

**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: NEW RULES ADOPTED

**I. SUMMARY**

In this order, we adopt initial rules to implement 2019 Senate Bill 98, a new legislative policy to encourage Oregon's large and small natural gas utilities to supply natural gas from renewable sources. We recognize the significant effort Commission Staff and stakeholders made to accomplish this complex rulemaking by the statutorily required deadline of July 31, 2020. We recognize that, as with other new programs we oversee, the rules and implementation practices for this program will continue to evolve as regulators, utilities, and stakeholders gain experience, the market develops, and other complementary policies emerge.

**II. BACKGROUND**

We convened this proceeding to implement 2019 Senate Bill 98, codified at ORS 757.390 to 757.398, directing us to adopt by rule, a Renewable Natural Gas (RNG) program for Oregon's large and small natural gas utilities.<sup>1</sup> "The Legislature intended the RNG program to encourage the development of RNG to 'support a smooth transition to a low carbon energy economy in Oregon,' and to 'leverage the natural gas system to reduce greenhouse gas emissions.'"<sup>2</sup>

Staff led a comprehensive informal rule development process over a period of five months with the broad and sustained participation of numerous stakeholders. Staff's process included four workshops and three opportunities to submit written comments. In a Staff Report, docketed March 11 2020, Staff recommended that we issue a Notice of Proposed Rulemaking to adopt the

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<sup>1</sup> ORS 757.394.

<sup>2</sup> Staff Report at 2 (Mar 11, 2020), citing ORS 757.390.

draft rules attached to the report. At our March 19, 2020 Special Public Meeting, we adopted Staff's recommendation, with two modifications to Staff's proposed rules.<sup>3</sup>

On March 27, 2020, we filed a Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact with the Secretary of State. On March 31, 2020, notice was provided to all interested persons on the service lists maintained pursuant to OAR 860-01-0030(1)(b) and to certain legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the April 2020 *Oregon Bulletin*, establishing a hearing date of April 28, 2020, and a comment due date of May 6, 2020.

We held a hearing to receive public comment on April 28, 2020. Staff opened comments, and the following parties presented comments or answered questions from us: Northwest Natural Gas Company, dba NW Natural (NW Natural); Cascade Natural Gas Corporation (Cascade); Avista Corporation, dba Avista Utilities (Avista); the Oregon Citizens' Utility Board (CUB); the Alliance of Western Energy Consumers (AWEC); 3Degrees Inc. (3Degrees); the Midwest Renewable Energy Tracking System (M-RETS); and the Coalition for Renewable Natural Gas. The comment period closed on May 6, 2020. Written comments were received by this date from: Staff; the Oregon Department of Environmental Quality (DEQ); NW Natural; Avista; CUB; AWEC; 3Degrees; the Coalition for Renewable Natural Gas; Electrochaea; and XCHG. All oral and written comments are generally supportive of the proposed rules, with some offering suggestions for revisions.

During our Public Meeting on June 2, 2020, we discussed potential consequences associated with recommendations to revise definitions of the terms "Environmental Attributes of Natural Gas" (proposed OAR 860-150-0010(5)) and "Renewable Thermal Certificates" (RTCs) (proposed OAR 860-150-0010(16)) made by 3Degrees and supported by NW Natural, Cascade, and Avista. As a result of this discussion, we reopened public comment on the proposed rules. A memorandum issued by the Administrative Hearings Division delineated our questions for stakeholders, and set forth detailed questions from Staff about other potential changes to the proposed rules necessary to fully implement the revised definitions. Stakeholders were invited to submit supplemental comments until the close of business on June 16, 2020. Additional comments were received by this date from NW Natural, Avista, 3Degrees, the Coalition for Renewable Natural Gas, and M-RETS.

### III. DISCUSSION

Below, we address significant issues we considered during our evaluation of the new rules we adopt to implement an RNG program. For each significant issue, we review comments by stakeholders and Staff, and we provide a decision with our analysis. We also acknowledge

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<sup>3</sup> Order No. 20-095 (Mar 26, 2020).

comments that led us to make minor revisions to the rules, with references to Appendix A that tracks changes to the final rules that we approve in this order.

#### **A. OAR 860-150-0010 Definitions**

The proposed rules set forth definitions for twenty terms. Both minor and significant comments about these definitions were received. Staff provided a minor comment recommending removal of the word “fossil” from the definition of “Geologic natural gas” in OAR 860-150-0010(7). This recommendation was not challenged, and we approve it without discussion.

We received comments addressing the terms, “environmental attributes” in OAR 860-150-0010(5) and “renewable thermal certificate” (RTC) in OAR 860-150-0010(16). One stakeholder, 3Degrees, proposed significant revisions to the definitions of these two terms, with support from the large and small natural gas utilities. The recommendations would result in definitions that recognize and differentiate two separate greenhouse gas benefits, rather than a bundle of greenhouse gas (GHG) benefits for RNG. Specifically, the two separate GHG benefits would be: 1) a benefit associated with the destruction of upstream methane; and 2) a benefit associated with displacing conventional natural gas with RNG. As comments about these terms are interrelated to comments about OAR 860-150-0050 regarding the accounting, tracking, and recordkeeping processes for RNG and its environmental attributes, we find it appropriate to address all of the comments about the three proposed rules together in the next section of this order.

#### **B. OAR 860-150-0010(5) “Environmental Attributes,” OAR 860-150-0010(16) “Renewable thermal certificate” or “RTC,” and OAR 860-150-0050 Environmental Attributes and Renewable Thermal Certificates: Definitions and Accounting Approach**

##### ***1. Overview of Proposed Rules***

As proposed in the Notice of Proposed Rulemaking, environmental attributes are expansively defined to include “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.”<sup>4</sup> A renewable thermal certificate, as proposed by OAR 860-150-0010(16), is defined as “a unique representation of the environmental attributes associated with the production, transport, and use of one dekatherm of renewable natural gas.”<sup>5</sup>

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<sup>4</sup> Notice of Proposed Rulemaking (Mar 27, 2020).

<sup>5</sup> *Id.*

Proposed OAR 860-150-0050 uses a full lifecycle carbon intensity (CI)<sup>6</sup> accounting for the GHG emissions associated with RNG, with an all-inclusive CI definition of RNG's environmental attributes from production to transport and use. The proposed rule also utilizes a "book and claim" accounting approach for RTCs, which tracks an RTC's chain of custody, rather than the physical gas, starting from injection into a common carrier pipeline.<sup>7</sup> Staff summarizes the program structure set forth in the proposed rules as: "the environmental attributes of each dekatherm of RNG, including its carbon intensity, will be represented by a 'renewable thermal certificate (RTC),' and RTCs will be issued, tracked, traded, and retired through the M-RETS electronic system."<sup>8</sup> Proposed OAR 860-150-0050(15) allows the Commission to direct utilities, at some time in the future, to use an alternative RTC tracking system.

## ***2. Policy Considerations Supporting Proposed Rules' Definitions of Environmental Attributes and RTCs***

The need to reconcile "[t]hree significant, and interrelated issues that emerged during the informal rule drafting process" led Staff to define environmental attributes in terms of the carbon intensity of a particular RNG source, and its pathway to Oregon retail natural gas customers.<sup>9</sup> Staff identified the three issues as follows:

- 1) the stated purpose and intent of the law is to "support a smooth transition to a low carbon energy economy in Oregon," and to, "leverage the natural gas system to reduce greenhouse gas emissions," though the law establishes no specific emissions reduction targets or mechanisms;
- 2) an existing, and lucrative, market for RNG already exists in the form transportation fuels credit programs administered by DEQ, CARB, and the U.S. Environmental Protection Agency (USEPA); and 3) there is a potential risk for entities to make "double claims" of the environmental attributes of RNG under multiple programs or in multiple jurisdictions.<sup>10</sup>

Recognizing that Oregon natural gas utilities may compete to purchase RNG from producers who sell to vehicle fueling stations, Staff gauged value from using the same methodology, CI accounting, currently specified by the DEQ in its Clean Fuels Program (CFP) rules<sup>11</sup>; the California Air Resources Board (CARB) in its Clean Fuels Program rules<sup>12</sup>; the United States

<sup>6</sup>*Id.* at 7 (Rule Summary for 860-150-0050).

<sup>7</sup> Staff Report at 7 (Mar 11, 2020).

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> Staff Comments at 3, fn. 6, citing OAR ch. 340, div. 253 (May 6, 2020).

<sup>12</sup> *Id.*, fn. 7, citing <https://ww2.arb.ca.gov/resources/documents/lcfs-life-cycle-analysis-models-and-documentation>.



