825 NE Multnomah, Suite 2000
Portland, Oregon 97232

February 21, 2019

***VIA ELECTRONIC FILING***

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

Attn: Filing Center

**RE: AR 622 Small Scale Community Based Renewable Energy Projects Rulemaking- PacifiCorp's Comments**

PacifiCorp d/b/a Pacific Power has previously submitted comments on September 28, 2018 and November 28, 2018 in the informal phase of this docket. PacifiCorp submits for the formal record the comments previously submitted and attached to this filing.

Please direct any questions regarding this filing to Cathie Allen at (503) 813-5934.

Sincerely,

Etta Lockey
Vice President, Regulation

PACIFIC POWER
A DIVISION OF PACIFICORP

825 NE Multnomah, Suite 2000
Portland, Oregon 97232

September 28, 2018

***VIA ELECTRONIC FILING***

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

Attn: Filing Center

**RE: AR 622 Small Scale Community Based Renewable Energy Projects Rulemaking—PacifiCorp's Comments**

As requested by Staff of the Public Utility Commission of Oregon (Commission), PacifiCorp d/b/a Pacific Power respectfully submits these comments to address policy questions to stakeholders distributed by Staff on September 19, 2018.

**Introduction**

Senate Bill (SB) 1547 amended ORS 469A.210, transitioning what was previously expressed as a goal into a mandate imposed on PacifiCorp and Portland General Electric Company (PGE). The statute is clear and unambiguous: it requires, by 2025, that at least eight percent of the aggregate electrical capacity of PacifiCorp and PGE come from projects that are renewable and smaller than 20 megawatts. PacifiCorp is aware of differences in opinion on the statute's purpose; however, the language of the statute is clear and self-executing and does not embody any additional intent to guide interpretation of the statute.

Following the passage of SB 1547, PacifiCorp participated in a series of stakeholder meetings hosted by the Oregon Department of Energy (ODOE) to discuss, in part, potential legislative modifications to the portion of SB 1547 that was codified in ORS 469A.210. One of the takeaways from these discussions is that the small-scale renewable capacity standard (SSRCS) will be met by 2025. The significant work performed to-date by ODOE should inform the Commission process, keeping in mind that whatever action the Commission takes should be consistent with the clear and unambiguous language of the statute.

Furthermore, while PacifiCorp acknowledges that the Commission has broad authority to implement rulemakings, it is notable in this instance that the legislature did not direct the Commission to interpret or enforce this provision. In light of this, if the Commission does move forward with this rulemaking, it should do so with the objective of avoiding reading additional requirements or restrictions into a law that the legislature has not given the Commission clear direction to implement. As the Commission proceeds with a rulemaking, it should carefully limit itself to the four corners of the language of ORS 469A.210. It is not appropriate for parties to

use this rulemaking as a vehicle for advocating for requirements or provisions that were not included in or are inconsistent with the statute as written.

**Responses to Staff's Questions**

**Rulemaking**

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

This rulemaking is premature, and likely unnecessary, for a number of reasons. The Commission should not implement ORS 469A.210 without considering or building upon extensive work already conducted by ODOE to assess implementation status. Data collected and compiled by ODOE show that under a variety of scenarios, PacifiCorp has already met or is expected to meet the SSRCS requirement. The only way to reach a conclusion that PacifiCorp is not on track to comply would be to inject additional requirements and restrictions not currently in statute. PacifiCorp is concerned that parties' interests in this rulemaking will be primarily aimed at adding restrictions and requirements that are not supported by law and could result in unnecessarily increased costs to PacifiCorp's customers. PacifiCorp therefore recommends that Commission Staff first coordinate with ODOE to review the data already collected and more clearly articulate where there may be ambiguity in the statute that requires implementation by the Commission.

**Measurement**

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

No, the eight percent requirement unambiguously applies to the electrical capacity of PacifiCorp and PGE. Reaching this conclusion does not require clarification or definition from the Commission.

