

ORDER NO. 20-181

ENTERED Jun 3, 2020

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 632

In the Matter of

Rulemaking Regarding the 2019 Senate Bill
98 Renewable Natural Gas Programs.

ORDER

DISPOSITION: PUBLIC COMMENT PERIOD REOPENED

This order memorializes our decision, made and effective at our June 2, 2020 Public Meeting, to adopt the Administrative Hearings Division's (AHD) recommendation in this matter to reopen public comment on Staff's proposed rules, effective June 2, 2020, with a public comment deadline set for June 16, 2020.

During the public meeting, we reviewed specific questions we would like stakeholders to address in comments, acknowledging that participants may comment on any aspect of the proposed rules during this reopened comment period. We order AHD and Staff to provide our questions, along with additional questions they may deem appropriate, to all stakeholders for consideration and response during the reopened public comment period.

AHD's report, with AHD's recommendation is attached as Appendix A.

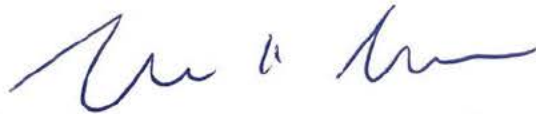
Made, entered, and effective Jun 3, 2020.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
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 Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. RM1

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: June 2, 2020**

REGULAR	CONSENT	RULEMAKING	X	EFFECTIVE DATE
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DATE: May 29, 2020

TO: Public Utility Commission

FROM: Nolan Moser **SIGNED**

THROUGH: Diane Davis

SUBJECT: PUBLIC UTILITY COMMISSION: Rulemaking Regarding the 2019 Senate Bill 98 Renewable Natural Gas Program. (AR 632)

RECOMMENDATION:

The Administrative Hearings Division (AHD) recommends that the Commission reopen and extend the comment period in this rulemaking effective June 2, 2020, and to issue a new public comment deadline of June 16, 2020. In the alternative, AHD recommends concluding this rulemaking prior to July 31, 2020 and allowing for further consideration of environmental attribute issues in these rules in a subsequent rulemaking.

DISCUSSION:Issue

Whether and how the Commission should reopen the public comment period for this rulemaking given the need to review and further consider options for the treatment of environmental attributes in proposed rules.

Applicable Law

2019 Senate Bill 98, which creates the Renewable Natural Gas Program, requires the Commission to adopt rules implementing the program by July 31 of this year.

Codified at ORS 757.394, the law states, in pertinent part:

(1) The Public Utility Commission shall adopt by rule a large renewable natural gas program for large natural gas utilities pursuant to the provisions of

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ORS 757.396.

(2) The commission shall adopt by rule a small renewable natural gas program for small natural gas utilities pursuant to ORS 757.398.

(3) Rules adopted by the commission under this section shall include:

(a) Rules for reporting requirements under the large renewable natural gas program and the small renewable natural gas program; and

(b) Rules for establishing a process for natural gas utilities to fully recover prudently incurred costs associated with the large renewable natural gas program and the small renewable natural gas program.

Section 7, chapter 541, Oregon Laws 2019, provides, “The Public Utility Commission shall adopt rules pursuant to sections 4 to 6 of this 2019 Act [codified at ORS 757.394 to 757.398] no later than July 31, 2020.”

ORS 183.335 specifies that a state agency must provide notice prior to adopting or revising any administrative rule, must describe the proposed rule, and must include a date by which public comment will be received. ORS 183.335 (14) requires that where an agency extends a deadline for public comment, it may only do so where the extension and opportunity for comment applies equally to all interested persons.

Analysis

Background

On March 27, 2020 notice for this rulemaking was filed with the Secretary of State. That notice described the opportunities and methods for comment, which included a hearing, held virtually on April 28, 2020, and a written public comment deadline of May 6, 2020. Prior to the May 6 public comment deadline, multiple written comments were received by stakeholders.

Following submission of comments, consistent with the Commission’s internal operating guidelines, the Administrative Law Judge (ALJ) assigned to this rulemaking reviewed proposed rules, the submitted comments, and applicable law with Commission Staff, the Department of Justice, and individual Commissioners. As a result, it was determined that a near-term deliberation on aspects of Staff’s proposed rules related to

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environmental attributes was necessary, and AR 632 was added to the Commission's public meeting agenda for June 2, 2020.

Environmental Attribute Issues

Staff's proposed rules, consistent with Senate Bill 98, would establish a program by which large natural gas utilities will procure amounts of renewable natural gas (RNG) and an RNG program for small natural gas utilities. The rules set forth reporting requirements, establish processes for the recovery of costs associated with the program, provide for competitive bidding requirements for certain investments, include a methodology for the calculation of incremental costs, and set forth a process for small natural gas utilities to participate in the program.

Staff's proposed rules also addressed the environmental attributes of the RNG produced, developed, or acquired under the program in the context of a renewable thermal certificate (RTC) tracking system. Addressing the treatment of environmental attributes is important for successful implementation of the statute. In proposed rules, Staff considered several options for treatment of environmental attributes, and ultimately decided to recommend adoption of rules that define the environmental attributes of RNG as "any and all environmental claims, credits, benefits, emissions reductions, offsets, and allowances attributable to the production of renewable natural gas and its avoided emission of pollutants."