Environmental Protection Agency in its Renewable Fuels Program rules<sup>13</sup>; and proposed by the Center for Resource Solutions' Green-E certification program for its renewable fuels standard<sup>14</sup>. Staff observed that the proposed rules' full lifecycle accounting approach, with a single representation of all environmental attributes, has already been demonstrated to be successfully used in these programs and is an appropriate initial approach for Oregon's natural gas utility RNG program.

DEQ supported the proposed rules, noting that the programs "will complement each other in spurring the development of more renewable natural gas."<sup>15</sup> DEQ noted that CI accounting "allows disparate fuels to be evaluated and compared on an apples-to-apples basis,"<sup>16</sup> thereby helping to ensure that a new energy source is lower-carbon than what it replaces.<sup>17</sup> Moreover, "[t]he lifecycle approach also means that fuel producers are evaluated on every step in the chain of their production and have a clear financial incentive to cut the carbon in all stages of their supply chains."<sup>18</sup> Different RNG sources (e.g., manure digester, landfill gas collector, wastewater treatment digester) will have differing carbon intensities for the RNG they produce. CI accounting offers transparency into those differences that underlie the dekatherm RTC, allowing the purchaser to compare the CI value of RTCs between two sources. This approach does not guarantee a lower CI project will be selected or paid a premium for its performance, but it allows the buyer full insight into the GHG impact of the dekatherm they purchase.

DEQ also addressed the book and claim accounting function of the proposed rules, which allows electronic tracking of RTCs as of injection into a common carrier pipeline, with no need to track the physical gas. The approach is consistent with how RNG is tracked in the Oregon Clean Fuels Program, as well as in the California Low Carbon Fuel Standard, and the federal Renewable Fuel Standard. DEQ noted that the flexibility of the approach helps the development of projects that would otherwise be uneconomic if physical delivery was required. NW Natural, Avista, and 3Degrees also specifically supported the proposed rules' book and claim accounting approach.

DEQ observed that using book and claim accounting requires environmental attributes to be clearly defined in order to understand what is being traded and paid for and to avoid double claims. The proposed rules' definition of environmental attributes mirrors the Clean Fuels Program's definition, with both including "all potential regulatory and marketing claims associated with the energy, with the exception of an overlapping federal program."<sup>19</sup>

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<sup>13</sup> *Id.*, fn. 8, citing 40 CFR § 80.1426.

<sup>14</sup> *Id.*, fn. 9, citing <https://www.green-e.org/docs/rf/Green-e%Renewable%20Standard%20Draft%20021820.pdf>.

<sup>15</sup> Department of Environmental Quality Comments at 1 (May 6, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at 3, fn. 2 citing <https://www.green-e.org/programs/renewable-fuels/documents>.

### 3. *Alternative Definitions Suggested*

With support from NW Natural and Avista, 3Degrees suggested significant changes to the definition of “environmental attributes” in order to separate “avoided methane emissions that occur at the project level, pre-injection into the common carrier pipeline.”<sup>20</sup> In comments filed May 6, 2020, 3Degrees proposed rewriting the term’s name and definition in a way that distinguished between the two GHG benefits associated with RNG, as described above. Distinguishing the two benefits would allow separate monetization for both benefits, NW Natural observed in supporting comments, and would accurately compensate a RNG project for its full environmental benefits. That is, projects with more impact on GHGs would potentially have a second value stream available through monetized offsets for Avoided Methane Emissions and thus be able to earn a premium as compared to other RNG projects with perhaps lower all-in CIs. 3Degrees noted that the dual tracking and monetization stream structure aligns with the treatment for renewable energy certificates (RECs) from methane capture projects that generate electricity, explaining:

It is common practice to allow digesters and landfill gas projects producing electricity to sell renewable energy certificates for the associated renewable energy benefit (i.e. generation of zero emissions power) and, when eligible, offsets for the Avoided Methane Emissions Benefit.<sup>21</sup>

3Degrees also discussed how the revised definitions may better align with SB 98 program design, as the legislation prioritizes volumetric RNG targets and “calls for utilities to ‘reduce emissions from the direct use of natural gas by procuring renewable natural gas.’”<sup>22</sup> 3Degrees indicated that these requirements make a source-based accounting framework appropriate for the RNG program, as well as potential industry regulations such as cap-and-invest, where the carbon content of the natural gas is explicitly regulated, rather than a simpler dekatherm-for-dekatherm displacement described by ORS 757.396(1). NW Natural agreed, adding that it interprets the legislation to not specify a full lifecycle carbon intensity accounting.

Although NW Natural acknowledged that the separate market for the destruction of upstream methane is nascent, the company asserted that “offset protocols that outline the rules and procedures for GHG accounting and requirements for monitoring, reporting, verification, and certification already exist that track these GHG reductions for the benefit of utility customers.”<sup>23</sup> 3Degrees also noted that “the predominant GHG accounting framework” for all but the transportation sector is source-based GHG accounting. Agreeing that CI accounting has merits,

<sup>20</sup> 3Degrees Comments at 1-2, (Apr 27, 2020).

<sup>21</sup> *Id.* at 3.

<sup>22</sup> 3Degrees’ Supplemental Comments at 1-2, citing ORS 757.390 (May 6, 2020).

<sup>23</sup> NW Natural’s Supplemental Comments at 2 (May 6, 2020).

however, 3Degrees recommended continuing to track CI for RNG, and NW Natural supported still requiring CI scores for RNG.

Staff acknowledged that 3Degrees' proposed approach might offer a viable alternative, but identified concerns, shared by DEQ. Concerns included whether additional changes to the rules would be needed to effectively implement the definition changes, and whether the existing offset market for avoided methane emissions benefits justified the change at this time. Given uncertainty about future regulatory policy and programs for GHG emissions, Staff recommended planning for consistency with existing programs, such as DEQ's CFP program, with the option for modifications in the future to align with rulemaking by DEQ or other policy directives.

The RNG Coalition agreed. Although the RNG Coalition articulated benefits associated with both approaches, the RNG Coalition recognized that the framework for GHGs will ultimately be determined in a future DEQ rulemaking arising from Executive Order No. 20-04. Regardless of the path chosen, the RNG Coalition recommended that we direct the utilities to collect both sets of GHG accounting information (for all RNG procured).

#### ***4. Following Further Consideration, Unanimous Support to Adopt Proposed Definitions***

We engaged in robust discussion about the alternative approaches to defining environmental attributes at our Public Meeting on April 28, 2020. This discussion led to a decision, at our June 2, 2020 Public Meeting, to reopen public comment.<sup>24</sup> Commissioners and Staff posed questions regarding the potential consequences of adopting the alternative definitions for environmental attributes and RTCs. Several parties who had supported the alternative definitions filed supplemental comments in response to these questions, and they unanimously agreed that the originally proposed definitions for environmental attributes and RTCs should be adopted now. They recommended that the Commission consider the alternative definitions in the future.

Recognizing that Oregon is currently engaging in multiple stakeholder processes to develop climate policies for the state, with many pending policy decisions, 3Degrees' supplemental comments note that rules for the RNG programs will likely need modification regardless of what the Commission adopts now. As the proposed rules do not preclude future changes, 3Degrees supports adopting the proposed rules. Doing so will allow utilities to begin procuring RNG, and 3Degrees perceives no harm to the market now or in the future should the rules be revised. NW Natural agrees, noting again that producers do not currently distinguish between RNG benefits, that buyers will in the near future only be able to purchase all attributes at a single price, and that purchasers of all attributes will be able to disaggregate the separate attributes should market

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<sup>24</sup> Order No. 20-181 (Jun 3, 2020).

conditions warrant separate monetization in the future. NW Natural and Avista both support adopting the bundled attribute approach in the proposed rules, letting the offset markets develop, and climate policy evolve, with later revisions to the rules.

## **5. *Decision***

We appreciate Staff and parties taking the time to carefully think about the implications, benefits, and disadvantages of the alternative definitions in today's market environment and to reach reasoned conclusions about how we should proceed now, taking into consideration our ability to revise the rules as policy and markets develop. We note the time pressure that the combination of the statutory deadline and the late emergence of this issue placed on Staff and parties and are grateful for their help in completing a thorough and transparent review of this important issue in that compressed timeline.

