

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

January 12, 2009

Filing Center
Public Utility Commission of Oregon
550 Capitol St. NE – Suite 215
Salem, OR 97308-2148

Re: *In the Matter of a Rulemaking to Implement SB 838 Relating to Renewable Portfolio Standard*
OPUC Docket No.: AR 518

Dear Filing Center:

Enclosed are an original and one copy of the Oregon Department of Energy's Comments in the above-captioned matter for filing with the PUC today.

Sincerely,

Janet L. Prewitt
Assistant Attorney General
Natural Resources Section

JLP:mme/#1245460
c: PUC Docket AR 518 Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 518 – Phase II

In the Matter of a Rulemaking to Implement
SB 838 Relating to Renewable Portfolio
Standard

OREGON DEPARTMENT OF ENERGY'S
COMMENTS

The Department supports the rules as proposed. The proposed rules offer the best approach to prevent improper claims related to environmental attributes of electricity generated using renewable resources.

In written comments submitted on January 9, 2009, PGE has proposed that 860-083-005(3)(d) and 860-083-0050(3) be deleted from the proposed rules. PacifiCorp's comments during the rulemaking hearing held on January 12, 2009, indicate support for the changes proposed by PGE.

The Department opposes this modification.

PGE states that the proposal to eliminate this portion of draft rules is intended to serve clarity and simplicity. There is no question that Renewable Energy Certificates are an abstraction for many people. While it may be difficult to explain what a REC is or how it can be used, that does not mean that accuracy in reporting should be sacrificed. The growing number of individuals and corporations that are concerned with their carbon footprints should have a good basis to support their analysis. That basis should be stable.

REC banking does not restrict future sale of any Certificate. Thus, it would be misleading to claim delivery of electricity from a specific source in a given year unless the REC associated with that claim is retired for RPS compliance in the same year. Retirement is the primary action that marks a REC as "used" in the tracking system.

PGE argues for changes in the proposed rule for two reasons. First, PGE claims that the link to the power source disclosure exceeds the authority of RPS legislation; second, that the proposed rule will result in the utilities providing confusing and misleading information to customers and other groups.

The Department of Energy supports the staff's position on the legal analysis. Furthermore, ODOE disagrees with the utilities' second reason cited for decoupling power source disclosure from RPS banking. Contrary to the utilities position, ODOE believes that a decoupled disclosure will, itself, mislead and confuse customers. In fact, the potential to mislead through a decoupled disclosure can do more harm than potential misunderstandings regarding banked REC output. Use of a banked REC is not restricted.

Consider a scenario in which a utility reports generation sources for a given year. Assume that report shows a fraction from wind resources of 9%. Some customers will make decisions based on this information such as being less careful about electricity use since it is 'green' or reducing their green power subscription to reflect the balance of the supply.

Then, if the market for Certificates in a subsequent period is strong, the utility might sell RECs to recover value for their customers, thereby diminishing the aspect of that generation which some customers counted on in making their decisions. The utilities should not claim a specific type of generation when the attribute for such generation has been banked and the future use is uncertain.

Finally, ODOE urges all parties involved to be careful about how generation is discussed to avoid making unfounded claims. All parties at the January 12, 2009 hearing supported presenting accurate information. The proposed rule does not restrict discussion of REC banking in a revised power source disclosure. Much of the discussion at the hearing revolved around whether to explain "null generation" or why the image doesn't reflect RPS banking in a footnote. The image of the pie is what is most likely to be remembered or accepted and this is one reason for keeping the language and intent the draft rules intact. A cursory look will be more accurate; anyone concerned about the lack of renewable resources in the mix is likely to look more carefully. But a person that sees, for example, 12% wind is unlikely to check the footnote which describes how the claim for that kind of resource might be sold or used later.

