ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 18, 2018

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** **Upon Approval**

DATE: December 11, 2018

TO: Public Utility Commission

FROM: Seth Wiggins

THROUGH: Jason Eisdorfer and JP Batmale

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. AR 622) Rulemaking for Small Scale Community Based Renewable Energy Projects. (Public Hearing and Commissioner Work Session)

STAFF RECOMMENDATION:
The Commission should initiate a formal rulemaking process to adopt rules to implement the standard in ORS 469A.210 pursuant to Oregon's Administrative Procedures Act.

DISCUSSION:

Issue

Whether the Commission should initiate a formal rulemaking by filing notice of its intent to adopt rules pursuant to Oregon's Administrative Procedures Act as prescribed in ORS 183.335.

Applicable Rule of Law

Section 14 of Senate Bill (SB) 1547 (2016), codified at ORS 469A.210, established a renewable energy project standard (hereinafter referred to as "the Standard") for electric companies that serve more than 25,000 customers in this state. Under ORS 469A.210(2), "by the year 2025, at least 8 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 one or both of the following sources:

a. Small-scale renewable projects with a generating capacity of 20 megawatts or less; or
b. Facilities that generate electricity using biomass that also generate thermal energy for a secondary purpose."

Under ORS 469A.200(3), only the first 20 megawatts of any single-facility qualifying under subsection (2)(b) may be used to comply with the Standard.

ORS 469A.200 provides, "If an electric company or electricity service supplier 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 Public Utility Commission may impose a penalty against the company or supplier in an amount determined by the commission."

Under ORS 756.060, "the Commission may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission[.]"

ORS 183.310-.410 set forth certain requirements associated with agency rulemakings, including the obligation for the agency to give notice of the agency's intent to adopt rules in the manner prescribed in ORS 183.335.

Analysis

Background
On August 28, 2018, the Commission opened Docket No. AR 622 to allow Staff to conduct an informal process with stakeholders to discuss rules to implement the Standard. On September 19, 2018, Staff sent questions to stakeholders regarding the need for rules and input on the content of any rules. Stakeholders filed responses to these questions and Staff facilitated a workshop on October 4, 2018, to discuss issues related to implementation of the Standard.

Staff circulated draft rules to stakeholders on November 14, 2018, and stakeholders filed comments regarding the draft rules on November 28, 2018. Staff has revised the draft rules to address some of the concerns raised by stakeholders. However, there is little consensus among the stakeholders and Staff regarding the proper implementation of the Standard.

Staff does not anticipate that the draft rules attached to this memorandum will remain unchanged. However, Staff does believe these draft rules provide notice of the scope of the rulemaking and the Commission's manner of implementation of the Standard and

are an appropriate basis for continuing process once the Commission provides notice of rulemaking as required under ORS 183.335.

Draft Rules
The Standard requires at least eight percent of all capacity to come from renewable energy projects under 20 MW and biomass facilities that generate thermal energy for a secondary purpose. However defined, this percentage involves both a numerator, which sums the capacity of all applicable renewable resources, and a denominator, the electric companies' total aggregate electrical capacity. Selecting the methodology to determine the most appropriate set of numbers to calculate both the numerator and the denominator requires a number of key determinations. In addition, implementing the Standard requires determinations regarding procedural issues.

To implement the Standard, the draft rules:

- Define the term "electrical capacity";
- Clarify the meaning of "aggregate electrical capacity";
- Specify how electric companies comply, and demonstrate compliance, with the requirement that eight percent of their electrical capacity be composed of renewable energy projects that satisfy either subsection (2)(a) or (b) of ORS 469A.210;
- Specify that electric companies must be able to demonstrate the projects used to comply with the Standard are "renewable" projects, i.e., by showing ownership of the renewable attributes associated with the qualifying projects' generation;
- Clarify that renewable energy credits ("RECs") associated with a project used to comply with the Standard may be used to comply with Oregon's RPS;
- Require that electric companies comply with the Standard in 2025 and every year thereafter;
- Require electric companies to file annual compliance reports starting in 2025;
- Require electric companies to file annual implementation reports starting in 2019; and
- Clarify electric companies may recover costs of resources used to comply with the Standard through Renewable Energy Clauses established under ORS 469A.120.