Based on the very helpful supplemental comments, we are comfortable concluding that the SB 98 programs should begin with the bundled attribute, CI approach in the proposed rules. We agree with commenters that there may yet be significant advantages to adopting the alternative approach proposed by 3Degrees. The alternative approach may offer utilities more options to lower the cost and risk of meeting SB 98 targets, including by securing lower cost RNG resources or by separately monetizing avoided emissions benefits. However, we are persuaded by the comments that, today, in the nascent stage of the RNG markets, those options are more theoretical than real. Without practical avenues for natural gas utilities to take advantage of those options for the benefit of customers, it is not clear that the real, achievable benefits to adopting the alternative approach would outweigh the complexity and uncertainty that doing so could introduce into existing programs and markets. We accept that, in the present state of the market, there is a rationale supporting cost recovery for bundled attributes.

We appreciate the information provided by the supplemental comments, along with information provided by the RNG Coalition throughout the process, indicating that RNG producers do not yet need or potentially even have the capacity to work with a split attribute program. We also agree with Staff that adopting the alternative approach would require consideration of other changes to the rules, beyond what 3Degrees specifically proposed.

A significant factor in our decision is the parties' assurance that adopting the proposed rules today, and allowing procurement to advance under the proposed rules, will not prevent us from adopting, nor customers from benefitting from, the alternative approach when it becomes more practically viable. Supplemental comments indicate that bundled attributes under contract to customers may be converted into two distinct attributes in the future, if and when the market conditions, other policies, and our rules evolve to warrant it.

The appropriate timing for us to reevaluate the alternative approach is not clear. We decline the recommendation from some parties to open a new rulemaking immediately. If market conditions and the evolution of other policies make the alternative approach unwise now, we will need to be persuaded that changes in those conditions and policies warrant the PUC devoting resources to a new rulemaking effort.

**C. OAR 860-150-0050(11), (12), (13), and (14) RTC Tracking**

**1. *Overview of Proposed Rule***

As proposed, sections (11) and (12) require a natural gas utility to obtain, and hold for review, attestations from all “upstream” holders of a RTC. Section (13) requires each large and small natural gas utility participating in the RNG program to maintain records of each RTC retired under the RNG program, as well as the attestations, for a minimum of five years after the date the RTC is retired. Section (14) allows a gas utility to store attestations in M-RETS to comply with Section (11).

**2. *Comments***

NW Natural argues that the requirement in sections (11) and (12) of proposed OAR 860-150-0050 for a natural gas utility to obtain attestations from all upstream holders of a renewable thermal credit, together with section (14) which allows the attestations to be stored in an electronic tracking system, are redundant. As a natural gas utility is required by the rules to use an electronic tracking system that will record, track, and monitor RTCs for integrity purposes, the administrative burden and costs associated with tracking RTCs should be minimized by relying on that electronic system. Avista agrees, and also asks that section (13) be stricken. Avista argues that, since the purpose of M-RETS is to track RTCs from creation to retirement, it is unnecessary and overly burdensome to require utilities to seek attestations from the RTC generator as well as each party taking custody of the RTC prior to utility possession. RECs for electric utilities are tracked using only the Western Renewable Energy Generation System (WREGIS), Avista observes.

**3. *Decision***

The proposed rules for Oregon’s RNG programs for large and small Oregon natural gas utilities initially were drafted to be complementary with the Oregon and California Clean Fuel Programs, which currently require written attestations of all RTCs. Compatibility among the programs can be maintained, however, with primary reliance on an electronic tracking system, whether M-RETS or another system we approve to implement the Oregon RNG programs. We revise section (11) to remove the requirement that a large natural gas utility or a small natural gas utility

pursuant to section (12), obtain attestations from any entity other than the RTC generator. We also revise section (14) to permit the section (11) attestation to be retained electronically to satisfy the requirements of sections (11), (12) and (13). These revisions minimize administrative costs and the burden associated with tracking RTCs.

**D. OAR 860-150-0200 Incremental Costs**

***1. Overview of Proposed Rule***

OAR 860-150-0200 sets forth the methodology for a natural gas utility to calculate its annual total incremental costs, as required by ORS 757.396.

***2. Corrections***

***a. Comments***

NW Natural pointed out an inadvertent omission that Staff proposes to remedy by adding OAR 860-150-0200(1)(e), with numbering adjustments to subsequent sections. New section (1)(e) provides:

For each qualified investment that is cost effective according to the calculation in subsection (1)(a) of this rule, the dollar value of the difference between the cost of the qualified investment plus operating costs associated with that investment and a proxy resource represents the cost savings of that qualified investment.

Noting that the “Rule Summary” for OAR 860-150-0200 states, “[t]his rule is proposed to set forth the methodology for a natural gas utility to calculate its total incremental costs, as required by ORS 757.396,” Avista identifies contradictory language in other parts of the rule that refer to only “a large natural gas utility,” with no reference anywhere to a small natural gas utility. Avista requests clarification.

***b. Decision***

Staff’s addition of new section (1)(e) was not challenged, and we approve it without discussion.

We address Avista’s comment in our discussion, below, of proposed OAR 860-150-0400.

**3. *Edits proposed to ensure the incremental cost calculation is in levelized terms for all RNG costs***

**a. *Comments***

As proposed, OAR 860-150-0200 levelizes the incremental cost calculation only for qualified investments, NW Natural points out. Discussing the value of evaluating the costs and benefits of all RNG resources to customers over time in order to minimize temporary volatility, NW Natural recommends revising the rule, making recommended changes to sections (1)(b) and (1)(d) of OAR 860-150-0200, to specify that the incremental cost calculation is in levelized terms for each RNG resource. Avista supports NW Natural's edits. Staff agrees with NW Natural that the annual calculations of incremental cost should utilize levelized costs for each component, not just qualified investments. Staff recommends adoption of NW Natural's proposed edits.

**b. *Decision***

We adopt NW Natural's edits.

**4. *Aligning the incremental cost calculation with ORS 757.396(2)***

**a. *Comments***

NW Natural indicates that the proposed rule's separation of incremental costs into two buckets (qualified investment and third-party purchase costs) means that the operating costs associated with qualified investments are not explicitly included in the calculation. NW Natural proposes edits to clarify that the incremental cost calculation reflects *all* RNG costs above and beyond the costs to acquire conventional natural gas. NW Natural proposes language that would: 1) remove the two cost buckets and define the incremental cost of an RNG resource as the difference between the levelized annual cost of the RNG that a large natural gas utility acquires for its retail utility customers and the levelized annual cost of an equivalent amount of non-RNG natural gas; and 2) add language specifying that the incremental cost calculation includes all costs that the large natural gas utility reasonably expects to incur to deliver RNG to customers. Avista supports NW Natural's comments and proposed revisions to OAR 860-150-0200.

AWEC expresses concern about the imprecision of NW Natural's "request to clarify that 'all' costs associated with RNG that are above and beyond what is required to acquire conventional natural gas"<sup>25</sup> are included in the incremental cost calculation, and recommends no changes. Staff agrees with AWEC about the imprecision of the term, "all costs," and worries that such

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<sup>25</sup> AWEC Comments at 1 (Apr 27, 2020).

language could allow ratepayers to pay for expenses not clearly related to RNG investments or purchases.

Staff acknowledges the need to ensure that OAR 860-150-0200 fully implements the language of ORS 757.396(2)(a), which allows a natural gas utility to recover the costs of qualified investments plus the “operating costs associated with qualified investments.”<sup>26</sup> To align the rule with the statute, Staff suggests modifying proposed OAR 860-150-0200(1)(d) to explicitly include this statutory phrase. Staff recommends maintaining the language separating costs between qualified investments and purchased RNG to make it clear that only operating costs associated with qualified investments are intended to be included in the incremental cost calculation and to avoid potential concerns raised by AWEC.

*b. Decision*

We agree with Staff’s recommendation to include the ORS 757.396(2) statutory phrase, “operating costs associated with qualified investments” in OAR 860-150-0200(1)(d). The approach addresses NW Natural’s concern that proposed section (1)(d) did not make it clear that the operating costs associated with qualified investments are included in the incremental costs calculation, without creating new confusion by adding overly broad language. We adopt Staff’s revisions, and refer to Appendix A and the tracked changes in OAR 860-150-0200(1)(d).

**E. OAR 860-150-0300 Mechanisms for Recovery of Prudently Incurred Costs by Large Natural Gas Utilities**

*1. Overview*

Under this rule, as proposed, a large natural gas utility may recover prudently incurred costs under various methods. Section (4) of the proposed rule allows a large natural gas utility to file a request with us to open an investigation to establish an automatic adjustment clause (AAC).

