PACIFIC POWER
A DIVISION OF PACIFICORP

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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 Renewable Energy Projects Rulemaking—PacifiCorp's Comments

As requested by the Public Utility Commission of Oregon (Commission), PacifiCorp d/b/a Pacific Power respectfully submits these comments for consideration in finalizing the rules to implement the Small Scale Renewable Energy Projects standard. Reference to proposed draft rules in these comments refer to those distributed by Staff on November 14, 2018.

I. Introduction

Pacific Power appreciates the thorough and diligent efforts of Staff in developing rules to implement ORS 469A.210 and acknowledges the challenges faced by the Commission in implementing the policy set forth in statute. The Company supports most aspects of the proposed rules as a well-reasoned interpretation of statute; however, as expressed throughout this proceeding and most recently during the Commission's February 14, 2019 rulemaking hearing, of primary concern to PacifiCorp are 1) requiring utility ownership of the environmental attributes to any degree; and 2) the continuation of the small-scale capacity requirement beyond 2025.

II. Compliance with ORS 469A.210 Does Not Require Ownership of Environmental Attributes or Renewable Energy Certificates

ORS 469A.210 is a capacity standard. Stakeholders to the rulemaking have not contested that ORS 469A.210 is a capacity standard.[1] Some stakeholders have, however, relied on the limited use of the phrase "renewable energy" in ORS 469A.210 to assert that renewable energy certificates (RECs)—an *energy*-based measure—are required for compliance with a capacity standard.[2] This is simply not the case and is inconsistent with implementation of a capacity

[1] Indeed, at the December 20, 2018 Special Public Meeting on legislative issues, representatives of the Community Renewable Energy Association and Renewable Energy Coalition referred to the need for legislation to convert the capacity standard to an energy standard.

[2] Admittedly, the use of "renewable energy" in the statute is awkward. As noted at the February 14, 2019 rulemaking hearing, this language is the "duckbill" on a platypus—an incongruous feature in an otherwise straightforward capacity standard.

standard which should be measured based on a generator's installed nameplate capacity as opposed to its generation output. The oral comments of Mr. Michael O'Brien at the February 14, 2019 rulemaking hearing addressed this point eloquently and Pacific Power supports those comments and encourages the Commission to implement ORS 469A.210 as a capacity standard rather than an energy standard.

a. Requiring Ownership of the Environmental Attributes Unnecessarily Expands the Capacity Standard

ORS 469A.210 explicitly states that compliance is measured based on "…the aggregate electrical capacity of all electric companies…," not energy. As a capacity standard, the small-scale projects requirement should be consistent with the state's previously mandated Solar Capacity Standard under ORS 757.370(1), which did not require REC ownership, but clearly defined REC treatment should a utility choose to acquire and use the RECs associated with the solar resource for Renewable Portfolio Standard (RPS) compliance. The Solar Capacity Standard was appropriately implemented as a capacity requirement entirely separate from the state's RPS, which uses energy as its measure of compliance. Importantly, the Solar Capacity Standard was repealed because it was successful; at the time of its repeal, all but a very small portion of the capacity required by the standard had been built and was in operation.[3] This is a critical fact for the Commission's consideration: capacity standards are effective in incentivizing the development of resources. There is a proven track record of this success with the Solar Capacity Standard.

Additionally, to the extent that ORS 469A.210 is intended to result in economic development and meet local demand for proximate renewable resources, these goals can be met through an effectively implemented capacity standard. Requiring the use of a generator's environmental attributes to show compliance with ORS 469A.210 is not necessary to ensure that the steel-in-the-ground is a renewable project, nor do the projects being installed to meet a capacity standard become less renewable or deliver fewer benefits to local communities simply because the environmental attributes are not claimed for compliance.