All environmental attributes associated with production, transportation and use of one dekatherm of RNG must be included in an RTC. One RTC must be retired for each dekatherm of RNG used toward the volumetric targets applicable to a natural gas utility's program. Staff noted that its analytical approach is the same utilized by environmental regulators in Oregon and California for clean fuels programs. Staff considered that maintaining consistency with these agencies, in the context of a regional market for RNG, would be most transparent, thereby ensuring compliance, and consistent with regional market dynamics.

Several comments were received addressing this issue. On April 27, 2020, 3Degrees Inc. (3Degrees) submitted comments recommending changes to Staff's approach to the environmental attributes issue. 3Degrees is a provider of carbon mitigation products, programs, and services, and it interacts with environmental attribute markets.

The changes proposed by 3Degrees specify that the only environmental attributes that must be acquired by a natural gas utility for compliance purposes are those associated with the quality of the RNG, meaning its characteristics as renewable gas, rather than a lifecycle review of its carbon intensity. 3Degrees' proposed changes would define

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environmental attributes represented by an RTC to exclude any attribute associated with carbon emission reductions. Accordingly, if the RNG has upstream avoided methane emissions, those would be separate from the attributes included in an RTC and could be sold separately as a carbon offset in an appropriate market. 3Degrees' proposed changes to the rule would make this carbon offset opportunity explicit, but these carbon offsets would not be tracked under the rules. 3Degrees argued that its proposed treatment was consistent with the treatment of Renewable Energy Credits in the electricity generation sector, and is supported by a variety of participants in environmental attribute markets.

This proposal from 3Degrees solicited additional written comment from stakeholders, and was discussed at the April 28 public hearing. In preparation for Commission consideration of final rules, AHD, the ALJ assigned to this proceeding, and Commission Staff have determined that review of the approach proposed by 3Degrees, and the policy implications that this approach may have on other portions of the rules, is warranted. The Commission may review this issue during the Public Meeting work session set for June 2, 2020.

Effectively, the Commission is presented with two core options on this issue. Consistent with Staff's proposed rule, natural gas providers complying with the rule would procure and attach to RNG all environmental attributes, including those captured in a carbon intensity analysis. Under the proposal from 3Degrees, natural gas providers would not be obligated to procure and attach all environmental attributes, and instead would be compelled to ensure that the RNG acquired displaced fossil fuel gas, the gas was created consistent with the definition of RNG, and track only the attributes associated with those facts. Carbon offsets could also be acquired, but this would not be strictly necessary to comply with the rule.

Should the Commission desire to adopt changes based on the proposal from 3Degrees, then a more holistic review of Staff's proposed rules will be necessary. A change in the structure of the rules related to environmental attributes will require review of the following issues in rules, at a minimum:

- Additional definitions
- Changes to tracking provisions
- Changes to incremental cost provisions
- Changes or review of cost recovery mechanisms
- Changes to or review of RNG compliance reporting provisions

Additionally, the change proposed by 3Degrees presents some policy considerations that the Commission may want to address. Specifically:

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- Greenhouse gas accounting issues
- Ratepayer cost issues
- Compatibility with market principles and the approaches adopted by state environmental authorities

Process Recommendation

AHD recommends, should the Commission desire to further explore a change to the approach to environmental attributes in AR 632 rules, that more process be afforded, and that stakeholders be invited to participate in the Commission's consideration of such changes. Accordingly, if the Commission intends to engage in further review of this issue, we provide two options for ongoing process, given the impending statutory deadline for the adoption of rules:

Option 1: Extended Comment Period

AHD considers that there is sufficient time in the schedule available to reopen and extend the public comment period in this matter, starting June 2, 2020, with a revised deadline of June 16, 2020. We recommend that Commissioners review at the June 2, 2020 public meeting the important questions they would like to see stakeholders and Staff address in subsequent comments. AHD will summarize and review received comments as part of preparation for final rules.

Option 2: Finalize Rules and Open a Rulemaking to Review Environmental Attribute Issues

If the Commission intends or finds it necessary to conduct a more in-depth review of this issue, an alternative option is to achieve a near-term conclusion to this rulemaking, considering adoption of the proposed rules prior to the July 31, 2020 statutory requirement without a change in the treatment of environmental attributes. Following adoption, a rulemaking to review the environmental attribute issue may be opened and all stakeholders may participate in that review.

Conclusion

AHD recommends more process in this rulemaking, should the Commissioners intend to review alternatives to Staff's approach to environmental attributes in these rules. In the event, after deliberation, that the Commission determines Staff's current approach should be adopted, then no action regarding additional public comment is necessary before all the proposed rules are presented for consideration.

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PROPOSED COMMISSION MOTION:

Re-open public comment on Staff's proposed rules, effective June 2, 2020, with a public comment deadline set for June 16, 2020.

In the alternative, continue consideration of Staff's proposed rules on a schedule allowing for adoption of rules prior to July 31, 2020 and indicate an intention to continue to review environmental attribute issues in a subsequent rulemaking.