Applicable Projects
The draft rules count all generating facilities that meet either criteria mentioned above, regardless of ownership. Some stakeholders have argued that the term 'community based' should preclude utility ownership, however Staff believes this to be not supported by the statute.

Individual Project Capacity (Numerator)
To calculate the numerator of the compliance for the Standard, utilities will sum the total capacity of their eligible projects. In determining the contribution to this summed value, there are two possible choices for individual projects: its nameplate capacity, or its contribution to peak. Staff recommends the Commission use nameplate capacity (Option #1) to measure individual projects' contributions.

Option #1: Nameplate Capacity
Staff believes the simplest method is to use an individual project's nameplate capacity. This provides a clear, consistent, and widely understood metric. Both Staff's initial and current draft rules use the sum of all projects' nameplate capacity to calculate the numerator.

Option #2: Contribution to Peak
A number of stakeholders have highlighted that a project's nameplate capacity is not the sole value considered in each utility's planning process. When planning for energy deliveries, a project's estimated capacity factor is applied to the nameplate capacity. Further, when planning for capacity, a project's contribution to peak load is used. Several stakeholders have stated that only this contribution at peak should be counted towards the numerator, as that is a better reflection of the actual makeup of the aggregate system capacity. Electing to measure an individual project by its contribution to peak also presents a number of complications to the analysis; when peaks occur and what each individual resource's contribution to them would need to be determined yearly. Accordingly, it would be less complex to calculate capacity from the nameplate capacity.

Aggregate System Capacity (Denominator)
The concept of 'aggregate electrical capacity' appears simple, however Staff has identified four possible ways in which it could be defined. Each method is problematic. Staff recommends the Commission use Option #4 below, defining electrical capacity as the sum of the nameplate capacity of each of the electric company's supply side resources and market purchases. Below these four options are summarized, with the advantages and drawbacks associated with each.

Option #1: Peak Load
In the earlier draft rules circulated to stakeholders on November 14, Staff used forecasted system peak in the year of compliance.[1] This is an easy solution, as this value is updated often in IRPs. However, a number of stakeholders have noted that the statute's requirement is in terms of "capacity," not load and that therefore, using system

[1] Forecasted peak, rather than actual, was used as utilities should not be penalized (or credited) for years that are unusually cold (or warm).

peak is not consistent with the statute. Other stakeholders raised concerns noting that merely using demand side forecasts does not fully account for a utility's entire system. Utilities must plan to serve peak load plus whatever planning reserve margin they have chosen. Accordingly, calculating the denominator with the simple demand side value will lead to an overestimation of the total compliance percent.[2]

Option #2: Peak Demand plus Planning Reserve Margin
A second option could be to simply add utilities reserve margins to their forecasted peak demand. Each utility in its IRP has a forecasted peak load (net of energy efficiency, private generation,[3] and interruptible service) associated with each year, and clearly identifies its planning reserve margin. Both are acknowledged by the Commission. By adding their margin to the peak load, both could create a simple, clear calculation of total system peak need that can be translated to capacity. However, this option does not equally compare capacity between the numerator and denominator, and accordingly Staff recommends using the supply side instead.

Option #3: Supply Side, Contribution to Peak
Utilities plan to meet forecasted peak load by summing their owned resource stack and market purchases. This value is readily available from utilities, updated in every IRP and IRP update. However, utilities use their resources' contribution to peak. This approach then would not be consistent with Staff's recommendation to use nameplate capacity for the numerator.

