

ORDER NO. 12 436

ENTERED NOV 15 2012

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1605

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY

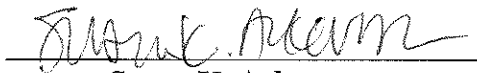
2011 RPS Compliance Report.

ORDER

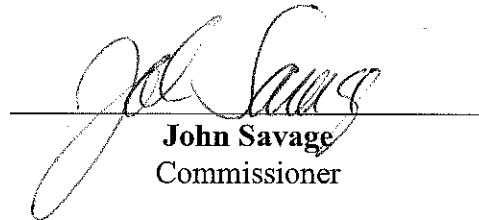
DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at the Public Meeting on October 23, 2012, to adopt Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

Dated this 15th day of Nov., 2012, at Salem, Oregon.



Susan K. Ackerman
Chair



John Savage
Commissioner



COMMISSIONER BLOOM WAS
UNAVAILABLE FOR SIGNATURE

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.

ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: November 6, 2012

REGULAR X CONSENT _____ EFFECTIVE DATE _____ Upon
Commission Approval

DATE: October 29, 2012

TO: Public Utility Commission

FROM: Erik Colville *EC*

THROUGH: Jason Eisdorfer and Maury Galbraith *MG*

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UM 1605) 2011 RPS Report.

STAFF RECOMMENDATION:

Staff recommends that the Commission determine, based upon Portland General Electric's (PGE or Company) 2011 Renewable Portfolio Standard Compliance Report, that PGE complied with the Renewable Portfolio Standard (RPS) for the 2011 compliance period. Staff also recommends that PGE be directed to retire the RECs placed in its WREGIS 2011 OR RPS sub-account, and to provide a WREGIS retirement report to the Commission within 30 calendar days.

DISCUSSION:

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

On July 16, 2012, Staff, Citizens' Utility Board of Oregon (CUB), Industrial Customers of Northwest Utilities (ICNU), Renewable Northwest Project (RNP), and Oregon Department of Energy (ODOE) filed comments. PGE reply comments were filed on August 15, 2012.

Summary

Staff finds that PGE's RPS Compliance Report demonstrates it complied with Oregon's RPS, which states that for the calendar year 2011 at least five percent of the electricity sold by a large utility to retail electricity consumers must come from qualifying

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resources. For 2011, PGE used a combination of bundled and unbundled renewable energy certificates (RECs) for compliance. The number of unbundled RECs used differs from that anticipated in the acknowledged Renewable Portfolio Standard Implementation Plan (RPIP) because additional unbundled RECs were available at a good value thereby allowing the Company to save bundled RECs for future compliance years.

Staff also finds that PGE's RPS Compliance Report shows its cost of compliance for 2011 was 0.04 percent of revenue requirement, therefore not triggering the cost limit under ORS 469A.100.

Comments and Issues

This is the first time the Commission has determined electric company and electricity service supplier compliance with the RPS. As a result, there are three issues that need to be clarified prior to determining compliance. These issues are:

1. How to implement the "first-in first-out" (FIFO) principle;
2. How to implement the 50 MWa limitation of low-impact hydropower (LIHY); and
3. Identification of eligible facilities under the solar capacity standard, and identification of double REC counting.

FIFO and LIHY

In its comments, and in off-record clarifying communications with Staff, ODOE raised the following concerns regarding FIFO and LIHY. ODOE argued for an approach that would use the oldest RECs first. This approach, ODOE commented, would be easy to track and seemed sensible. ODOE argued against an alternative approach of dividing up RECs into three categories – unbundled, LIHY, and bundled – and then using the oldest RECs in each of those categories progressively until reaching the respective limits of 20 percent and 50 MWa. This latter approach, ODOE commented, would not be transparent or easy to track. Further, ODOE expressed concern with how the Company would apply the FIFO approach in future years: whether the use "start date" is set by the use "end date" from the previous year, or whether the Company would be allowed to repeatedly reset to January 2007.

PGE commented that ORS 469A.140 (2)(a) and (b), and OAR 860-083-300 (3)(b)(B) (sometimes referred to as the Statute and Rules) are clear regarding application of FIFO to banked RECs. In addition, PGE stated that it applies a FIFO approach to each *category* of resource, starting first with unbundled RECs, then LIHY, and finally, bundled

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RECs for the remaining need. PGE also comments that nothing in the Statute prohibits the addition of RECs into the "bank" that pre-date RECs used in a previous compliance report. PGE noted it will clearly identify categories of resources and use clear descriptions of RECs in future RPS Compliance Reports.