3) **What does electrical capacity mean?**

Electrical capacity is a common term used in the energy industry to refer to the electric output an electricity generator can produce under specific conditions. This is not an ambiguous term and does not require clarification by the Commission. It has been suggested that electrical capacity as it is used in this statute should refer to capacity contribution or contribution to peak load. The concepts of capacity contribution or contribution to peak are very different from the basic concept of electrical capacity. If the legislature had intended to mean that electrical capacity should actually mean capacity contribution or contribution to peak, it would have clearly

indicated this in the statutory language.[1] The Commission should not read such a different and unique requirement into the statute without clear direction from the legislature.

**4) What does aggregate electrical capacity mean?**

See response to question 2 above.

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

An individual project's capacity should be based on the installed nameplate capacity. This is the most straightforward and obvious measurement of electrical capacity.

**Project Eligibility**

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

No. The statute requires that projects must be: 1) renewable; and, 2) with a generating capacity of 20 megawatts or less (unless the facility uses biomass). Renewable energy resources are already defined in ORS.469A.025. There is nothing in the statutory language that would suggest deviating from this definition. As noted above, the calculation of generating capacity should be similarly straightforward.

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

See response to question 6 above. Determining the eligibility of projects should be as simple as the utilities reporting pertinent information such as project location, resource type, nameplate capacity, commercial online date, and if applicable, the Western Renewable Energy Generation Information System (WREGIS) identification number. For a number of projects, this data could be verified using ODOE's list of renewable portfolio standard (RPS)-eligible projects and publically available WREGIS information. PacifiCorp will work with the Commission and/or ODOE to provide any supplemental information necessary to verify qualifying project eligibility. The Commission does not need to institute a new process for determining eligibility of projects.

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[1] The language of the statute before its amendment expressed a goal of "eight percent of Oregon's retail electrical load" from small renewable sources by 2025. This revision suggests legislative intent to transition the statute from an energy-based goal measured in megawatt hours to a capacity-based standard measured in megawatts.

**8) Which renewable projects should be eligible?**

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

Yes. There is nothing in the statute that restricts ownership to any particular type of entity. The Commission should not read such a requirement into the statute when there is no language to support doing so. There is also no existing statutory intent or purpose to support a policy that would restrict certain ownership types.

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

No. There is nothing in the statute that requires compliance beyond 2025.

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

Yes. There is no basis in statute for precluding existing Public Utility Regulatory Policies Act of 1978 (PURPA) projects from qualifying. A significant portion of small-scale renewable capacity in PacifiCorp's resource portfolio comes from PURPA projects. Excluding these projects from qualifying could potentially place significant cost and burden on PacifiCorp's customers if numerous new non-PURPA resources must somehow be acquired. The Commission should not place such a burden on PacifiCorp customers in the absence of clear statutory direction to do so. There is also no existing statutory intent or purpose to support a policy that would exclude existing PURPA projects.

**d. Do community solar projects qualify?**

Any projects that are renewable and under 20 megawatts electrical capacity (unless the facility uses biomass) would qualify.[2]

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

Any projects that are renewable and under 20 megawatts electrical capacity (unless the facility uses biomass) would qualify. PacifiCorp interprets the question regarding the "gross portion" to refer to a measurement of energy, which is not applicable to a capacity standard.

**9) What locational restrictions are applicable?**

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

The statute does not include locational restrictions and therefore none should be applied. If the legislature had intended to place a geographical limitation on the small-scale renewable capacity

[2] PacifiCorp notes that SSRCS and community solar requirements were both passed as part of SB 1547 and therefore share a linkage.

requirement that is more restrictive than geographical limitations that apply to the broader RPS requirement, it would have made this clear in the statute.

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

No. In accordance with OAR 330-160-0015, renewable energy certificates (RECs) represent the environmental, economic, and social benefits associated with the generation of electricity from renewable energy sources. One REC is created in association with the generation of one megawatt-hour of electricity. Because the small-scale renewable requirement is measured in terms of capacity and not generation, RECs are not applicable or relevant in the same manner as the RPS which requires that a certain amount of energy be produced from renewable sources. This approach is consistent with Oregon's previously mandated Solar Capacity Standard under ORS 757.370(1), which also utilized nameplate capacity as the measure, yet did not require the acquisition or retirement of the project's RECs to show compliance.