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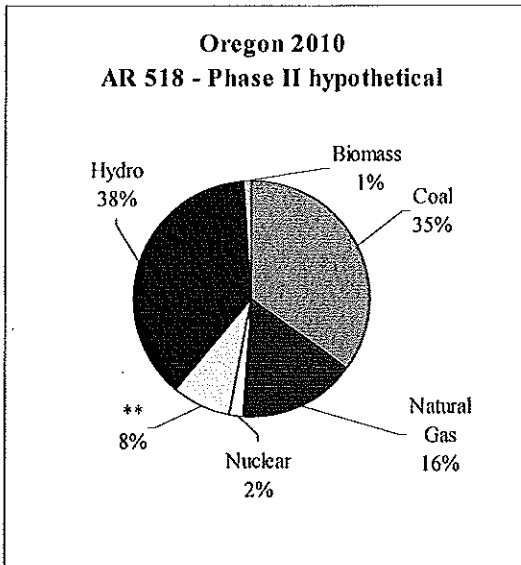
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Here is a small example of what might be done.

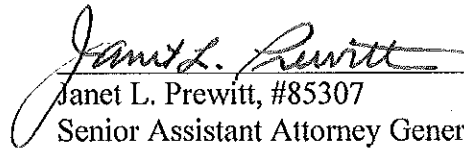


** - Renewable Resources eligible for the Oregon RPS produced electricity equal to 8% of the Oregon total in 2012. These resources generally include wind, geothermal, solar, biomass, and hydroelectric systems placed in operation after 1994.

Utilities have reserved the credit associated with this renewable-sourced generation for some future use, most likely to satisfy the Oregon RPS.

Respectfully submitted,

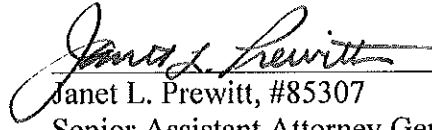
JOHN R. KROGER
Attorney General


Janet L. Prewitt, #85307
Senior Assistant Attorney General
Of Attorneys for Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of January, 2009, I served the foregoing OREGON DEPARTMENT OF ENERGY'S COMMENT'S upon the persons named on the attached AR 518 service List by electronic mail and by mailing a full, true and correct copy thereof addressed to the persons at the addresses on AR 518 service list.

Dated: January 12, 2009



Janet L. Prewitt, #85307
Senior Assistant Attorney General

AR 518 SERVICE LIST

<p>PACIFICORP OREGON DOCKETS 825 NE MULTNOMAH ST STE 2000 PORTLAND OR 97232 oregondockets@pacificorp.com</p>	<p>Sarah J Adams Hoffman Angeli LLP 1000 SW Broadway Ste 1500 Portland OR 97205 sarah@hoffmanangeli.com</p>	<p>Jim Anderson JD ANDERSON ASSOCIATES 910 SAHALEE CT SE SALEM OR 97306 lobbyoregon@comcast.net</p>
<p>Sven Anderson OREGON DEPARTMENT OF ENERGY 625 MARION ST SALEM OR 97301 sven.anderson@state.or.us</p>	<p>Aubrey Baldwin PACIFIC ENVIRONMENTAL ADVOCACY CENTER 10015 SW TERWILLIGER BLVD PORTLAND OR 97219 abaldwin@lclark.edu</p>	<p>Tom Barrows CENTRAL LINCOLN PUD tbarrows@aol.com</p>
<p>Greg Bass SEMPRA ENERGY SOLUTIONS LLC 401 WEST A STREET SUITE 500 SAN DIEGO CA 92101 gbass@semprasolutions.com</p>	<p>Jeremiah Baumann ENVIRONMENT OREGON 1536 SE 11TH AVE PORTLAND OR 97214 jeremiah@environmentoregon.org</p>	<p>Scott Bolton PACIFICORP 825 NE MULTNOMAH PORTLAND OR 97232 scott.bolton@pacificorp.com</p>
<p>Laura K Bonnicksen CONSTELLATION ENERGY COMMODITIES GROUP 111 MARKET PL STE 500 BALTIMORE MD 21202 laura.bonnicksen@constellation.com</p>	<p>Julie Brandis ASSOCIATED OREGON INDUSTRIES 1149 COURT ST NE SALEM OR 97301-4030 retail_energy@aol.org</p>	<p>Rebecca T Brown PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC 07 PORTLAND OR 97204 rebecca.brown@pgn.com</p>
<p>Maxwell S. Bulk J. ARON & COMPANY 85 BROAD ST 4TH FL NEW YORK NY 10004 maxwell.bulk@gs.com</p>	<p>Ed Busch PUBLIC UTILITY COMMISSION OF OREGON PO BOX 2148 SALEM OR 97308-2148 ed.busch@state.or.us</p>	<p>PORTLAND GENERAL ELECTRIC COMPANY 121 SW SALMON ST 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com</p>
<p>THOMAS CORR SEMPRA ENERGY 101 ASH ST - MS HQ 08 C SAN DIEGO CA 92101 tcorr@sempra.com</p>	<p>Randall Dahlgren PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC 0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com</p>	<p>Melinda J. Davison DAVISON VAN CLEVE PC 333 SW TAYLOR - STE 400 PORTLAND OR 97204 mail@dvclaw.com</p>
<p>Jim Deason 1 SW COLUMBIA ST, SUITE 1600 PORTLAND OR 97258-2014 jimdeason@comcast.net</p>	<p>Jeff Deyette UNION OF CONCERNED SCIENTISTS TWO BRATTLE SQ CAMBRIDGE MA 02238 jdeyette@ucsusa.org</p>	<p>Bill Drumheller OREGON DEPARTMENT OF ENERGY 625 MARION ST NE SALEM OR 97301 bill.drumheller@state.or.us</p>