Option #4: Supply Side, Nameplate Capacity
Staff recommends the Commission elect to use the sum of all utility resources and market purchases to estimate total system capacity. This would make a clear and consistent comparison between the use of nameplate capacity for qualifying projects in the numerator and reflect the planning reserve margin portion of aggregate electrical capacity raised by some stakeholders.

Under this option, the treatment of contracts and market purchases will require additional scrutiny. These represent roughly 10 and 23 percent for PGE and PacifiCorp, respectively. A comparable estimation could be designed to require using the maximum delivery of the contract as the associated capacity of the contract.

A potential concern from this recommendation are the creation of additional incentives. Renewables replacing retiring thermal generation is a growing industry trend. With the

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[2] As with the same number of qualifying MWs in the numerator, smaller denominator will create a larger percent.
[3] Staff defines private generation as all generation installed behind the meter but not part of the Oregon Solar Incentive Program.

supply side capacity calculation however, utilities may see reduced economic benefit to pursuing large renewable projects (greater than 20MW), as their inclusion in the denominator would increase their resource need for compliance towards this Standard.[4]

Multi-State Jurisdiction
Even with a clear definition of aggregate electrical capacity, PacifiCorp's multi-state system presents additional concerns. To calculate the denominator for the Standard, Staff recommends multiplying PacifiCorp's system capacity (as defined above) with Oregon generation allocation factor.

Geographic Location
Determining which projects qualify for the Standard raises another range of interpretations from stakeholders. Staff's rules follow their recommendation that only projects located within Oregon should qualify for the numerator. Staff is aware that this treatment is potentially discriminatory and would be inconsistent with dormant Commerce Clause unless the state has a legitimate reason to distinguish between in-state and out-of-state resources. Staff believes there are legitimate reasons to require that qualifying resources be located within the state, including that such a requirement furthers the purpose of the Standard, to require electric companies to invest in resources the legislature found are "an essential element of this state's energy future."[5]

Another open question is whether the rules should treat Oregon only and multi-state jurisdictional utilities differently. Staff's rules reflect its recommendation that they be treated equally, and that all qualifying projects from either an Oregon-only or multi-state electric company (EC) must be located in Oregon.

Environmental Attributes
Because the Standard requires that qualifying small energy projects be renewable, the draft rules require that utilities demonstrate the resources used to meet the Standard are "renewable." For the EC to claim the resources it uses are renewable, the EC must show that it owns the renewable attributes associated with the projects' generation. The EC need not retire RECs to comply with the Standard, but instead, must show ownership of the renewable attributes.

The draft rules circulated to stakeholders on November 14 specified that utilities had to show ownership of a qualifying renewable energy project's "environmental attributes"

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[4] Consider two utilities, A & B, equal in all ways and each currently compliant with the community-based standard. If A replaces all of its thermal generation with renewables, its denominator will increase, and thus push it out of compliance. With the same peak load and community-based renewable capacity, B remains compliant.
[5] ORS 469A.210(1).

and defined environmental attributes very broadly. Stakeholders pointed out that the draft definition of environmental attributes captured attributes that are not associated with generation and that are not represented by a REC. Stakeholders pointed out that requiring that utilities show ownership of all a resource's environmental attributes, as opposed to those attributes represented by a REC, would be burdensome to utilities and renewable projects because most PPAs do not transfer ownership of environmental attributes not covered by the REC.

Staff agrees that requiring utilities to show ownership of the broadly-defined environmental attributes used in the initial draft of rules is inappropriate. Accordingly, the current draft rules have been modified to require that utilities show ownership of the renewable attributes that are represented by an Oregon RPS-compliant REC.

Duration of the Standard
ORS 469A.210 requires that "by 2025" EC's comply with the Standard. Staff interprets the Standard to be ongoing, not just a one-time requirement in 2025.

Monitoring Compliance
The draft rules require the ECs to file annual compliance reports starting in June 2025. PGE asserts that the Commission does not have authority to monitor compliance and suggests the rules require only a status report. Staff believes the authority to monitor compliance and to adopt these rules is found in ORS chapters 469A and 756.

