ORDER NO. 09-406
ENTERED 10/12/09

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.	ORDER

DISPOSITION: MOTION FOR RECONSIDERATION DENIED

I. INTRODUCTION

In Order No. 09-225 (the Order) the Public Utility Commission of Oregon (the Commission) considered whether a utility that reports renewable energy for purposes of direct access power source labeling requirements under OAR 860-038-0300 should be deemed to have "used" the renewable energy credits (RECs) associated with that renewable energy in that same year. Mindful of the banking provisions in the Oregon Renewable Energy Act (the "Act") (codified at ORS 469A.005 to 469A.210), the Commission held that the "use" of renewable energy in power source reporting did not constitute a "use" of the RECs associated with that renewable energy in that same year.

By motion filed August 14, 2009, Renewable Northwest Project (RNP) asks for reconsideration of the Order. RNP states that it does not agree with the Commission's decision in Order 09-225; however, its motion to reconsider is directed at "clarifying" the order.

Replies to RNP's motion were filed by Portland General Electric Company (PGE) and PacifiCorp, dba Pacific Power (Pacific Power). RNP submitted a response to the replies filed by PGE and Pacific Power.

II. RNP'S MOTION

RNP states that the Commission effectively treated the direct access power source reporting requirements and the renewable portfolio standard compliance requirements "as being separate statutory schemes." If the two schemes are separate for purposes of "using" RECs, then RNP argues that the two schemes likewise should be separate for purposes of power source reporting: an electric company can only claim renewable energy for direct access purposes in the calendar year in which the electricity is generated and used. "An electric company, which uses a REC that was issued for electricity that was generated in a calendar year that is different from the compliance year, cannot also claim that electricity

for purposes of Direct Access Regulation disclosure in the same (compliance) year the REC was used for compliance purposes."

RNP offers three examples to illustrate its position:

Example 1: In 2010 an electric utility generates 100 MWh of renewable energy and banks the RECs for use in 2012. The electric utility can only report the renewable energy for direct access purposes in 2010, not 2012.

Example 2: In 2010 an electric utility acquires an unbundled REC for 100 MWh of renewable energy for Renewable Portfolio Standards (RPS) compliance in 2010. The utility cannot include the 100 MWh of renewable energy in its direct access product disclosure.

Example 3: In February 2011, an electric utility generates 100 MWh of renewable energy and uses the associated RECs for RPS compliance in 2010. For direct access reporting requirements, the utility only can include the energy in its 2011 product disclosure, not 2010.

RNP cites no provision in the adopted rules that it proposes be changed to reflect its proposed clarification.

III. UTILITY RESPONSES

A. PGE

PGE argues that the motion should be denied.

First, PGE argues that the motion is procedurally deficient. RNP fails to state sufficient reasons why reconsideration is necessary or to establish any of the specified bases for reconsideration.

Second, in its motion RNP identifies no specific regulation that is unclear or ambiguous – rather, RNP acknowledges the clarity of the Commission's resolution of the "paramount issue" in this phase – that disclosing renewable energy for power source labeling requirements does not prevent the associated RECs from being used to comply with RPS standards in a later compliance year.

Third, RNP seems to misunderstand the Commission's order and the adopted rules. In Order No. 09-225 the Commission made no substantive changes to the rules for portfolio options or for power source labeling requirements. Citing RNP's example 2, PGE states that it was unquestioned that utilities could acquire unbundled RECs, include these RECs in portfolio options, and disclose them under the labeling requirements. PGE argues that "[n]othing in this proceeding has changed the ability of utilities to use unbundled RECs in the power source labeling requirements***." According to PGE, in its order the

Commission addressed the impact, if any, of disclosing RECs under the power source labeling requirement on the potential later use of the same RECs for compliance with the RPS. It did not address (or even call into question) the ability of the utility to use unbundled RECs in portfolio options and disclose them under the power source labeling requirements in OAR 860-038-0300.

B. Pacific Power

Pacific Power neither supports nor opposes RNP's motion, but "notes that RNP's motion addresses a matter that would not seem to be an issue."

Although RNP did not identify a specific regulation for reconsideration and clarification, Pacific Power interprets the motion as an expression of RNP's concern that renewable energy may be reported twice for direct access purposes – in the year the energy is generated, and again in the year the associated RECs are used for RPS compliance. According to Pacific Power, the energy can only be reported a single time – at the time of generation. However, RECs can be acquired and used at any time to satisfy the RPS standard. When RECs are used and retired, they should be included in the company's RPS compliance report.

Pacific Power states that "nothing in this proceeding has changed how the Company reports generation pursuant to the power source labeling requirements." RNP's motion seems to address a matter that is not an issue.

IV. RNP'S RESPONSE

RNP states that "there is not one portion of the order that gives rise to [its] concern." RNP believes the order "may have created an ambiguity" and "could be interpreted to allow something that is contrary to law."

RNP states that its concern relates to the relationship between RPS compliance and the 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.

RNP wants to make sure that consumers are making purchase decisions based on accurate information.

V. DISCUSSION

As noted by RNP, in Order No. 09-225 the Commission did treat the direct access legislation and the renewable portfolio standard legislation as separate statutory schemes for purposes of defining the term "use" in the context of RPS compliance reporting. "[T]he Commission confirmed in a straight-forward manner that a utility may disclose the renewable source of a generated electron in that year's power source disclosure while also banking, and using, the detached RECs for future RPS compliance." There is no ambiguity.

RNP has cited no rule adopted in the Order that needs to be clarified. RNP has cited no language in the Order that needs to be clarified. RNP's motion for clarification, in part, is directed at the "Electric Company and Electricity Service Suppliers Labeling Requirements" rule (OAR 860-038-0300). A substantive change in that rule is not before the Commission in this docket. However, there appears to be a disagreement about whether a utility can include unbundled RECs as part of its power supply mix. RNP may seek clarification of that issue in the labeling requirement rule.

RNP's motion is denied.

ORDER

IT IS ORDERED that the Motion for Reconsideration filed by Renewable Northwest Project is denied.

Made, entered, and effective OCT 1 3 2009.

COMMISSIONER BEYER WAS UNAVAILABLE FOR SIGNATURE

Lee Beyer
Chairman

Ray Baum
Commissioner

John Savage
Commissioner

A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.