<p>Michael Early INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES 333 SW TAYLOR STE 400 PORTLAND OR 97204 mearly@icnu.org</p>	<p>Noah Eckert BP SOLAR INTERNATIONAL INC 1 HARBOR CTR STE 290 SUISUN CITY CA 94585-2427 noah.eckert@bp.com</p>	<p>Sara Eddie CONSERVATION SERVICES GROUP 1400 SW FIFTH AVE, STE 830 PORTLAND OR 97201</p>
<p>Diana Enright OREGON DEPARTMENT OF ENERGY 625 MARION ST SALEM OR 97301 diana.enright@state.or.us</p>	<p>David Fife SEATTLE NORTHWEST SECURITIES GROUP 1420 FIFTH AVE STE 4300 SEATTLE WA 98101 dfife@snwsc.com</p>	<p>Ann L. Fisher AF LEGAL & CONSULTING SERVICES PO BOX 25302 PORTLAND OR 97298-0302 energlaw@aol.com</p>
<p>Ryan Flynn PACIFICORP 825 NE MULTNOMAH, SUITE 1800 PORTLAND OR 97232 ryan.flynn@pacificorp.com</p>	<p>Andrea Fogue LEAGUE OF OREGON CITIES PO BOX 928 1201 COURT ST NE STE 200 SALEM OR 97308 afogue@orcities.org</p>	<p>Kelly Francone ENERGY STRATEGIES 215 SOUTH STATE ST - STE 200 SALT LAKE CITY UT 84111 kfrancone@energystrat.com</p>
<p>Rick Gilliam SUNEDISON 590 REDSTONE DR BROOMFIELD CO 80020 rgilliam@sunedison.com</p>	<p>Paul Graham OREGON DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 paul.graham@state.or.us</p>	<p>Ann English Gravatt RENEWABLE NORTHWEST PROJECT 917 SW OAK - STE 303 PORTLAND OR 97205 ann@rnp.org</p>
<p>Thomas M. Grim Cable Huston Benedict Haagensen & Lloyd LLP 1001 SW FIFTH AVE STE 2000 PORTLAND OR 97204-1136 tgrim@cablehuston.com</p>	<p>Joe Henri SUNEDISON 5013 ROBERTS AVE STE B MCCLELLAN CA 95652 jhenri@sunedison.com</p>	<p>Amie Jamieson MCDOWELL & RACKNER PC 520 SW SIXTH AVE - STE 830 PORTLAND OR 97204 amie@mcd-law.com</p>
<p>Robert Jenks CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 bob@oregoncub.org</p>	<p>Judy Johnson PUBLIC UTILITY COMMISSION P.O. BOX 2148 SALEM OR 97308-2148 judy.johnson@state.or.us</p>	<p>Jason W. Jones OREGON DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us</p>

