

BEFORE THE OREGON DEPARTMENT OF ENERGY
February 1, 2011

**JOINT COMMENTS OF PACIFICORP, PORTLAND GENERAL ELECTRIC,
EUGENE WATER AND ELECTRIC BOARD, OREGON MUNICIPAL
ELECTRIC UTILITIES ASSOCIATION, PNGC POWER, AND OREGON
RURAL ELECTRIC COOPERATIVE ASSOCIATION TO EXPAND THE
OREGON RENEWABLE PORTFOLIO STANDARD AND ADDRESS
PROGRAMMATIC IMPLEMENTATION ISSUES**

Pursuant to the Oregon Department of Energy's (the "Department") Notice of Proposed Rulemaking dated December 15, 2010, to expand the Oregon renewable portfolio standard ("RPS") and address certain programmatic implementation issues, PacifiCorp, Portland General Electric ("PGE"), Eugene Water and Electric Board ("EWB"), Oregon Municipal Electric Utilities Association ("OMEU"), PNGC Power, and Oregon Rural Electric Cooperative Association ("ORECA") (collectively, the "Joint Parties") jointly submit these comments recommending that the Department revise the proposed rules as further described in Attachment A herein. The Joint Parties appreciate the opportunity to participate in this proceeding and the Department's consideration of these comments.

I. INTRODUCTION

The Joint Parties represent two investor-owned utilities and numerous consumer-owned utilities serving over 4 million customers in eight states, including California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, and owning over 13,000 megawatts ("MW") of generation. In Oregon, the Joint Parties serve over 2.7 million retail customers. The Joint Parties have, or represent parties with, a compliance obligation under the Renewable Energy Standard, ORS chapter 469A et. seq.

The Joint Parties have reviewed the Department's proposed rules issued January 3, 2011, and actively participated in numerous advisory committee meetings beginning in July 2010 to discuss the concepts and definitive language that resulted in the proposed rules. Most of the Joint Parties also testified at the Department's January 25, 2011, formal public hearing on the proposed rules. The Joint Parties appreciate the efforts of Department staff and other stakeholders in addressing the complex and varied issues presented in this proceeding. By and large, the Joint Parties agree that, with the few exceptions noted in these comments and Attachment A, the proposed rules represent both needed clarifications for compliance and agreement found among stakeholders in the rule advisory committee meetings.

In these comments, the Joint Parties address three important issues: (1) the treatment of stranded electricity and associated renewable energy credits ("RECs") (proposed OAR 330-160-0020), (2) the use of North American Electric Reliability Corporation ("NERC") electronic tagging ("e-Tags") (proposed OAR 330-160-0025), and (3) hydroelectric facility upgrades (proposed OAR 330-160-0050).

II. DISCUSSION

A. Stranded Electricity

The proposed rules provide that the Department is obligated to establish an interim tracking system to account for stranded electricity after July 1, 2011, if the Department determines that the Western Renewable Energy Generation Information System (“WREGIS”) is unable to be used to retroactively create RECs for stranded electricity.¹ The interim tracking system is to be established for “the singular purpose of ensuring that stranded electricity can be used to comply with the Oregon RPS.”² The rule also provides that the interim tracking system may be used to establish compliance with the Oregon RPS to the same extent as renewable energy certificates issued by WREGIS.³ To be eligible for the interim tracking system, an electric utility, electricity service supplier, or generator must electronically provide the Department the following information: (i) generation data, including metering data, identical to that required by WREGIS; (ii) attestation from an officer of the electric utility, electricity service supplier, or generator stating that the information being provided pursuant to 330-160-0020(4) is true and accurate to the best of their knowledge; and (iii) additional information requested by the Department necessary to process a generating unit’s stranded electricity in the interim tracking system. The Department, or its designee, may conduct verification audits for all stranded electricity issued RECs through the interim tracking system.