CONCLUSION

This memo explains the decisions made by Staff in drafting its revised rules for the Standard in established in ORS 469A.210(2). On a number of key issues, Staff made recommendations as to how to best interpret the statute. The proposed rules, found in Appendix A, balance a number of concerns raised by utilities and other stakeholders have raised throughout this docket, and present the Commission the Staff's recommended method of implementing this Standard. We envision continued engagement by stakeholders in assisting the Commission to determine the most appropriate method for calculating the Standard.

PROPOSED COMMISSION MOTION

The Commission should initiate a formal rulemaking process to adopt rules to implement the standard in ORS 469A.210 pursuant to Oregon's Administrative Procedures Act.

Appendix A: Draft Rules

[RULE 1]

ADOPT: 860-

RULE TITLE: Applicability of Rules

RULE SUMMARY: This rules clarify that the rules implement the standard in ORS 469A.210.

RULE TEXT:

(1) These rules implement ORS 469A.210.

(2) The rules contained in this division apply only to an electric company that makes sales of electricity to 25,000 or more retail electricity customers in this state.

(3) Upon request or its own motion, the Commission may waive any of the division 0XX rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

STATUTORY/OTHER AUTHORITY: ORS 756.060, ORS 469A.200, 469A.210
STATUTES/OTHER IMPLEMENTED: ORS 469A.210.

[RULE 2]

ADOPT: 860-

RULE TITLE: Definitions for Division 0xx Rules

RULE SUMMARY: Adopts definitions for purposes of implementing standard in ORS 469A.210.

RULE TEXT:

For purposes of OAR 860-XXX-XXXX - 860-XXX-XXXX:

(1) "Electric company" has the meaning in ORS 756.005.

(2) "Nameplate capacity" means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized

conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Nameplate capacity is usually indicated on a nameplate attached to the individual machine or device.

(3) "Renewable attributes" means the environmental attributes associated with energy generation represented by a renewable energy certificate that can be used to comply with Oregon's renewable portfolio standards in ORS 469A.050 and ORS 469A.055. Renewable attributes do not include greenhouse gas offsets from methane capture not associated with generation of electricity and do not include environmental attributes represented by a thermal renewable energy certificate created under ORS 469A.132.

STATUTORY.OTHER AUTHORITY: ORS 756.060, ORS 469A.200, 469A.210
STATUTES/OTHER IMPLEMENTED: ORS 469A.210.

[RULE 3]

ADOPT: 860-

RULE TITLE: Aggregate Electrical Capacity

RULE SUMMARY: Clarifies the meaning of aggregate electrical capacity for purposes of complying with ORS 469A.210.

RULE TEXT:

(1) For purposes of compliance with the standard in ORS 469A.210(2), each electric company's aggregate electrical capacity is the total nameplate capacity of the electric company's generation resources to serve Oregon load.

(2) For electric companies making retail sales in multiple jurisdictions, the nameplate capacity of generation resources to serve Oregon load is the total nameplate capacity of the electric company's system generation multiplied by Oregon's generation allocation factor.

[RULE 4]

ADOPT: 860-

RULE TITLE: Eligible Renewable Energy Projects

RULE SUMMARY:

RULE TEXT:

(1) Renewable energy projects used to comply with the standard in ORS 469A.210 must be located in the State of Oregon.

(2) For each renewable energy project used to comply with the standard in ORS 469A.210(2), the electric company must show ownership of the renewable attributes of the energy generated by the project during the compliance year. A renewable energy project for which the electric company does not own the renewable attributes during the compliance year may not be used to comply with the electrical capacity standard in ORS 469A.210(2).

(3) Notwithstanding subsection (2), if the electric company owns the renewable attributes for only a portion of the energy generated by the renewable energy project, a share of the project's capacity that is proportionate to the electric company's ownership interest in the renewable attributes of the project's output can be used for compliance with the standard in ORS 469A.210.