*2. Comments*

NW Natural and Avista ask that the draft rules be revised to include an AAC. The proposed rules, as written now, allow a large natural gas utility to request that the Commission open an investigation to consider establishing an AAC. Not including an AAC in the rules fails to implement SB 98, NW Natural asserts. NW Natural argues that ORS 757.394(3)(b), requiring a process for utilities to fully recover prudently incurred costs, and ORS 757.396(2), allowing a utility to recover qualified investments by an AAC, taken together, “provide that an automatic adjustment clause *must* be established and that a utility may use it to recover the cost of qualified

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<sup>26</sup> ORS 757.396(2)



investments.”<sup>27</sup> (*Emphasis added.*) NW Natural proposes revisions to OAR 860-150-0300(4) to establish the Renewable Natural Gas Adjustment Clause (RNGAC) that is modeled on the electric utilities’ Renewable Adjustment Clause (RAC), and effectuated by tariff filing. Avista supports NW Natural’s proposed methodology and proposed rule revisions. Avista asserts that a deferral model that allows a utility to defer all costs, including a rate of return, associated with an RNG qualified investment or purchase for a later surcharge or rebate to customers is the preferred and most appropriate cost recovery mechanism and should be included in OAR 860-150-0400.

In the alternative, NW Natural argues that an investigation regarding AACs is not needed and a tariff filing would suffice to establish a single-company AAC. NW Natural further argues that allowing a tariff filing instead of a request that an investigation be opened would provide more certainty to NW Natural’s business planning regarding RNG acquisitions.

CUB disagrees that the statutory language mandates the inclusion of an AAC. ORS 757.394(3) provides, in pertinent part, that the new rules “establish a process for natural gas utilities to fully recover prudently incurred costs associated with the large renewable natural gas program,” and CUB argues that the proposed rules do that. OAR 860-150-0300(1) enables the recovery of RNG commodity costs through NW Natural’s purchased gas adjustment (PGA) mechanism, and OAR 860-150-0300(3) enables a utility to file a general rate case to recover prudently incurred capital costs associated with qualifying investments. Together with OAR 860-150-0300(4), which provides a course to establish an AAC, CUB asserts that these provisions set forth a sufficient “process” for NW Natural to recover its prudently incurred costs. CUB credits the proposed rules for providing flexibility by not prescribing a recovery method and by taking a middle ground approach with regard to a complicated recovery mechanism such as an AAC for a brand new program.

AWEC observes that, although SB 98 is clear that utilities can recover all prudently incurred RNG program costs, the law gives the Commission discretion to prescribe the timing of that recovery. ORS 757.396(2)(a), AWEC notes, uses “may” not “shall” with regard to the use of an AAC. AWEC requests that we reject NW Natural’s recommendations and adopt the proposed requirement that a utility seeking rate recovery of a qualified investment outside of a rate case must demonstrate in an investigation why it is necessary and in the public interest.

With regard to an AAC for qualified investments in RNG, Staff believes that proposed OAR 860-150-0300 and 860-150-0400 adequately address this topic, and that a separate docket would be the best avenue to discuss the most appropriate structure, mechanism, and parameters for a new AAC. While Staff believes an initial investigation docket would be the most appropriate venue, Staff recognizes that it would be feasible and consistent with the intent of the

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<sup>27</sup> NW Natural Comments at 7 (Apr 22, 2020).

rules for a natural gas utility participating in the RNG program to file a tariff that includes an AAC, with a request that the Commission suspend the filing for an investigation.

### 3. *Decision*

The legislature directed us, in ORS 757.394(3), to adopt rules to establish a *process* for natural gas utilities to fully recover the costs associated with a large or small renewable natural gas program, with the legislature further mandating, in ORS 757.396(2), that our adopted ratemaking mechanisms, which *may* include an AAC (as specified in ORS 757.396(2)(a)), permit recovery of the costs that a large natural gas utility incurs to meets the statute’s targets in ORS 757.396(1). We do not agree with NW Natural that ORS 757.394(3)(b) and ORS 757.396(2) change the latter statute’s use of the word “may” to “must” with regard to use of an AAC.

Although we take no position at this time on whether to approve any particular AAC design, we note that the natural gas utilities already have processes that could allow them to fully recover costs associated with RNG programs through existing rules: 1) OAR 860-150-0300(1) enables recovery of RNG commodity costs through a PGA mechanism; and 2) OAR 860-150-0300(3) enables a utility to file a general rate case to recover prudently incurred capital costs associated with qualifying investments. To the extent these mechanisms did not allow for full recovery, we note that OAR 860-150-0300(4) provides a course by which we may establish an AAC.

An AAC could be appropriate with respect to some SB 98 costs, but rather than prescribing the details of such a mechanism in OAR 860-150-0300(4), we are more comfortable providing that a large natural gas utility may file a request that we establish an AAC. We find it would be more appropriate to review a specific requested mechanism through a separate process, rather than presume that the rules could specify every relevant detail of how such a mechanism would work in the time that we have before the rules must be adopted. We do, however, agree to modify the language in the proposed rules to remove the implication that a full investigation would necessarily be required before we adopt an AAC. We note that, even if we were to provide generically for AACs in the rules, review of a separate tariff filing would likely be necessary to engage with the specifics of the mechanism.

## F. **OAR 860-150-0400 Mechanisms for Recovery of Prudently Incurred Costs by Small Natural Gas Utilities**

### 1. *Overview*

Requirements for an initial filing by a small natural gas utility that wishes to participate in the RNG program are set forth in this proposed rule. The proposed rule also describes methods for a small natural gas utility to recover RNG program costs that are prudently incurred.

## **2. *Comments***

If OAR 860-150-0200 is not revised to apply its methodology to small natural gas utilities, Avista recommends that OAR 860-150-0400 be amended to add language similar to NW Natural's recommendations regarding RNG procurements and qualified investments for OAR 860-150-0200.

## **3. *Decision***

We revise OAR 860-150-0400(g) to add the phrase, "small natural gas" before the word "utility" to make it clear that a cost effectiveness assessment of qualified investments utilizes the same formula specified for use by a large natural gas utility in OAR 860-150-0200. This revision provides the clarification sought by Avista. We also correct a mistake in the Rule Summary of OAR 860-150-0400 to indicate that the rule applies to small, not large, natural gas utilities.

## **G. OAR 860-150-0500 Large Natural Gas Utility Investments in Biogas Production**

### **1. *Overview***

The rule implements a competitive bidding process under ORS 757.396 for a large natural gas utility to use before making certain qualified investments.

### **2. *Comments***

NW Natural makes several recommendations for revisions to proposed OAR 860-150-0500 to ensure that the competitive bidding requirements do not impede RNG investments. NW Natural first recommends raising the dollar threshold for requiring Commission review and approval of requests for proposals for upstream qualified investments from \$10 million to \$25 million. NW Natural bases this request on comparison to the process that electric utilities use for resource procurement as these rules influenced development of the RNG competitive bidding rule. Observing that competitive bidding requirements should be applied to RNG projects with a scope similar to the electric projects to which they are applied, NW Natural points out that the minimum size for electric resources subject to competitive bidding rules are 80 megawatts or greater for a term of five years or more with project costs in the hundreds of millions of dollars.

Second, NW Natural recommends that section (3) of OAR 860-150-0500<sup>28</sup> be revised to remove the protest process in (3)(i). This provision combined with (3)(l) makes the rules more prescriptive than analogous requirements in the rules for electric resource procurement, NW Natural asserts.

Third, NW Natural argues that section (3)(m) of OAR 860-150-0500 is not needed and should be removed. This provision requires requests for proposals (RFPs) to explain why a qualified investment is necessary to meet current or future annual RNG targets, which NW Natural asserts is not information that bidders need to know. The information relates to prudence, which the Commission will have the opportunity to consider outside of the RFP process.

Fourth, NW Natural requests removal of sections (4) through (6) of OAR 860-150-0500. Requiring Commission approval of draft RFPs for RNG projects is not commensurate with the pace of the market, NW Natural asserts, pointing out that the timeline between filing an RFP and receiving responsive bids could be as long as three months if a party requests a 30-day delay in the review period. NW Natural argues that a utility should be allowed to use its own procurement procedures and policies to satisfy the competitive bidding requirements of SB 98.

Finally, NW Natural expresses concern about OAR 860-150-0500(8)(b)(D) because it is not clear what happens if NW Natural is the only bidder, since the section anticipates that a large natural gas utility would submit a bid to an invitation for RFPs “in competition with other entities.” NW Natural suggests striking the phrase, “in competition with other entities.”