The Joint Parties support the Department’s proposed rules as they relate to the accounting of stranded electricity and associated RECs. While the Joint Parties would suggest that the Department include a date-certain for when the interim tracking system will be established, if necessary, the intent of the proposed rules is clear in the sense that the interim tracking system is to be established in a manner to allow electric utilities to comply with the Oregon RPS for the 2011 compliance year. Accordingly, the Joint Parties anticipate that an interim tracking system, if applicable, would be made available well in advance of the end of the 2011 RPS compliance year. Establishing a date-certain regarding when the interim tracking system will be adopted pending failure of WREGIS to “push” the stranded electricity into the WREGIS system allows the utilities to determine whether to continue to bank, sell or otherwise use the stranded electricity and

¹ See Proposed OAR 330-160-0020(4). “Stranded electricity” is defined in the proposed rules as qualifying electricity that:

- (a) was generated between January 1, 2007 and the effective date of these rules by a generating unit that was registered in WREGIS on or before the effective date of these rules and;
- (b) is not associated with a WREGIS-issued renewable energy certificate and;
- (c) was reported to the Department on or before March 1, 2011.

See Proposed OAR 330-160-0015(12).

² Proposed OAR 330-160-0020(4).

³ *Id.*

the associated RECs. In that way, the date-certain gives utility customers the greatest benefit possible for the value of those RECs.

The Joint Parties propose limited amendments to the proposed rules regarding stranded RECs in Attachment A, which is attached hereto.

B. E-Tags

The proposed rules make significant revisions to address the use and application of e-Tags in the context of identifying bundled RECs under the RPS.⁴ Specifically, the Department proposes to allow electric utilities to use other documentation (in lieu of e-Tags) to demonstrate that RECs claimed to be bundled RECs are in fact bundled RECs (i.e. the REC is associated with one megawatt-hour of qualifying electricity). The proposed rules limit the use of other documentation to instances where: (i) the qualifying electricity associated with the bundled renewable energy certificate was initially delivered to the electric utility's interconnected transmission or distribution system in the month and year it was generated; and (ii) the electric utility owned the facility where the qualifying electricity was generated or had rights to the qualifying electricity when it was generated.⁵ For all other transactions, an e-Tag would be required to demonstrate the bundled nature of a REC.

Although the Department has made significant strides in acknowledging the complexity and inadequacy of the use of e-Tags for the purpose of demonstrating the bundled nature of a REC, the proposed rules remain too restrictive and continue to overly rely on e-Tags to demonstrate bundled RECs. As the Joint Parties have commented during the advisory committee process and at hearing, the effectiveness of e-Tags remains questionable and that rather than being the single, definitive identification tool for the Department, e-Tags should be one of a suite of tools to be used by an electric utility to demonstrate the bundled nature of RECs. Through extensive conversations with other stakeholders to this proceeding, the Joint Parties propose additional revisions to the proposed rules to capture the concept that e-Tags are one source, among many, that will provide the Department with the information they need to confirm the bundled nature of RECs.

The Renewable Energy Standard requires large utilities with an obligation to comply with the RPS to meet that obligation with a certain percentage of bundled electricity. Among other things, this bundled requirement stemmed, during the creation

⁴ "Bundled renewable energy certificate" means a renewable energy certificate for qualifying electricity that is acquired:

- (a) By an electric utility or electricity service supplier by a trade, purchase or other transfer of electricity that includes the certificate that was issued for the electricity; or
- (b) By an electric utility by generation of the electricity for which the certificate was issued.

See ORS 469A.005(3),

⁵ Proposed OAR 330-160-0025(3).

of the law, from a desire to ensure that electric utility investment in renewable energy went, as much as possible, toward local, Pacific Northwest energy generation sources. In this context, the Joint Parties understand the need to have a system that provides the public with the assurance that utilities are following the law and that customers are receiving value, in actual renewable generation development, for the money they have paid. However, the use of the e-Tags, by themselves, does not achieve these objectives.

First, requiring additional manual entries in the form of an e-Tag could cause delay, data errors and expense for a system that is designed to improve reliability through a high degree of automation. The e-Tag was developed as a nearly automated way to track transactions of electricity scheduled to flow between control areas. E-Tags were never designed to track the sale, purchase or generation of renewable electricity with an associated REC. Following enactment of FERC Order No. 888, transmission service had to be reserved separate from the energy transfer and system operators needed to ensure that prior to an energy transfer, an entity had the necessary transmission capacity between source and sink. The e-Tag ensures that capacity is available for the energy transfer by reserving the transmission service. Submitting an e-Tag is only an electronic request for the movement of energy over a prescribed physical path, for a given duration and for a given energy profile. It is not a record of the type of energy or a way to manually enter information about a particular sale or purchase.⁶ Any information provided by an e-Tag for the purpose of identifying the bundled nature of RECs for Oregon's RPS is virtually useless in many circumstances.

