rule 10 essentially modifies the requirements imposed by ORS 469A.075 and validly adopted rules in OAR 860-083-0400. That rule governs the elements of the implementation plans for meeting the requirements of the renewable portfolio standard, of which ORS 469A.210 is not a part. The renewable portfolio standard applicable to large utilities is found at ORS 469A.052. As the language in OAR 860-083-0400(1) makes clear "each electric company that is subject to ORS 469A.052 must file an implementation plan." The authority provided to Staff for this rulemaking from the Commission applied only to the implementation of ORS 469A.210 and not any other statute, including ORS 469A.052. PGE believes that amending rules that were validly adopted pursuant to ORS 469A.052 by reference are outside the scope of this rulemaking. Instead, PGE suggests a revision to Rule 10 to address this issue: "…each electric company subject to the standard…[may] incorporate its plan to achieve…"

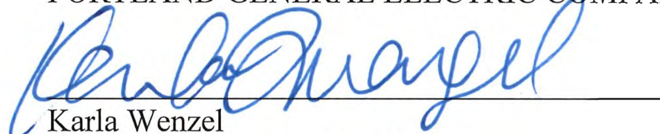
Conclusion

PGE appreciates Staff's work on the draft proposed language given the expeditious timeline for the AR 622 rulemaking and looks forward to continued work with stakeholders. Should you have any questions regarding these comments, please contact Colin Wright at (503) 464-8011.

Please direct all formal correspondence and requests to the following email address pge.opuc.filings@pgn.com.

Respectfully submitted,

PORTLAND GENERAL ELECTRIC COMPANY



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