Staff agrees with NW Natural’s recommendation to increase the threshold from \$10 million to \$25 million, being persuaded by comparison to the electric utility competitive bidding rules in OAR 860-089-0100. Raising the threshold will allow a large natural gas utility to timely pursue a greater number of RNG projects in a nascent market, but the largest and most expensive projects will be subject to the competitive bidding process, Staff states.

The rest of NW Natural’s proposed revisions to the competitive bidding process need to be considered in context of a higher threshold, and ensuring that a fair and transparent process exists for the most significant projects. For this reason, Staff does not agree with NW Natural that the protest process in OAR 860-150-0500(3)(i) should be removed. Staff does not object to removing OAR 860-150-0500(3)(l), however, to lessen the prescriptiveness of the rules.

Although Staff agrees with NW Natural that a bidder need not know why a qualified investment is necessary to meet current or future annual RNG targets, as contemplated in section 3(m), Staff explains that the information is intended for the Commission’s review of the RFP. The information is relevant to our decision about approval of a draft RFP for a project in excess of

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<sup>28</sup> Typo in NW Natural’s comments referred to 860-150-0400. NW Natural Comments at 8 (Apr 22, 2020).

\$25 million, Staff asserts. Rather than remove it, Staff suggests moving the language from proposed OAR 860-150-0500(3)(m) to a revised OAR 860-150-0500(4). Staff does not agree that sections (4) through (6) should be removed because the process set forth there is reasonable and necessary for a fair and transparent bidding process that does not unduly favor the large natural gas utility to the detriment of other potential bidders. As for timing issues, Staff points out that proposed OAR 860-150-0500(5) allows a large natural gas utility to ask for an expedited review period in its filing, while proposed OAR 860-150-0005(4) allows waiver of any rule in proposed Division 150 upon written request and for good cause shown.

Regarding the potential ambiguity in proposed OAR 860-150-0500(8)(b)(D), Staff agrees that the section is unclear should NW Natural be the sole bidder in an otherwise compliant RFP. Staff recommends revising the clause to “in competition with other bids that may be submitted” in the proposed rule. Finally, Staff recommends a revision to proposed rule OAR 860-150-0500(8)(b)(C) to correct a typographical error. The correct word in this sentence should be “evaluate,” and not “elevate.”

### **3. Decision**

OAR 860-150-0500 results from the legislative mandate that competitive bidding be used before a large natural gas utility makes a qualified investment in upstream biogas production. The rule’s goal, in this context, is to create a framework for a bidding process that is competitive, transparent, and fair for all market participants. We find that proposed OAR 860-150-0500, with the revisions recommended by Staff, strikes the appropriate balance between providing sufficient safeguards on the market to ensure transparency and fairness, without imposing so many that competition is overly inhibited. Raising the dollar threshold for application of some of the rule’s safeguards to better align with similar requirements in the electricity market as a primary means to provide leeway for large natural gas utilities to be nimble in a nascent market is appropriate, we find. If a market opportunity is significant, the rule requires additional safeguards, including more up-front Commission process and engagement. We find that Staff’s revisions to the safeguards are appropriate, and we adopt them.

## **IV. ORDER**

IT IS ORDERED that:

1. New rules OAR 860-150-0005, 860-150-0010, 860-150-0100, 860-150-0200, 860-150-0300, 860-150-0400, 860-150-0500, and 860-150-0600 are adopted as set forth in Appendix A to this order.

2. The rule changes become effective upon filing with the Secretary of State.

Made, entered, and effective Jul 16 2020.



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**Megan W. Decker**  
Chair



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**Letha Tawney**  
Commissioner



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**Mark R. Thompson**  
Commissioner

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

RULE SUMMARY: This rule establishes the Scope, Purpose, and Applicability of this new rule Division.

**860-150-0005**

**Purpose, Scope, and Applicability**

(1) The purpose of these rules is to set forth the requirements governing renewable natural gas programs for large natural gas utilities and for small natural gas utilities.

(2) These rules apply to purchases of renewable natural gas and to qualifying investments in renewable natural gas infrastructure by large and small natural gas utilities, as defined herein.

(3) Nothing in these rules prohibits or limits the ability of a natural gas utility to file a rate schedule under which a retail natural gas customer may elect to pay a special rate for a quantity of renewable natural gas equivalent to all or a portion of that customer's natural gas usage, consistent with the filing requirements under ORS 757.205, ORS 757.210, ORS 757.220, OAR Chapter 860, Division 22 and any other applicable requirements specified by the Commission in rule or order.

(4) Upon request or its own motion, the Commission may waive any of the Division 150 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757

STATUTES/OTHER IMPLEMENTED: ORS 757.394, 757.396, 757.398

RULE SUMMARY: This rule defines necessary terms used throughout this new rule Division.

## **860-150-0010**

### **Definitions**

For purposes of this Division, except when a different scope is explicitly stated:

- (1) “Biogas” has the meaning given that term in ORS 757.392.
- (2) “Carbon intensity” or “CI” means the amount of lifecycle greenhouse gas emissions per unit of energy of fuel expressed in grams of carbon dioxide equivalent per megajoule (gCO<sub>2</sub>e/MJ).
- (3) “CFP Online System” has the meaning given that term in OAR 340-253-0040.
- (4) “DEQ” means the Oregon Department of Environmental Quality.
- (5) “Environmental attributes” means 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. The environmental attributes of renewable natural gas include, but are not limited to, the avoided greenhouse gas emissions associated with the production, transport, and combustion of a quantity of renewable natural gas compared with the same quantity of geologic natural gas. Environmental attributes do not include:
  - (a) The renewable natural gas itself or the energy content of that gas;
  - (b) Any tax credits associated with the construction or operation of the renewable natural gas production facility, and any other financial incentives in the form of credits, reductions, or allowances associated with the production of renewable natural gas that are applicable to a state, provincial, or federal income taxation obligation;
  - (c) Fuel- or feedstock-related subsidies or “tipping fees” that may be paid to the seller to accept certain fuels, or local subsidies received by the renewable natural gas production facility for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or
  - (d) Emission reduction credits encumbered or used by the renewable natural gas production facility for compliance with local, state, provincial, or federal operating and/or air quality permits.
- (6) “General rate revision” has the meaning given that term in OAR 860-022-0017.
- (7) “Geologic natural gas” means any ~~fossil~~ natural gas from geologic or non-renewable resources, whether extracted by conventional or unconventional means.
- (8) “Large natural gas utility” has the meaning given that term in ORS 757.392.
- (9) “M-RETS” means the regional renewable energy certificate system and trading mechanism known



as the Midwest Renewable Energy Tracking System, Inc.

(10) “Natural gas utility” has the meaning given that term in ORS 757.392.

(11) “OR-GREET” has the meaning given that term in OAR 340-253-0040.

(12) “Pathway” means a detailed description of all stages of renewable natural gas production and use for a source of RNG, including feedstock generation, production, cleaning or conditioning, transportation, distribution, and combustion of the renewable natural gas by the consumer. The fuel pathway is used to calculate the carbon intensity of each source of renewable natural gas.

(13) “Production facility” means any facility at which biogas or hydrogen is produced, cleaned, conditioned, upgraded, purified, or processed to meet standards for injection to a natural gas common carrier pipeline as renewable natural gas.

(14) “Qualified investment” has the meaning given that term in ORS 757.392.

(15) “Renewable natural gas” or “RNG” has the meaning given that term in ORS 757.392.

(16) “Renewable thermal certificate” or “RTC” means a unique representation of the environmental attributes associated with the production, transport, and use of one dekatherm of renewable natural gas.

(17) “Small natural gas utility” has the meaning given that term in ORS 757.392.

(18) “Target year” means a calendar year, beginning with the year 2020 through and including the year 2050, for which ORS 757.396 establishes portfolio targets for the percentage of gas purchased by a large natural gas utility for distribution to retail natural gas customers in Oregon that is renewable natural gas.

(19) “Tier 1 calculator” or “Simplified calculator” has the meaning given that term in OAR 340-253-0040.

(20) “Tier 2 calculator” has the meaning given that term in OAR 340-253-0040.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757

STATUTES/OTHER IMPLEMENTED: ORS 756.040, 757.020, 757.394

**RULE SUMMARY:** This rule establishes the accounting, tracking, and recordkeeping requirements and processes for renewable natural gas and its environmental attributes. It is necessary to implement the reporting requirements mandated by ORS 757.394(3). Further, the lifecycle greenhouse gas emissions accounting and reporting required by this rule provide relevant information to the Commission.