Staff's reading of the Statute and Rules is that the application of the FIFO principle is clear in certain respects: 1) each electric company and electricity service supplier must use, in chronological order from first issued to last issued, its banked RECs; and 2) there are limits on the quantity of unbundled RECs and RECs from LIHY that may be used for RPS compliance. However, Staff believes it is necessary for the Commission to clarify the method a Company is to use to "draw" RECs from its bank.

As stated above, PGE interprets the Statute to allow it to make three separate "draws" of RECs from its bank. First, it would use the FIFO principle to draw only unbundled RECs from the bank (up to the 20 percent limitation). Second, it would use the FIFO principle to draw only LIHY RECs from its bank (up to the 50 MWa limitation). Third, it would use the FIFO principle to draw bundled RECs from its bank. Under this approach, the use of unbundled RECs and LIHY RECs are maximized in each compliance year and all remaining RECs are banked for future compliance years.

As stated, ODOE recommends an alternative approach. ODOE recommends that the Company make a single "draw" of RECs from its bank using the FIFO principle. In addition, ODOE recommends that the date of the last REC used in the current compliance year become the start date for the use of RECs in the next compliance year. Under this approach, any unbundled RECs that exceed the 20 percent limitation or any LIHY RECs that exceed the 50 MWa limit in the current compliance year would no longer be available for use in future RPS compliance years.

Given what Staff finds to be a lack of clarity in the law regarding the FIFO principle for using RECs to comply with the RPS, it reviewed the following portions of SB 838 (2007 session).

1. The introduction says:

Whereas the Legislative Assembly finds that it is in the interest of the state to promote research and development of new renewable energy sources in Oregon; and

Whereas the Legislative Assembly finds that it is necessary for Oregon's electric utilities to decrease their reliance on fossil fuels for electricity generation and to increase their use of renewable energy sources; and

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Whereas the Oregon Renewable Energy Act provides a comprehensive renewable energy policy for Oregon, enabling industry, government and all Oregonians to accelerate the transition to a more reliable and more affordable energy system; ...

2. The Legislature then, in Section 10 of the Bill, established that an electric utility or electricity service supplier must comply with the RPS standard applicable to the utility or supplier in each calendar year by using bundled RECs issued or acquired during the compliance year, using unbundled RECs, subject to limitations, or banked RECs.
3. Lastly, the Legislature established in Section 12 that electric utilities are not required to comply with a RPS during a compliance year to the extent that the incremental cost of compliance, the cost of unbundled RECs, and the cost of alternative compliance payments under Section 20 exceeds four percent of the utility's annual revenue requirement for the compliance year.

After considering these portions of SB 838, Staff concludes the Legislature intended the RPS to promote and accelerate the use of renewable energy sources while at the same time limiting the cost of compliance for customers from doing so.

Staff notes that unbundled RECs currently have a cost advantage over bundled RECs. Also as noted above, the single "draw" interpretation could result in unbundled RECs and LIHY RECs becoming unavailable for use in future RPS compliance years, thereby potentially increasing the cost of compliance for customers. In addition, Staff notes that allowing LIHY RECs to accumulate in the bank does not dilute other aspects of RPS compliance because LIHY RECs may only be used up to the 50 MWa limit, and only may be used to meet that limit. Given these notations, Staff does not find the single "draw" interpretation of ORS 469A.140(2) to be consistent with the Legislature's RPS intent. As a result, Staff recommends the Commission apply the law to allow the Company to "draw" RECs, FIFO, from its bank in three separate "draws": unbundled; LIHY; and bundled.

For clarity, Staff sets forth its understanding of the RPS FIFO principle as follows:

The FIFO principle sets up a multi-step process for determining which RECs may be applied to RPS compliance in a given calendar year. First, under ORS 469A.140(2)(a), banked RECs are used first, taking into account the 20 percent limitation on the use of unbundled RECs set forth in ORS 469A.145. To the extent that a Company's bank includes unbundled RECs above the 20

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percent limit, those unbundled RECs remain in the bank. The unbundled RECs that remain in the bank remain eligible for application to future compliance years even if they are of an older issue date than bundled RECs applied to the current compliance year. In other words, the Company would be allowed to repeatedly reset the use "start date" to January 2007. Second, under ORS 469A.140(2)(b), all RECs eligible for use in a calendar year are used in chronological order based on issuance date. A REC is considered issued when it is initially created and is a reference to the issue date of the REC rather than the date when a Company acquires a REC or the date the REC is banked.