Maintaining the small-scale renewable requirement standard as a 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.

b. Requiring Ownership of the Environmental Attributes Limits the Use of the Associated Renewable Energy Certificate (REC) and Increases Compliance Costs

The requirement for utilities to maintain ownership of an eligible project's environmental attributes, coupled with the geographical limitation, is problematic for two reasons: 1) it has the

[3] Prior to the repeal, PacifiCorp had installed 7.0 megawatts of the 8.7 megawatt requirement, with ample time to install the remaining capacity under the program.

unintended outcome of rendering RECs allocated to states other than Oregon unusable for those states' RPS requirements or for sale in the voluntary, interstate REC market; and 2) it unnecessarily converts and expands the small-scale requirement into a capacity *and* energy standard. Staff attempts to create a distinction between the ownership of a facility's environmental attributes and the ownership of its associated RECs. Environmental attributes, however, are associated with the production of energy. The REC is the manifestation of the environmental attributes as a tradable commodity. While Pacific Power appreciates Staff's attempt to draw this distinction, this distinction will not solve the issue of RPS compliance in other states or the potential infringement on participation in the voluntary, interstate REC market.

Proposed Rule 5(1) requires that, for a project to be eligible, "…the electric company owns or otherwise has the rights to the environmental attributes associated with the energy produced by the energy project during the compliance year." While the proposed rules do not mandate retirement of RECs, requiring the utility to demonstrate ownership of a project's environmental attributes to show compliance with the small-scale requirement constitutes a claim being made on those environmental attributes, and consequently, the associated REC.

The Center for Resource Solutions' (CRS) *Explanation of Green-e Energy Double-Claims Policy*,[4] outlines the differentiation of a delivery and consumption-based claim versus a generation-based claim. CRS's approach to generation-based claims states "One of the primary factors is whether the statement implies that the statement-maker is delivering the environmental benefits it describes to its customers (through RECs), which implies that the generator owns the RECs associated with the facility. Green-e generally requires that these types of statements be clarified to reflect that the generator does not own the renewable attributes of the facility.[5]" (emphasis added). By CRS's standards, making an explicit claim of ownership against a generator's environmental or renewable attributes no longer constitutes only a generation-based claim. Making such claims has the outcome of compromising the integrity of the associated REC and prohibits its use in Green-e certified voluntary programs.

The issues surrounding the requirement of environmental attributes are further exacerbated by the geographic limitation in proposed Rule 4(1), which requires eligible projects to be located within Oregon. Under PacifiCorp's interjurisdictional cost allocation structure, each state's customers are allocated their proportionate share of RECs from shared renewable facilities across the Company's six-state system. As a result, PacifiCorp's Oregon customers are allocated approximately 26 percent of RECs from system renewables, with the remainder allocated to the Company's other jurisdictions, including California and Washington, which both have state RPS requirements.

[4] Explanation of Green-e Energy Double-Claims Policy available at https://resource-solutions.org/wp-content/uploads/2015/07/Explanation-of-Green-e-Energy-Double-Claims-Policy.pdf.
[5] Explanation of Green-e Energy Double-Claims Policy available at https://resource-solutions.org/wp-content/uploads/2015/07/Explanation-of-Green-e-Energy-Double-Claims-Policy.pdf, page 8.

Staff's position is that showing ownership of the environmental attributes of the generation would not constitute a claim for purposes of using the REC for the Oregon RPS. However, similar to CRS's prohibition on such claims, regulating agencies in PacifiCorp's other states with RPS requirements are highly likely to restrict the use of RECs associated with ownership claims made for compliance with ORS 469A.210. To avoid the risk of making double claims and compromising other jurisdictions' allocation of RECs, under the current proposed rules, Pacific Power can only count Oregon's allocated share of eligible projects toward meeting the small-scale requirement. Table 1[6] below shows the Company's position with and without the requirement for environmental attribute ownership.

Table 1 – 2025 Compliance Position With and Without Environmental Attributes[7]

	Without Environmental Attribute Requirement (Project's Full Capacity Eligible)	**With Environmental Attribute Requirement** (Project's Oregon-Allocated Capacity Eligible)
Compliance Year	**2025**	**2025**
Eligible Capacity (MW)	305 (MW)	76 (MW)
Oregon's Peak During System Peak + Reserve Margin	11%	3%
All Generation Sources	7%	2%

If no environmental attributes are required, Pacific Power anticipates being reasonably positioned to achieve the 2025 compliance obligation of 8 percent without significant incremental costs. If environmental attributes are required, the Company's compliance position drops significantly. To close the compliance shortfall would require situs-assigned acquisitions, likely with incremental costs borne by Oregon customers. This approach is ultimately punitive and inconsistent with the capacity standard set forth in statute.