## **860-150-0050**

### **Environmental Attributes and Renewable Thermal Certificates**

(1) The environmental attributes of RNG produced or purchased pursuant to these rules must include, but is not limited to, an estimated carbon intensity for the pathway utilized to produce, transport, and deliver RNG to a retail **natural gas** customer.

(2) Each large natural gas utility and each small natural gas utility that is authorized by the Commission to participate in the RNG program under these rules must use RTCs to track the chain of custody of the environmental attributes of RNG that is produced or purchased for the utility's retail natural gas customers in Oregon. RTCs used for compliance with these rules must be issued, monitored, accounted for, and transferred by or through M-RETS.

(3) All entities that generate, acquire, purchase, sell, transfer, or broker the trade of RTCs for eventual use by a natural gas utility under these rules must register and maintain accounts in good standing with the M-RETS renewable energy certificate system. A natural gas utility may not use RTCs under these rules that are issued by, acquired from, or transferred by an entity that has not complied with all information, data reporting and verification requirements of the M-RETS system, including payment of registration and transaction costs.

(4) Each entity that generates RTCs pursuant to these rules must estimate the carbon intensity of the pathway for the RNG. To estimate the carbon intensity of the RNG, the **entity generating** **RTCs generator** must use one of the following, as appropriate to the pathway in question:

(a) A Tier 1 OR-GREET calculator or simplified calculator published by DEQ for the Clean Fuels Program;

(b) A Tier 2 OR-GREET calculator published by DEQ for the Clean Fuels Program;

(c) A Tier 1 CA-GREET calculator published by the California Air Resources Board (CARB) for use in the California Low Carbon Fuel Standards (LCFS) program, with the transportation and distribution cells modified for that RNG's pathway to Oregon;

(d) A Tier 2 CA-GREET calculator published by CARB for use in the LCFS program, with the transportation and distribution cells modified for that RNG's pathway to Oregon; or

(e) A methodology that a natural gas utility may otherwise be directed to use by Commission order.

(5) For any of the calculators described in section (4), entities submitting documentation to M-RETS

are not required to use cells that would not apply to RNG delivered to retail natural gas utility customers, such as compression above normal pipeline pressures that would only be appropriate for compressed natural gas (CNG) vehicle fuels. In the Natural Gas Transport cells of the calculators, an entity may use the pipeline distance to a large or small natural gas utility's city gate instead of pipeline distance to a CNG station.

(6) Each entity that generates RTCs pursuant to these rules must provide documentation to M-RETS regarding the carbon intensity of the pathway in question pursuant to section (4). That documentation must include:

(a) One of the calculators described in section (4), with the appropriate cells modified and values entered for the pathway in question; and

(b) A resultant carbon intensity value for the pathway in question.

(7) Upon the Commission's request, each large natural gas utility and each small natural gas utility that participates in the RNG program must provide documentation to demonstrate that, for each RTC the natural gas utility purchased or otherwise acquired, one dekatherm of RNG was delivered to an injection point on a natural gas common carrier pipeline.

(8) A large natural gas utility must retire one RTC in the M-RETS system for each dekatherm of RNG counted towards the annual targets for a large natural gas utility established in ORS 757.396.

(9) A small natural gas utility participating in the RNG program described in these rules must retire one RTC in the M-RETS system for each dekatherm of RNG counted towards the quantity of RNG the utility specified in its filing with the Commission pursuant to OAR 860-150-0400.

(10) Once retired, a RTC may not be sold, transferred, or claimed again by a natural gas utility or any other entity.

(11) A large natural gas utility or a small natural gas utility participating in the RNG program described in these rules must obtain attestations from the RTC generator ~~and from each other entity that purchased, received, or otherwise acquired custody of each RTC prior to the natural gas utility collectively~~ demonstrating that:

(a) The entity claiming the environmental attributes represented by each RTC has the exclusive right to claim environmental attributes associated with the RNG;

(b) The environmental attributes, and the RTC that represents those attributes, are associated with RNG produced by a specific entity, in a specific location, using a specific process and a specific pathway; and

(c) The environmental attributes have not been used or claimed in any other program or jurisdiction.

(12) Each large natural gas utility and each small natural gas utility participating in the RNG program must retain the attestations described in section (11) and make them available for review by the Commission upon request.

(13) Each large natural gas utility and each small natural gas utility participating in the RNG program described in these rules must maintain records of each RTC retired under the RNG program, as well as the attestations described in section (11), for a minimum of five (5) years after the date on which the RTC was retired.

(14) The attestations described in section (11) of ~~these rules~~this rule may be made, stored, ~~and~~ transferred and retained electronically through the M-RETS system to satisfy the requirements of sections (12) and (13) of this rule, or through another means specified by the Commission.

(15) Large natural gas utilities and small natural gas utilities may be directed by Commission order to use a generally-applicable RTC tracking system instead of the M-RETS system. In that event, all references to the M-RETS system in sections (2) through (14) of this rule shall apply to the designated RTC tracking system.

(16) For a large natural gas utility, an RTC generated during the target year, the preceding year or the subsequent year may be retired to comply with the annual RNG targets established in ORS 757.396. For a small natural gas utility, an RTC may be retired during the year in which it is generated, during the subsequent year, or retired and applied to the year preceding the year the RTC was generated.

(17) An unused RTC expires, for the purposes of these rules, at 11:59 p.m. on December 31 of the year subsequent to the year during which the RTC was generated. A natural gas utility may not use an expired RTC to comply with these rules.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757

STATUTES/OTHER IMPLEMENTED: ORS 757.394, 756.105

**RULE SUMMARY:** This rule establishes requirements for the types of information about renewable natural gas that each natural gas utility must include in its future integrated resource plans. This information will help PUC Staff and the Commission evaluate purchases and investments by natural gas utilities during ratemaking proceedings, pursuant to proposed OAR 860-150-0300 and OAR 860-150-0400. Later, this information will also inform the annual compliance reports specified in proposed OAR 860-150-0600, pursuant to ORS 757.394(3).

## **860-150-0100**

### **Renewable Natural Gas Resource Planning**

(1) Each large natural gas utility and small natural gas utility must, as part of an integrated resource plan filed after August 1, 2020, include information relevant to the RNG market, prices, technology, and availability that would otherwise be required under the Commission's Integrated Resource Plan Guidelines, by order of the Commission, or by administrative rules.

(2) In addition to the information required under section (1), a large natural gas utility must also include in each integrated resource plan:

(a) Information about opportunities, challenges, and the natural gas utility's strategy for meeting annual RNG targets in ORS 757.396 during the period of the integrated resource plan's action plan; and

(b) The cost effectiveness calculation that the utility will use to evaluate RNG resources, pursuant to OAR 860-150-0200.

(3) In addition to the information required under section (1), each small natural gas utility must also include in its integrated resource plan:

(a) An indication whether and when the utility expects to make a filing with the Commission, pursuant to OAR 860-150-0400, of its intent to begin participating in the RNG program described in these rules, if the utility has not already started to participate in the RNG program;

(b) Information about opportunities, challenges, perceived barriers, and the natural gas utility's strategy for participation in the RNG program described in these rules; and

(c) The cost effectiveness calculation that the utility will use, pursuant to OAR 860-150-0200, to evaluate RNG resources, if the utility has not already filed this with the Commission pursuant to OAR 860-150-0400.

(4) The requirements of this rule are in addition to all requirements concerning integrated resource plans contained in OAR 860-027-0400 and as specified by Commission Order Numbers 07-002 and 07-047.

STATUTORY/OTHER AUTHORITY: ORS 183, 756.040, 757.262

STATUTES/OTHER IMPLEMENTED: ORS 756.040, 757.262

RULE SUMMARY: This rule sets forth the methodology for a natural gas utility to calculate its total incremental annual costs, as required by ORS 757.396.