<p>Katie Kalinowski RENEWABLE NORTHWEST PROJECT 917 SW OAK ST STE 303 PORTLAND OR 97205 katie@rnp.org</p>	<p>Lindsay Kandra CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP 1001 SW 5TH AVE STE 2000 PORTLAND OR 97204-1136 lkandra@cablehuston.com</p>	<p>Curtis L. Kebler GOLDMAN SACHS & CO. 2121 AVENUE OF THE STARS LOS ANGELES CA 90067 curtis.kebler@gs.com</p>
<p>Lori Koho PUBLIC UTILITY COMMISSION OF OREGON P.O. BOX 2148 SALEM OR 97308-2148 lori.koho@state.or.us</p>	<p>Cheryl Lee CALIFORNIA PUC cnl@cpuc.ca.gov</p>	<p>Pamela G. Lesh PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1 WTC 1703 PORTLAND OR 97204 pamela.lesh@pgn.com</p>
<p>Suzanne Leta Liou RENEWABLE NORTHWEST PROJECT 917 SW OAK ST STE 303 PORTLAND OR 97205 suzanne@rnp.org</p>	<p>KEN LEWIS 2980 NW MONTE VISTA TERRACE PORTLAND OR 97210 ki05pdx@comcast.net</p>	<p>Kevin Lynch IBERDROLA RENEWABLES, INC. 1125 NW COUCH ST STE 700 PORTLAND OR 97209 kevin.lynch@iberdrolausa.com</p>
<p>Raul Madarang PORTLAND GENERAL ELECTRIC 121 SW SALMON ST PORTLAND OR 97204 raul.madarang@pgn.com</p>	<p>Dennis J. Maurer OREGON DEPARTMENT OF REVENUE dennis.j.maurer@state.or.us</p>	<p>Brendan McCarthy PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC0301 PORTLAND OR 97204 brendan.mccarthy@pgn.com</p>
<p>DAMON S MCCAULEY damon.mccauley@pgn.com</p>	<p>G. Catriona Mccracken CITIZEN'S UTILITY BOARD OF OREGON 610 SW BROADWAY - STE 308 PORTLAND OR 97205 catriona@oregoncub.org</p>	<p>Katherine A. McDowell MCDOWELL & RACKNER PC 520 SW SIXTH AVE - SUITE 830 PORTLAND OR 97204 katherine@mcd-law.com</p>
<p>Daniel W. Meek ATTORNEY AT LAW 10949 SW 4TH AVE PORTLAND OR 97219 dan@meek.net</p>	<p>Senator Rick Metsger STATE CAPITOL 900 COURT ST NE S-307 SALEM OR 97301 sen.rickmetsger@state.or.us</p>	<p>Alan Meyer WEYERHAEUSER COMPANY 698 12TH ST - STE 220 SALEM OR 97301-4010 alan.meyer@weyerhaeuser.com</p>
<p>BJ MOGHADAM PACIFIC POWER & LIGHT bj.moghadam@pacifcorp.com</p>	<p>Brian Moghadam POWEREX CORP 666 BURRARD STE 1440 VANCOUVER BC V6C2X8 brian.moghadam@powerex.com</p>	<p>Mark Nelson PUBLIC AFFAIRS COUNSEL PO BOX 12945 SALEM OR 97309 pacounsel@pacounsel.org</p>