STATUTORY/OTHER AUTHORITY: ORS 756.060, ORS 469A.200, 469A.210is
STATUTES IMPLEMENTED: ORS 469A.210.

[RULE 5]

ADOPT: 860-

RULE TITLE: Compliance Reports

RULE SUMMARY: Requires electric companies to file a compliance report starting in 2025 and every year thereafter.

RULE TEXT:

(1) No later than June 1, 2025, and no later than June 1 for each year thereafter the electric company must file a report with the Commission demonstrating compliance or explaining in detail any failure to comply, with the standard in ORS 469A.210.

(2) The report required in section (1) of this rule must include the following information associated with each owned or contracted qualifying and eligible renewable energy project:

(a) The name of the facility;
(b) The location of the facility;
(c) The in-service date of the facility;
(d) The manufacturer's nameplate capacity rating;

(e) The execution date of any associated power purchase agreement; and
(f) The contracted capacity and output delivery period of any associated power purchase agreement; and
(g) Proof of the subject electric company's ownership interest in the renewable attributes of the project output during the compliance period.

(3) The report required in section (1) of this rule must include the following information regarding the electric company's generation.

(a) The total nameplate capacity of the electric company's generating resources.

(b) The total contracted capacity of all power purchase agreements.

(c) For an electric company making retail sales in multiple jurisdictions, the Oregon generation allocation factor from the most recently concluded Oregon general rate case.

STATUTES/OTHER AUTHORITY: ORS 756.060, 469A.200, 469A.210
STATUTES IMPLEMENTED: ORS 469.200, 469A.210

[RULE 6]

ADOPT: 860-0

RULE TITLE: Renewable Energy Attributes

RULE SUMMARY: Clarifies that renewable energy credits (RECs) for generation of renewable energy projects used to comply with the Standard in ORS 469A.210(2) may be used to comply with RPS.

RULE TEXT:

(1) Use of a qualifying project's capacity to meet the standard of ORS 469A.210 does not prevent the electric company from using the renewable energy certificates associated with qualifying projects' output for purposes of meeting a renewable portfolio standard established under ORS 469A.050 during the compliance year.

(2) Use of a qualifying project's capacity to meet the standard of ORS 469A.210 does not prevent the electric company from banking otherwise eligible renewable energy certificates associated with qualifying projects' output for purposes of

meeting a renewable portfolio standard established under ORS 469A.050 in a subsequent year.

STATUTES/OTHER AUTHORITY: ORS 756.060, 469A.200, 469A.210
STATUTES IMPLEMENTED: ORS 469.200, 469A.210

[RULE 7]

ADOPT: 860

RULE TITLE: Implementation Plans.

RULE SUMMARY: Requires electric companies to file implementation plans starting in 2021.

RULE TEXT:
Starting in 2021 and every year thereafter, an electric company must incorporate its plan to achieve or exceed, and maintain, the standard in ORS 469A.210 into its renewable portfolio standard implementation plans filed pursuant to OAR 860-083-0400.

STATUTORY/OTHER AUTHORIZED: ORS 756.060, 469A.200, 469A.210
STATUTES IMPLEMENTED: ORS 469A.200, 469A.210

[RULE 8]

ADOPT: 860-0

RULE TITLE: Cost Recovery
RULE SUMMARY: [RULE 7]

ADOPT: 860-0

RULE TITLE: Implementation Plans.

RULE SUMMARY: Specifies mechanism for cost recovery.

RULE TEXT:

An electric company may request recovery of its prudently incurred costs to comply with the Standard in ORS 469A.210 in an automatic adjustment clause proceeding filed at the Commission pursuant to ORS 469A.120.

STATUTORY/OTHER AUTHORIZED: ORS 756.060, 469A.200, 469A.210
STATUTES IMPLEMENTED: ORS 469A.200, 469A.210