Another provision of the RPS statute, the limitation on the use of RECs from LIHY facilities, operates in a similar manner to the limitation on the use of unbundled RECs. Under ORS 469A.025(5), up to 50 MWa of electricity per year generated by an electric utility from LIHY may be used to comply with the RPS. Staff understands this limit similarly to that of the limit on the use of unbundled RECs. To the extent that a Company's bank includes RECs from LIHY that exceed the 50 MWa limit, those RECs would remain in the bank. The LIHY RECs that remain in the bank remain eligible for application to future compliance years even if they are of an older issue date than non-LIHY RECs applied to the current compliance year. The statutory language applies a limit to what may be "used" to comply per year and does not limit the ability of a Company to bank RECs from LIHY for use in future years, even if the amount generated in a given year is greater than 50 MWa. Further, the remaining banked LIHY RECs may not be used for compliance beyond reaching the 50 MWa limit. Staff also understands that ORS 469A.025(5) is silent with respect to REC banking and the FIFO principle. Limitations on banking or further restriction on the use of RECs from LIHY should not be read into the Statute.

Lastly, RECs first may be used if they are eligible to be used in a given compliance year. If they are not eligible to be used in a given compliance year they may be banked for use in future compliance years. RECs that are eligible for use in a given compliance year are used by order of issuance date. There is no language in the Statute or Rules that would preclude a Company from later acquiring RECs of older issue dates to be used in future compliance years. There is no language in the Statute or Rules that precludes future use of currently ineligible unbundled or LIHY RECs. The FIFO principle applies only to what is currently in a Company's bank and is currently eligible in any given RPS compliance year. Staff understands any other interpretation of the statutory language would effectively negate the indefinite banking provision set forth in ORS 469A.140 as it applies to certain types and issue dates of RECs.

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Staff therefore agrees with the Company's interpretation of the law as it relates to FIFO and LIHY, as reflected in its filed RPS Compliance Report.

To assist in confirming REC compliance with FIFO, Staff recommends that PGE, in future compliance reports, clearly identify the RECs in each "draw" and use clear descriptions of the RECs drawn. Staff also recommends that PGE clearly identify the facility name and quantity of RECs associated with each individual LIHY facility in future compliance report tables and figures.

Solar

PGE comments it has clearly presented its solar facilities within the submitted RPCR, including the facility name, size and quantity of RECs produced. PGE also comments, with respect to determining eligible facilities under the solar capacity standard, it will determine eligibility of its facilities in accordance with ORS 757.375. To claim the second solar REC not accounted for in WREGIS (available as a result of the "double credit"), PGE plans to submit an attestation with future compliance reports.

Recognizing that compliance with the solar capacity standard in OAR 860-084-0020 is not required to be complete until 2020, Staff recommends, in future compliance report tables and figures, that PGE clearly identify the individual solar capacity standard facilities as to the facility name and facility size, quantity of RECs, application of the double credit, and whether that represents all generation.

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. The utility's RPIP shows how it plans to meet the requirement of that standard for the next odd-numbered compliance year and each of the four subsequent compliance years. Additionally, the utility RPIP shows whether or not the utility plans to meet its RPS target without triggering the cost limit under ORS 469A.100; four percent of annual revenue requirement.

As part of its compliance with ORS 469A, the utility is required by OAR 860-083-0300(2)(a) to file an RPS Compliance Report annually on or before June 1. The utility's filed RPS Compliance Report is to 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.

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Substantively, the RPS 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; (3) a calculation of the costs of compliance; and (4) a description of material deviations from the applicable acknowledged RPIP.

Procedurally, Staff and interested parties may file comments within 45 calendar days of the filing of the RPS Compliance Report. The utility 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 utility's RPS Compliance Report considers:

- (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

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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 utility has complied with the RPS applicable to the utility and the manner in which the company or supplier has complied. The Commission will issue a decision determining whether the utility complied with the applicable RPS and any other determinations under ORS 469A.170(2).

Conclusion

Staff finds that PGE's RPS Compliance Report demonstrates it complied with ORS 469A.052, which states that for the calendar year 2011, at least five percent of the electricity sold by a large utility to retail electricity consumers must come from qualifying resources. For 2011, PGE used a combination of bundled and unbundled REC for compliance. The number of unbundled RECs used differs from that anticipated in the acknowledged RPIP because additional unbundled RECs were available at a good value thereby allowing the Company to save bundled RECs for future compliance years.

Staff also finds that PGE's RPS Compliance Report shows its cost of compliance for 2011 was 0.04 percent of revenue requirement, therefore not triggering the cost limit under ORS 469A.100. Further, Staff finds that the matters discussed above in Comments and Issues, will not cause PGE's cost of compliance to trigger the cost limit. As a result, Staff finds no need to direct PGE to revise its 2011 RPS Compliance Report.

PROPOSED COMMISSION MOTION:

Portland General Electric be found to have complied with Oregon's Renewable Portfolio Standard during the 2011 compliance period. In addition, PGE is directed to retire the RECs placed in its Compliance Report, and to provide a WREGIS retirement report to the Commission within 30 calendar days.

Docket No. UM 1605 PGE 2011 RPCR