Additionally, requiring that the utility own or retire the associated RECs could have the effect of increasing the RPS mandate, for PacifiCorp and PGE customers only, by eight percent. If the legislature had intended ORS 469A.210 to act as a vehicle to increase the RPS for electric companies by a specific amount beyond what was otherwise included in SB 1547, it would have stated this clearly.

## Compliance

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

No. As described in response to question 1, this statute is self-implementing.

**12) When does compliance occur?**

The plain language of the statute specifies that compliance occurs "by the year 2025[.]" PacifiCorp interprets this to mean that the utilities must comply by December 31, 2024.

**13) How should the utility report progress?**

As noted in response to question 1, staff at ODOE have already conducted extensive data collection and compilation to assess utility and small-scale renewable capacity standard progress. The Commission should first work with ODOE to understand these data collection efforts. As also explained above, PacifiCorp has already met the capacity requirement and should not be required to report on progress.

**14) How should a utility demonstrate compliance?**

See response to question 13.

**15) What happens after 2025?**

The statute does not require any ongoing action after 2025. The Commission should not read additional requirements into the statute.

Additional Questions

**16) Do you have any other specific issues you would like addressed in this informal stage of this rulemaking that falls within the scope of this rulemaking as opened by the Commission in Order No. 18-322?**

PacifiCorp's views are fully expressed in the previous comments.

PacifiCorp appreciates the opportunity to provide these comments and responses and looks forward to continuing its active participation in this proceeding.

Please direct any questions regarding this filing to Natasha Siores at 503-813-6583.

Sincerely,

Etta Lockey
Vice President, Regulation

PACIFIC POWER
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November 28, 2018

***VIA ELECTRONIC FILING***

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

Attn: Filing Center

**RE: AR 622 Small Scale Community Based Renewable Energy Projects Rulemaking—PacifiCorp's Comments**

As requested by Staff of the Public Utility Commission of Oregon (Commission), PacifiCorp d/b/a Pacific Power respectfully submits these comments to draft rules distributed by Staff on November 14, 2018.

**Introduction**

If the Commission adopts rules to implement Oregon Revised Statute (ORS) 469A.210, those rules must be narrowly limited to the four corners of the statutory language. With notable exceptions below, Staff's proposed rules appear to be generally limited and appropriately focused on the statute as written. In three instances—the requirement associated with renewable energy certificates (RECs), continuation of the small-scale renewables requirement beyond 2025, and geographical limitation for eligible resources—the proposed rules inappropriately read additional requirements into the statute that, if intended by the legislature, would have been included in the statute. These elements are described in more detail below.

**Requiring REC Ownership Inappropriately Converts the Standard from Capacity to Capacity and Energy**

Imposing a requirement to own the RECs and/or associated environmental attributes makes the utilities liable for both an energy and a capacity standard. The language of ORS 469A.210 is clear that it applies to capacity and not energy. In addition, not requiring the acquisition or retirement of RECs is consistent with Oregon's previously mandated Solar Capacity Standard under ORS 757.370(1), which also used nameplate capacity as its measure.

Requiring REC ownership directly implicates the broader Renewable Portfolio Standard (RPS) framework, raising questions regarding applicable REC banking rules, least-cost utility compliance strategies, whether the small-scale renewable capacity standard becomes an RPS carve-out or an add-on, how incremental costs will be calculated, and how cost containment provisions will be applied. The plain language of the statute confirms that the Legislature clearly did not intend this outcome. Had that been the original intent, the relationship between the RPS and the small-scale capacity requirement would have been identified explicitly. ORS 469A.210

clearly does not do that. Instead, the policy goal the Legislature in ORS 469A.210 seeks is assurance that small-scale renewable energy projects are being accounted for in meeting Oregon's overarching goal of developing all sizes and scale of resources by the year 2025. In any event, by interpreting the statute to require the use of RECs to demonstrate compliance, Staff's proposed rules fundamentally change the nature of the legislative requirement and create implementation and compliance requirements that are not supported by the language of the statute.