## 860-150-0200

### Incremental Costs

(1) For the purposes of ORS 757.396, a large natural gas utility must calculate its total incremental annual cost as follows:

(a) A large natural gas utility must apply a cost-effectiveness calculation to all RNG that the utility acquires for its retail natural gas customers. The cost-effectiveness calculation must be consistent with the methodology used to evaluate RNG resources in the utility's most recently acknowledged integrated resource plan, or integrated resource plan update, or as the utility may otherwise be directed by order of the Commission;

(b) For each purchase of RNG from a third party that is not cost effective according to the calculation in subsection (1)(a) of this rule, the dollar value of the difference between the levelized cost of the purchased RNG and the levelized cost of a cost-effective purchase of a comparable quantity of geologic natural gas of the same vintage and contract duration represents the incremental cost of that purchased RNG. During each year, the incremental cost of all RNG purchases will be summed to calculate their contribution toward the utility's total annual incremental cost;

(c) For each purchase of RNG from a third party that is cost effective according to the calculation in subsection (1)(a) of this rule, the dollar value of the difference between the levelized cost of the purchased RNG and the levelized cost of a comparable quantity of geologic natural gas of the same vintage and contract duration represents the cost savings of that purchased RNG. During each year, the cost savings of all RNG purchases will be summed and subtracted from the incremental cost of RNG purchases described in subsection (1)(c);

(d) For each qualified investment that is not cost effective according to the calculation in subsection (1)(a) of this rule, the dollar value of the difference between the cost of the qualified investment plus operating costs associated with that investment and a cost-effective proxy resource represents the incremental cost of that qualified investment;

**(e) For each qualified investment that is cost effective according to the calculation in subsection (1)(a) of this rule, the dollar value of the difference between the cost of the qualified investment plus operating costs associated with that investment and a proxy resource represents the cost savings of that qualified investment;**

~~(f)~~ During each year, the levelized incremental costs associated with ~~of~~ each qualified investment described in subsections (1)(d) and (1)(e) must be summed to calculate a gross total annual incremental levelized cost; and

~~(g)~~ To calculate a net total annual incremental levelized cost, a large natural gas utility must sum the value calculated according to subsection (1)(b) and the gross total annual incremental levelized cost

according to subsection (1)(~~fd~~), then subtract from this total any value received during that year by a large natural gas utility upon any resale of RNG to an entity other than a retail utility customer, including any associated RTCs.

(2) The resultant net cost described in subsection (1)(d) will serve as a large natural gas utility's total incremental annual levelized cost for the purposes of ORS 757.396 and these rules.

(3) If a large natural gas utility's total incremental annual levelized cost exceeds five percent of the large natural gas utility's total revenue requirement from the utility's normalized results of operations report that was most recently filed with the Commission, the large natural gas utility may not make another qualified investment during that year unless:

(a) The large natural gas utility immediately files a petition with the Commission to exceed its revenue requirement cap, stating that it has exceeded or expects to exceed the five percent of total revenue requirement cap;

(b) In its filing, the large natural gas utility shows good cause why it should continue to make qualified investments that year to meet the applicable annual RNG target volume set forth in ORS 757.396;

(c) In its filing, the large natural gas utility identifies the number of, and associated costs for, all qualified investments made during that year as of the date of the filing;

(d) In its filing, the large natural gas utility identifies all the qualified investments that it intends to make before the end of the year and the total anticipated costs associated with those additional investments;

(e) In its filing, the large natural gas utility requests the Commission's approval to continue making qualified investments during that year; and

(f) The Commission approves the utility's request to continue making qualified investments during that year.

(4) After a large natural gas utility makes a filing pursuant to section (3), the Commission generally will consider whether to approve or deny the utility's petition, or to conduct further investigation, within thirty days of the filing. The Commission may consider comments on the petition from interested persons that are filed within fifteen days of the utility's petition.

STATUTORY/OTHER AUTHORITY: ORS 756, 757

STATUTES/OTHER IMPLEMENTED: ORS 757.396

**RULE SUMMARY:** This rule sets forth the various methods by which a large natural gas utility may recover prudently incurred costs associated with the renewable natural gas program, pursuant to ORS 757.396.

**860-150-0300****Mechanisms for Recovery of Prudently Incurred Costs by Large Natural Gas Utilities**

(1) A large natural gas utility may make a filing, consistent with the requirements of OAR 860-022-0070 and other applicable rules of the Commission, seeking to pass through prudently incurred costs associated with the purchase of RNG to meet the annual targets for a large natural gas utility established in ORS 757.396, excluding qualified investments, by means of its purchased gas adjustment mechanism. Such costs may also include the utility's cost of registration for the RTC tracking system described in OAR 860-150-0050, transaction costs for any RTCs acquired in association with the purchase of RNG from another entity, and transaction costs incurred to retire the RTCs associated with gas delivered to retail utility customers.

(2) In filings, annual earnings reviews, and quarterly updates associated with the purchased gas adjustment mechanism, a large natural gas utility must clearly identify costs of purchased RNG and the costs associated with RTCs described in section (1) of this rule.

(3) A large natural gas utility filing new or revised tariff schedules that constitute a general rate revision may seek to recover prudently incurred costs associated with qualified investments in its filing.

(4) A large natural gas utility may file a request that the Commission ~~open an investigation to~~ establish an automatic adjustment clause for recovery of prudent costs associated with qualified investments that meet criteria to be established by the Commission.

(5) If the Commission establishes an automatic adjustment clause pursuant to section (4), any rate adjustments made through this clause since the natural gas utility's most recent general rate revision may be incorporated in the natural gas utility's next general rate revision, as appropriate.

STATUTORY/OTHER AUTHORITY: ORS 756, 757

STATUTES/OTHER IMPLEMENTED: ORS 757.394, 757.396



**RULE SUMMARY:** This rule establishes the requirements for an initial filing by a small natural gas utility that wishes to participate in the renewable natural gas program. This rule also sets forth the various methods by which a small natural gas utility may recover prudently incurred costs associated with the renewable natural gas program, pursuant to ORS 757.398.

**860-150-0400****Mechanisms for Recovery of Prudently Incurred Costs by Small Natural Gas Utilities**

(1) Before a small natural gas utility makes a qualified investment for the first time, or purchases RNG from a third-party producer with the intent to seek cost recovery in a new or revised tariff schedule, the utility must file a petition to participate in the RNG program with the Commission. In addition to the information required under ORS 757.398, the small natural gas utility's petition must include:

(a) The total volume of RNG to be procured per year over a period concluding at the end of the last month of the test year used in the general rate revision filing, expressed as a percentage of all natural gas expected to be delivered to the utility's retail customers in Oregon;

(b) Identification of qualified investments the small natural gas utility may make during the period specified in the filing, including the expected average cost and timing of those investments, and the average annual quantity of RNG those investments will produce;

(c) The expected value of any RTCs to be acquired by the utility during the period specified in the filing;

(d) The expected value of any RNG that the small natural gas utility intends to sell to a party who is not a retail utility customer, including the value of any environmental credits that the utility may acquire from the RNG producer and resell;

(e) Any expected savings to be achieved through the avoidance of geologic natural gas costs, to be calculated in the manner described in OAR 860-150-0200(3);

(f) The costs of the identified annual RNG procurements and the levelized costs of all qualified investments expressed as a percentage of the utility's total revenue requirement, where this requirement is that approved by the Commission in the utility's most recently completed general rate revision;

(g) An assessment by the **small natural gas** utility of the relative cost effectiveness of the all qualified investments it intends to make during the period concluding at the end of the last month of the test year used in the general rate revision filing. This assessment must utilize the same formula utilized by a large natural gas utility pursuant to OAR 860-150-0200 or another formula specified by the Commission;

(h) The utility's proposed annual rate cap limiting the cost of RNG purchases and qualified investments.

(2) The small natural gas utility may not make RNG purchases or qualified investments in excess of the annual rate cap established by the Commission, except in an instance where the anticipated annual costs would have remained below the cost cap but for an unforeseeable increase on construction costs associated with a qualified investment.

(3) After a small natural gas utility has made a complete filing pursuant to section (1), and after the Commission has approved the small natural gas utility's filing and set a rate cap, the small natural gas utility may file a general rate revision to seek to recover prudently incurred costs associated with qualified investments consistent with its filing made under section (1).

(4) If the small natural gas utility wishes to revise its participation in the RNG program at any time, renew it after the end of the time period specified in the petition, make additional RNG purchases or qualified investments beyond those described in the filing, or request that the Commission revise the rate cap described in this section, the small natural gas utility must file a petition to modify or renew its RNG program with the Commission that contains the information required under section (1).

(5) The small natural gas utility may, as part of its petition described in section (1), include a request to pass through prudently incurred costs associated with the purchase of RNG from another entity to meet its target volumes as approved by the Commission, excluding qualified investments, by means of its purchased gas adjustment mechanism. Such costs may include the utility's cost of registration for the RTC tracking system described in OAR 860-150-0050, transaction costs for any RTCs acquired in association with the purchase of RNG from another entity, and transaction costs incurred to retire the RTCs associated with gas delivered to retail utility customers.

(6) In filings, annual earnings reviews, and quarterly updates associated with the purchased gas adjustment mechanism, a small natural gas utility must clearly identify costs associated with the purchase of RNG and costs of compliance described in section of this rule.