<p>Sara M. O'Neill CONSTELLATION NEWENERGY INC. ONE MARKET STREET SPEAR TOWER - 36TH FL SAN FRANCISCO CA 94105- 1420 sara.oneill@constellation.com</p>	<p>Brad Ouderkirk ECOS 309 SW 6TH AVE #1000 PORTLAND OR 97204 bouderkirk@ecosconsulting.com</p>	<p>Alvin Pak SEMPRA ENERGY SOLUTIONS LLC 401 WEST A STREET SUITE 500 SAN DIEGO CA 92101 apak@sempra.com</p>
<p>Kip Pheil OREGON DEPARTMENT OF ENERGY 625 MARION ST NE - STE 1 SALEM OR 97301-3737 kip.pheil@state.or.us</p>	<p>Lisa F. Rackner MCDOWELL & RACKNER PC 520 SW SIXTH AVENUE STE 830 PORTLAND OR 97204 lisa@mcd-law.com</p>	<p>Susan Richter FORTIS PROPERTIES 139 WATER ST STE 1201 ST. JOHN'S NL A1B 3T2 srichter@fortisproperties.com</p>
<p>Theodore E. Roberts SEMPRA ENERGY 101 ASH ST HQ 12B SAN DIEGO CA 92101-3017 troberts@sempra.com</p>	<p>Dave Robertson PORTLAND GENERAL ELECTRIC 121 SW SALMON ST PORTLAND OR 97204 dave.robertson@pgn.com</p>	<p>Ausey H. Robnett III PAINE HAMBLEN COFFIN BROOKE & MILLER LLP P.O. BOX E COEUR D'ALENE ID 83816-0328 ausey.robnett@painehamblen.com</p>
<p>John Ryan WEYERHAEUSER COMPANY 33663 WEYERHAEUSER WAY SOUTH, CH 1K32 FEDERAL WAY WA 98003 john.ryan2@weyerhaeuser.com</p>	<p>Lisa C. Schwartz PUBLIC UTILITY COMMISSION OF OREGON P.O. BOX 2148 SALEM OR 97308-2148 lisa.c.schwartz@state.or.us</p>	<p>John W. Stephens ESLER STEPHENS & BUCKLEY 888 SW FIFTH AVE STE 700 PORTLAND OR 97204-2021 stephens@eslerstephens.com</p>
<p>Joelle Steward PACIFIC POWER & LIGHT 825 NE MULTNOMAH STE 2000 PORTLAND OR 97232 joelle.steward@pacificcorp.com</p>	<p>Bob Tamlyn PORTLAND GENERAL ELECTRIC 121 SW SALMON ST PORTLAND OR 97204 bob.tamlyn@pgn.com</p>	<p>Douglas C. Tingey PORTLAND GENERAL ELECTRIC 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com</p>
<p>Jay Tinker PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC- 0702 PORTLAND OR 97204 jay.tinker@pgn.com</p>	<p>David Tooze PORTLAND CITY OF ENERGY OFFICE 721 NW 9TH AVE -- SUITE 350 PORTLAND OR 97209-3447 dtooze@ci.portland.or.us</p>	<p>Kathryn Van Natta NORTHWEST PULP & PAPER ASSN 2191 SW OAK CREST DR HILLSBORO OR 97123 kathryn@nwpulpanpaper.org</p>
<p>John M. Volkman ENERGY TRUST OF OREGON 851 SW 6TH AVE SUITE 1200 PORTLAND OR 97204 john.volkman@energytrust.org</p>	<p>Senator Vicki L. Walker STATE CAPITOL 900 COURT ST NE S-210 SALEM OR 97301 sen.vickiwalker@state.or.us</p>	<p>Benjamin Walters PORTLAND CITY OF - OFFICE OF CITY ATTORNEY 1221 SW 4TH AVE - RM 430 PORTLAND OR 97204 bwalters@ci.portland.or.us</p>

<p>Michael T. Weirich OREGON DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 michael.weirich@doj.state.or.us</p>	<p>Peter West ENERGY TRUST OF OREGON 851 SW 6TH AVE - STE 1200 PORTLAND OR 97204 peter@energytrust.org</p>	<p>Louann Westerfield IDAHO PUBLIC UTILITY COMMISSION 472 WEST WASHINGTON ST BOISE ID 83720 louann.westerfield@puc.idaho.gov</p>
<p>Linda K. Williams KAFOURY & MCDUGAL 10266 SW LANCASTER RD PORTLAND OR 97219-6305 linda@lindawilliams.net</p>	<p>Eric Winter ELEMENT MARKETS LLC 3555 TIMMONS LN STE 900 HOUSTON TX 77027 ewinter@elementmarkets.com</p>	<p>Marcus A. Wood STOEL RIVES LLP 900 SW FIFTH AVE - STE 2600 PORTLAND OR 97204</p>
<p>PAUL M. WRIGLEY PACIFIC POWER & LIGHT 825 NE MULTNOMAH ST, STE 2000 PORTLAND OR 97232 paul.wrigley@pacificorp.com</p>	<p>Marni Zollinger COB CREATIONS, LLC marnizollinger@cobcreations.com</p>	