

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

AR 518 – Phase II

In the Matter of a Rulemaking to ) RENEWABLE NORTHWEST PROJECT’S  
Implement SB 838 Relating to Renewable ) REPLY MEMORANDUM IN SUPPORT OF  
Portfolio Standard ) MOTION TO RECONSIDER ORDER NO. 09-  
 ) 225

Renewable Northwest Project submits this reply memorandum in support of its motion to reconsider and in reply to Portland General Electric Co.’s Response and PacifiCorp’s Position Regarding Renewable Northwest Project’s Motion to Reconsider Order No. 09-225.

In Order No. 09-225, the Commission determined that for RPS compliance purposes an electric company may use a banked REC in a given year even though for power source disclosure purposes under ORS 757.601, *et seq.* and OAR 860-038-0300, the electric company “used” the energy for which the REC was issued in an earlier year.

RNP filed its motion to reconsider to ask the Commission to clarify that in making that determination, the Commission was not determining the converse: The Commission was not determining that for power source disclosure purposes, an electric company can rely upon its use of a banked or unbundled REC to comply with a renewable portfolio standard in a given year to claim that its power source in that year includes the renewable energy for which the certificate was issued. In the case of a banked REC, the electric company would not have generated/ acquired and used the associated renewable energy in that year. And in the case of an unbundled REC, by definition the utility did not acquire the energy for which the certificate was issued. ORS 469A.005(12).

RNP is concerned that a utility or electricity service supplier could misread Order No. 09-225 as giving a green light to the converse, and that as a result, consumers would be misled. Not

only would that misreading be contrary to the purposes of ORS 757.659(3) and OAR 860-038-0300(1), it would also be contrary to the Environmental Marketing Guidelines issued by the National Association of Attorneys General ([http://apps3.eere.energy.gov/greenpower/markets/pdfs/naag\\_0100.pdf](http://apps3.eere.energy.gov/greenpower/markets/pdfs/naag_0100.pdf)). It also would be contrary to the policies behind other consumer protection statutes, including Oregon's Unlawful Trade Practices Act, ORS 646.605 *et seq.* OAR 860-038-0420(1) ("All advertising and marketing activities by electricity service suppliers must be truthful, not misleading, and in compliance with Oregon's Unfair Trade Practices Act (ORS 646.605 through 646.656).")

ORS 756.561(1) provides that the Commission may grant a rehearing or reconsideration on an application for rehearing or reconsideration "if sufficient reason therefor is made to appear." It certainly makes sense for a party to specify "[t]he portion of the challenged order which the applicant contends is erroneous or incomplete" where there is a specific portion of the challenged order that is erroneous or incomplete. OAR 860-014-0095(2). In this case, however, there is not one portion of the order that gives rise to RNP's concern. RNP is concerned that the order may have created an ambiguity and could be interpreted to allow something that is contrary to law. We do not believe the Commission intended that result.

The Commission is called upon in its orders "to disclose a rational relationship between the facts and the legal conclusion [it] reaches" and to "clearly and precisely state what it found to be the facts and fully explain why those facts lead it to the decision it makes," all with an end of "demonstrat[ing] that it has applied the criteria prescribed by statute and by its own regulations and has not acted arbitrarily or on an ad hoc basis." *Publishers Paper Co. v. Davis*, 28 Or App 189, 195, 559 P2d 891 (1977).

In its Response, PGE contends that it is “unquestioned” that utilities can “acquire unbundled RECs, include these RECs in portfolio options and disclose them under the labeling requirements” under OAR 860-038-0300. PGE Response, at 2. RNP will assume that in making this statement, PGE is talking about what utilities can do under their voluntary portfolio option programs, not their basic service option. RNP’s concern relates to the relationship between RPS compliance and utilities’ basic service options. When a utility uses a banked REC for RPS compliance purposes in a given year, the utility should not be permitted to claim that its power source mix for its basic service option in that year includes the renewable energy for which the banked REC was originally issued. Nor should a utility be permitted to claim that its power source mix for its basic service option in that year includes unbundled RECs.

PacifiCorp appears to agree with RNP. PacifiCorp states:

Consistent with the Order, electrons can only be used to provide electric service to a retail customer once—at the time of generation. Therefore, the electrons are reported in the year of generation for purposes of OAR 860-038-0300.

PacifiCorp’s Position Regarding Renewable Northwest Project’s Motion to Reconsider Order No. 09-225, at 2.

RNP wants to make sure that consumers are making purchase choices based on accurate information. OAR 860-038-0300(1)(“The purpose of this rule is to establish requirements for electric companies and electricity service suppliers to provide price, power source, and environmental impact information necessary for consumers to *exercise informed choice.*”).

For the foregoing reasons, the motion to reconsider should be allowed and the Commission should clarify that an electric company or electricity service supplier *cannot* rely upon its use of a banked REC or an unbundled REC to comply with a renewable portfolio

standard in a given year to claim that its power source in that year includes the renewable energy for which the certificate was issued.

DATED this 16<sup>th</sup> day of September, 2009.

ESLER, STEPHENS & BUCKLEY

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