PACIFIC POWER
A DIVISION OF PACIFICORP

825 NE Multnomah, Suite 2000
Portland, Oregon 97232

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 in the calendar year 2040 and subsequent calendar years 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.

[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.

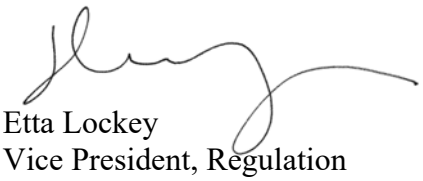
> *(1) Energy projects that satisfy the criteria of [Rule 4] are eligible to count toward the standard in [Rule 3] as renewable energy projects when the electric company owns or otherwise has the rights to the environmental attributes associated with the energy produced by the project during the compliance 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