(7) If the Commission has accepted a small natural gas utility's petition to participate in the RNG program, the small natural gas utility may file a request that the Commission open an investigation to establish an automatic adjustment clause for recovery of prudently incurred costs associated with certain qualified investments.

STATUTORY/OTHER AUTHORITY: ORS 756, 757

STATUTES/OTHER IMPLEMENTED: ORS 757.394, 757.398

**RULE SUMMARY:** This rule implements the requirement in ORS 757.396 for a large natural gas utility to engage in a competitive bidding process before it may make certain qualified investments.

**860-150-0500****Large Natural Gas Utility Investments in Biogas Production**

(1) Pursuant to ORS 757.396, before making a qualified investment in biogas production that is upstream of conditioning equipment, pipeline interconnection or gas cleaning, a large natural gas utility must engage in a competitive bidding process as provided in this rule.

(2) A large natural gas utility must issue a request for proposals to initiate a competitive bidding process that contains the information required by section (3) of this rule.

(3) At a minimum, the utility's request for proposals must include:

(a) A description of the project, specifications, delivery or performance schedule, inspection and acceptance requirements. This description must:

(A) Identify the scope of the work to be performed under the resulting contract, if the large natural gas utility awards one. The scope of work must require the contractor to comply with all applicable federal, state, and local laws, standards, and permit or inspection requirements;

(B) Outline the anticipated duties of the contractor under any resulting contract; and

(C) Establish the expectations for the contractor's performance of any resulting contract.

(b) If the utility intends to hold a pre-offer conference:

(A) The time, date and location of any pre-offer conference;

(B) Whether attendance at the conference will be mandatory or voluntary; and

(C) A provision that provides that statements made by the large natural gas utility's representatives at the conference are not binding upon the large natural gas utility unless confirmed by written addendum.

(c) The form and instructions for submission of bids and any other special information, including whether bids may be submitted by electronic means;

(d) How the large natural gas utility will notify bidders of addenda and how the large natural gas utility will make addenda available;

(e) Any minimum bidder requirements for credit and capability;

(f) The time, date and place of bid opening;

- (g) Standard form contracts to be used in acquisition of resources;
- (h) Language to allow bidders to negotiate mutually agreeable final contract terms that are different from the standard form contracts;
- (i) The anticipated solicitation schedule, deadlines, protest process, and bid evaluation process;
- (j) Bid evaluation and scoring criteria;
- (k) A description of how the large natural gas utility will share information about bid scores, including what information about the bid scores and bid ranking may be provided to bidders and when and how it will be provided;
- ~~(l) If the large natural gas utility intends to award contracts to more than one bidder, the large natural gas utility must identify in the request for proposals how it will determine the number of contracts it will award;~~
- ~~(m) Indication of the alignment of the large natural gas utility's qualified investment to be addressed by the bidding process with:~~
  - ~~(A) A need for this RNG production volume to meet current or future annual RNG targets identified in the large natural gas utility's most recently acknowledged integrated resource plan; or~~
  - ~~(B) A subsequently identified need or change in circumstances with good cause shown.~~
- (4) A large natural gas utility will prepare and file a draft request for proposals for the Commission's review and approval. **This filing must include an explanation of how the draft request for proposals aligns with a need to acquire additional RNG production volume to meet current or future annual RNG targets identified in the large natural gas utility's most recently acknowledged integrated resource plan, or alignment with subsequently identified need or change in circumstances.**
- (5) The Commission will generally issue a decision approving or disapproving the draft request for proposals within sixty (60) days after the draft request for proposals is filed. A large natural gas utility may request an alternative review period when it files the draft RFP for approval, including a request for expedited review, upon a showing of good cause.
- (6) Once the Commission approves the draft request for proposals, the large natural gas utility may proceed with the request for proposals by issuing public notice on the utility's website or through the utility's electronic procurement system, if the company regularly uses such a system, and may further advertise the notice using additional media. This public notice must be issued and be publicly available for not less than thirty (30) days prior to closing of the opportunity to submit sealed bids.

(7) A large natural gas utility must provide the Commission with a copy of all bid documents submitted by all bidders upon the Commission's request.

(8) A large natural gas utility is exempt from the requirements in sections (4) through (6) of this rule if:

(a) The large natural gas utility's procurement process requires competitive bidding, the total project cost is not anticipated to exceed ~~\$10~~25 million, and the large natural gas utility can provide a copy of the request for proposals and all bid documents submitted by all bidders to the Commission upon the Commission's request; or

(b) All of the following apply:

(A) A large natural gas utility is not the developer, owner, or operator of the biogas production facility;

(B) The request for proposals or other invitation for competitive bids for the project is issued by an entity that is not the large natural gas utility;

(C) The large natural gas utility does not receive or evaluate bids nor select a winning bid; and

(D) The large natural gas utility submits a bid in response to the request for proposals, in competition with other ~~entities~~bids that may be submitted, and the utility is awarded a contract only after all eligible bids are evaluated in accordance with the procedures of the entity that issued the request for proposals.

STATUTORY/OTHER AUTHORITY: ORS 756, 757

STATUTES/OTHER IMPLEMENTED: ORS 757.396

RULE SUMMARY: This rule implements natural gas utility reporting requirements, pursuant to ORS 757.394.

**860-150-0600****Renewable Natural Gas Compliance Reports**

(1) A large natural gas utility or a small natural gas utility that participates in the RNG program described in these rules must file an annual compliance report for each year that the utility participates in the program by making RNG purchases or qualified investments. Each compliance report will cover a calendar year, beginning January 1 through and including December 31. The first report is due on June 30 of the year following the first compliance year, and then annually on June 30 thereafter for as long as the utility continues to participate in the program.

(2) Each annual compliance report must include but not be limited to:

(a) The total volume of RNG acquired during the compliance year by type or source, including the volume as a percentage of the gas utility's sales load delivered to retail customers;

(b) A detailed description of the natural gas utility's expenditures that year on RNG purchases and on qualified investments;

(c) A summary of all transactions that year involving RTCs purchased, acquired, sold, transferred, or retired to comply with these rules;

(d) A list of all RTCs that the utility owned and that expired during the compliance year before the utility was able to retire them. The list must be accompanied by information about the value and source of these expired RTCs as well as an explanation for why the utility was not able to retire them prior to expiration;

(e) The number of unused, unexpired RTCs in the natural gas utility's possession at the end of the compliance year, and the utility's plan to fully utilize these certificates;

(f) The range of carbon intensity values and the average intensity value associated with the RTCs retired that year;

(g) Detailed information about qualified investments made during the compliance year, including but not limited to:

(A) The name of the facility where the qualified investment was made;

(B) The location of the facility where the qualified investment was made, including the city/town, county, and state;

(C) The type of facility. For example, the facility type includes but is not limited to a livestock feeding operation, a wastewater treatment plant, a food waste processing facility, a renewable-electricity-to-

hydrogen, facility, and so forth;

(D) The total quantity of RNG produced by or procured from that facility during the compliance year;

(E) The expected future annual quantity of RNG to be produced by or procured from that facility;

(F) The average RNG output of the facility expressed in standard cubic feet per minute;

(G) The disposition of RNG produced by the facility but delivered to non-retail utility customers or to non-Oregon customers;

(H) The number and value of RTCs acquired along with the RNG produced by the facility;

(I) An estimate of the carbon intensity for RNG produced at the facility and using an appropriate pathway, pursuant to OAR 860-150-0050.

(3) A large natural gas utility's annual compliance report must also include a detailed explanation of why the utility achieved, or did not achieve, that year's RNG target volume as specified in ORS 757.396, to include identifying challenges or barriers to RNG market growth.

(4) A large natural gas utility must explain how annual RNG purchases and qualified investments made during the compliance year aligned with the actions described in the utility's most recently acknowledged integrated resource plan.

(5) A large natural gas utility's annual compliance report must include the total annual incremental costs incurred during the compliance year, calculated as described in OAR 860-150-0200, and expressed as a percentage of the utility's total revenue requirement from its most recent normalized results of operations report.

(6) A small natural gas utility's annual compliance report must include the total costs incurred during the compliance year for RNG purchases and qualified investments, expressed as a percentage of the utility's total revenue requirement approved by the Commission in its most recent general rate revision.

(7) A small natural gas utility's annual compliance report must include the total volume of RNG acquired during the compliance year, as well as this volume expressed as a percentage of the total volume of gas delivered to customers that year.

STATUTORY/OTHER AUTHORITY: ORS 756, 757

STATUTES/OTHER IMPLEMENTED: ORS 757.394