

ORDER NO. 12 406

ENTERED OCT 25 2012

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1604

In the Matter of

CONSTELLATION NEWENERGY INC

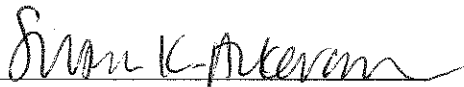
2011 RPS Compliance Report.

ORDER

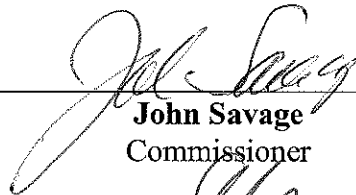
**DISPOSITION: STAFF'S RECOMMENDATION ADOPTED**

This order memorializes the decision of the Public Utility Commission of Oregon made and effective at a public meeting held on October 23, 2012.

Dated this 25<sup>th</sup> day of Oct., 2012, at Salem, Oregon.



**Susan K. Ackerman**  
Chair



**John Savage**  
Commissioner



**Stephen M. Bloom**  
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: October 23, 2012

REGULAR X CONSENT \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_ Upon Commission Approval

DATE: October 15, 2012

TO: Public Utility Commission

FROM: Erik Colville *EC*

THROUGH: Jason Eisdorfer and Maury Galbraith *MG*

SUBJECT: CONSTELLATION NEWENERGY INC.: (Docket No. UM 1604) 2011 RPS Report.

**STAFF RECOMMENDATION:**

Staff recommends the Commission determine that, based upon Constellation NewEnergy's (CNE) 2011 Renewable Portfolio Standard Compliance Report, CNE complied with the Renewable Portfolio Standard (RPS) for the 2011 compliance period. In addition, Staff recommends CNE be directed to retire the REC's identified in its compliance report and to provide a WREGIS retirement report to the Commission within 30 calendar days.

**DISCUSSION:**

On June 1, 2012, CNE filed its 2011 RPS Compliance Report. The purpose of the compliance report is to document compliance with Oregon's RPS.

**Summary**

Staff finds that CNE's RPS Compliance Report demonstrates it complied with ORS 469A.065, which states that an electricity service supplier (ESS) must meet the requirements of the RPS that are applicable to the electric utilities that serve the territories in which the ESS sells electricity to retail electricity consumers. Under ORS 469A.052, the RPS applicable for the calendar year 2011 is at least five percent of the electricity sold by a large utility to retail electricity consumers must come from qualifying resources. For 2011, CNE used only unbundled renewable energy certificates (RECs)

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for compliance. CNE is exempt as an ESS under ORS 469A.145(4) from the 20 percent unbundled REC limitation.

Staff also finds that CNE's RPS Compliance Report shows its cost of compliance for 2011 was greatly less than four percent calculated as prescribed in OAR 860-083-0300(2)(a), therefore not triggering the cost limit under that same Rule. The calculated cost of compliance was designated by the Company as confidential.

### **Summary of Requirements**

The RPS, ORS 469A.052, states that at least five percent of the electricity sold by a large utility to retail electricity consumers must come from qualifying resources in each of the calendar years 2011, 2012, 2013, and 2014. In 2015, the percentage that must come from qualifying resources increases to 15 percent. ORS 469A.065 requires an ESS to meet the requirements of the RPS that are applicable to the electric utilities that serve the territories in which the ESS sells electricity to retail electricity consumers.

As part of its compliance with ORS 469A, the ESS is required by OAR 860-083-0300(2)(a) to file a compliance report annually on or before June 1. The ESS's filed report must demonstrate compliance, or explain in detail failure to comply, with the RPS applicable in the compliance year. In Order No. 11-441, the Commission adopted a standardized form for the RPS compliance report. The standardized form presents data and descriptions that are required by OAR 860-083-0350.

Substantively, the compliance report must include the following information associated with complying with the RPS for the compliance year: (1) the megawatt-hour target and an accounting of how the utility met that target; (2) identification and information on each generating facility that provided RECs; and (3) a calculation the costs of compliance.

Procedurally, Staff and interested parties may file comments within 45 calendar days of the filing of the report. The ESS may file a written response within 30 calendar days thereafter. After considering written comments, the Commission may decide to commence an investigation, begin a proceeding, or take other action as necessary to make a determination regarding compliance with the applicable renewable portfolio standard.

### **Standard of Review**

Staff's review of the ESS's RPS Compliance Report considers:

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- (a) The relative amounts of renewable energy certificates and other payments used by the company or supplier to meet the applicable renewable portfolio standard, including:
  - (A) Bundled renewable energy certificates;
  - (B) Unbundled renewable energy certificates;
  - (C) Banked renewable energy certificates; and
  - (D) Alternative compliance payments under ORS 469A.180.
- (b) The timing of electricity purchases.
- (c) The market prices for electricity purchases and unbundled renewable energy certificates.
- (d) Whether the actions taken by the company or supplier are contributing to long term development of generating capacity using renewable energy sources.
- (e) The effect of the actions taken by the company or supplier on the rates payable by retail electricity consumers.
- (f) Good faith forecasting differences associated with the projected number of retail electricity consumers served and the availability of electricity from renewable energy sources.
- (g) For electric companies, consistency with the implementation plan filed under ORS 469A.075, as acknowledged by the commission.

Finally, the Commission's review of the RPS Compliance Report is for the purpose of determining whether the ESS has complied with the RPS. The Commission will issue a decision determining whether the ESS complied with the applicable RPS and any other determinations under ORS 469A.170(2).

### **Conclusion**

Staff finds that CNE's RPS Compliance Report demonstrates it complied with ORS 469A.065, which states that an ESS must meet the requirements of the RPS that are applicable to the electric utilities that serve the territories in which the ESS sells electricity to retail electricity consumers. For 2011, CNE used only unbundled RECs for compliance. CNE is exempt as an ESS under ORS 469A.145(4) from the 20 percent unbundled REC limitation.

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Staff also finds that CNE's compliance report shows its cost of compliance for 2011 was greatly less than four percent calculated as prescribed in OAR 860-083-0300(2)(a), therefore not triggering the cost limit under that same Rule. The calculated cost of compliance was designated by the Company as confidential.

**PROPOSED COMMISSION MOTION:**

Constellation NewEnergy be found to have complied with Oregon's Renewable Portfolio Standard during the 2011 compliance period. In addition, CNE is directed to retire the RECs identified in its compliance report and to provide a WREGIS retirement report to the Commission within 30 calendar days.

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