III. Imposing a Requirement Beyond 2025 is Not Supported by the Language in the Statute

The statute is clear as to the time period of compliance (as 2025 and no further). The unambiguous language in ORS 469A.210 requires compliance "by the year 2025." The proposed rules, however, require compliance by January 1, 2025 *and beyond*. This addition in the rule is not supported by the language in the statute.

The legislature will affirmatively state its intent when establishing an ongoing requirement. For example, the RPS is explicit in the requirement for compliance to continue beyond a particular date. ORS 469A.052(2)(h) states "At least 50 percent of the electricity sold by an electric

[6] Without environmental attributes required, the total installed nameplate capacity of a project located within Oregon would count towards compliance. With the environmental attribute requirement, only Oregon's allocated share of projects within the state would count towards compliance with this standard.
[7] Information for Table 1 is extracted from PacifiCorp's 'Compliance Template' filed with Staff on February 12, 2019.

company to retail electricity consumers in the calendar year 2040 and subsequent calendar years must be qualifying electricity." (emphasis added). The legislature did not include such an affirmative statement in ORS 469A.210(2).

Notably, the small-scale capacity standard was converted from a goal to mandate in Senate Bill 1547, the same bill that significantly amended the RPS and the same bill in which the legislature used the language "and subsequent calendar years" to describe the ongoing compliance obligation of the RPS. The legislature clearly understood *at the time of amending the small-scale capacity standard*, how to create an ongoing compliance obligation and chose not do so in ORS 469A.210(2). Similarly, the legislature subsequently amended the small-scale capacity standard in 2017 and again, did not add language that would require an ongoing compliance obligation beyond 2025. The Commission has no statutory basis or authority to extend ORS 469A.210 into perpetuity when such an approach is not clearly mandated by the statute.

The Commission should also consider the impacts of the small-scale capacity requirement and its interaction with other policies that mandate utilities' acquisition of renewable resources, such as Public Utility Regulatory Policies Act of 1978 (PURPA). Under current Oregon PURPA rules, during a resource deficiency period, utilities are required to purchase the energy and RECs from a Qualifying Facility (QF) paying the avoided cost rate of a renewable acquisition. As a large number of QF projects are anticipated to qualify as eligible for the small-scale capacity standard, without assuming some or all expiring contracts would be renegotiated for both the energy and RECs, Pacific Power is anticipated to be in an even worse position of noncompliance in 2036.[8] Table 2 below shows the Company's position in 2036, both with and without requirement of the environmental attributes.

Table 2 – 2036 Compliance Position With and Without Environmental Attributes

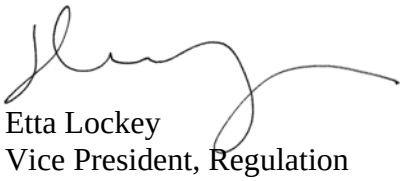
	Without Environmental Attribute Requirement (Project's Full Capacity Eligible)	**With Environmental Attribute Requirement** (Project's Oregon-Allocated Capacity Eligible)
Compliance Year	**2036**	**2036**
Eligible Capacity (MW)	121 (MW)	30 (MW)
Oregon's Peak During System Peak + Reserve Margin	4%	1%
All Generation Sources	3%	1%

PacifiCorp appreciates the opportunity to provide these comments and looks forward to working with the Commission and stakeholders on the continued development of rules implementing ORS 469A.210.

[8] Both the REC entitlement and capacity (or energy) contract expire simultaneously for nearly all of PacifiCorp's eligible QFs located in Oregon.

Please direct any questions regarding this filing to Etta Lockey at (503) 813-5701.

Sincerely,



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