A straight-forward capacity standard is consistent with the statute and can incentivize development of small scale renewables in much the same way the former Oregon Solar Capacity Standard effectively incented incremental solar development in the state of Oregon.[1]

**Imposing a Requirement Beyond 2025 is Not Supported by Statute**

The proposed rules require the utilities to comply with the small-scale community renewables standard by January 1, 2025 and beyond, creating a requirement that apparently carries forward in perpetuity. The statutory language of ORS 469A.210 does not create an ongoing compliance obligation beyond 2025, but rather a requirement for utilities to show compliance "by the year 2025." In sharp contrast, language pertaining to the remainder of the RPS statute is explicit in the requirement for compliance to continue beyond a particular date. For example, 469A.052(2)(h) states: "At least 50 percent of the electricity sold by an electric company to retail electricity consumers <u>in the calendar year 2040 and subsequent calendar years</u> must be qualifying electricity." (emphasis added) The Commission has no ability or basis to extend the small-scale capacity requirement into perpetuity when such an approach is not clearly mandated by the statute.

**The Proposed Rules May Violate the Dormant Commerce Clause**

As expressed in previous comments, PacifiCorp does not support a geographical limitation on project eligibility for the small-scale capacity standard because such a limitation is not supported in the unambiguous language of ORS 469A.210. However, in addition to this, the geographical limitation included in the proposed rules creates a potential violation of the Dormant Commerce Clause of the United States Constitution. The Dormant Commerce Clause prohibits economic protectionism through state regulatory measures that benefit in-state economic interests to the detriment of out-of-state entities.[2] The proposed rules appear discriminatory on their face and ORS 469A.210 provides no legitimate local purpose (and is in fact silent on the topic) that can only be served through a discriminatory rule. PacifiCorp does not support reading a geographical limitation into the statute and is also troubled by the potential for setting a precedent where the Commission unilaterally adopts rules that are not constitutional or supported by statute.

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[1] In fact, the Oregon Solar Capacity Standard was repealed because utilities had largely met the requirements of the standard.

[2] *See New Energy Co. of Indiana v. Limbaugh*, 486 U.S. 269, 273-274 (1988).

**Other Proposed Clarifications**

PacifiCorp proposes clarifying language to Rule 5 concerning the treatment of multi-state utilities such as PacifiCorp to ensure that if REC ownership is ultimately required the rules make clear that the proportionate share of capacity that qualifies under the standard is not limited to the share of energy or environmental attributes allocated to Oregon. Proposed changes to Rule 5 are provided below.

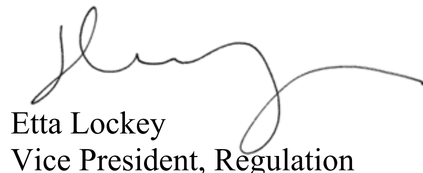
> *(1) Energy projects that satisfy the criteria of [Rule 4] are eligible to count toward the standard in [Rule 3] as renewable energy projects when the electric company owns or otherwise has the rights to the environmental attributes associated with the energy produced by the project during the compliance year. For multi-state utilities, the eligible capacity is not limited to the proportionate share of environmental attributes as allocated to the utility's customers under any inter-jurisdictional allocation methodology. Energy projects that satisfy the criteria of [Rule 4], but for which the subject electric company does not own or otherwise have the rights to the environmental attributes associated with the project's output during the compliance year, are not eligible to meet the standard in Rule 3.*

In addition, section 7 of the proposed rules references a February 1 due date for the small-scale capacity standard compliance report. Current RPS rules in Oregon Administrative Rule 860-083-0350 require that the compliance report be filed annually on June 1 of the compliance year. PacifiCorp proposes aligning the small-scale capacity standard compliance report due date with the June 1 due date for the RPS compliance report.

PacifiCorp appreciates the opportunity to provide these comments and responses and looks forward to continuing its active participation in this proceeding.

Please direct any questions regarding this filing to Natasha Siores at 503-813-6583.

Sincerely,



Etta Lockey
Vice President, Regulation