Second, an e-Tag is created at the time the electronic request for capacity is made and identifies an amount of energy *intended* to be transferred. However, the *actual* amount of energy can vary from the amount scheduled. This problem is particularly evident with a highly variable, renewable power source like wind. For example, assume that PGE scheduled space, through the NERC system, for 100 MW of wind to be delivered on June 1 of a given year, at Slatt, but for some reason, the wind forecast was off significantly and it was particularly hot in the Columbia Gorge that day resulting in only 20 MW delivered. In that case, use of an e-Tag would provide PGE with a benefit it did not deserve, namely that PGE apparently "delivered" more bundled energy than was actually received. The opposite can also be true, with a larger amount of energy being received than scheduled. Neither of these scenarios are acceptable outcomes for utilities, customers or the state.

⁶NERC states that:

"Tagging is designed to be a computerized process with little or no human intervention. The human interface to the tagging process is via user and/or vendor provided special applications. These applications provide displays for the users to create, correct, approve, deny or adjust tags. Because it is a computerized process, the applications must ensure that all required is entered [*sic, probably intended to read "all required data is entered"*] completely and correctly. Many data entry mistakes will cause a tag to be rejected, thus delaying or possibly preventing a "deal," something everyone would like to avoid."

Tagging Essentials For Etag 1.7, February 18, 2002, available at <http://reg.tsin.com/Tagging/e-tag/Tagging%20Essentials.pdf>

Third, in certain instances, e-Tags simply are not created and, where created, may not provide any useful data as to the bundled nature of RECs. For example, for PacifiCorp, the majority of the generation is sourced and sunk within PacifiCorp's balancing authorities (Pac West and Pac East). In this circumstance, no e-Tag is created, since the electricity never leaves the PacifiCorp integrated system. In the limited number of circumstances where PacifiCorp's generation is located outside its system, any e-Tag will only identify the balancing authorities, with no specificity as to the sale, purchase or generation of renewable electricity with an associated REC. Similarly, the Bonneville Power Administration sells system power to its consumer-owned utility customers and does not generate e-Tags for these sales under network transmission contracts.

Despite these short-comings, the Joint Parties acknowledge that administrative rules and statutes are written with the future in mind. As a result, it is wise to continue to give electric utilities the *option* of using the e-Tag mechanism for compliance, if, at some point in time, the e-Tag is developed and refined in a manner that would allow for error-free recording of a renewable energy transfer. In this context, the use of e-Tags by electric utilities should be one of a variety of alternatives that electric utilities may provide the Department to demonstrate the bundled nature of RECs. Accordingly, the Joint Parties recommend that the primary means of compliance should be through documentation (in lieu of e-Tags) including, but not limited to, FERC Form 1 data, redacted contract data provided to the Department on a confidential basis, compliance reports and/or listings of designated network resources. This documentation will serve to provide the Department with better information about bundled RECs than e-Tags.

The Joint Parties have worked extensively with Department staff and other stakeholders to propose amended language to the proposed rules for the Department's consideration. The intent of the proposed amendments is to reflect the statutory language and legislative history pertaining to bundled RECs and to offer a compliance path that is sufficiently rigorous. In that context, the Joint Parties offer the proposed amendments described in Attachment A to clarify that the electric utility may provide e-Tags or other documentation for transactions involving owned or contracted for resources that are initially delivered to (1) the Bonneville Power Administration, (2) the transmission system of an electric utility⁷, or (3) to another delivery point designated by an electric utility or the Bonneville Power Administration for the purpose of subsequent delivery to the electric utility.

C. Hydroelectric Facility Upgrades

The proposed rules attempt to describe which types of "efficiency upgrades" to hydroelectric facilities made on or after January 1, 1995 produce qualifying electricity for the purposes of compliance with the Oregon RPS. While the Joint Parties support the Department's efforts to define "efficiency upgrades" as that term is used in the statute,

⁷ As defined in ORS 469A.005(7) and ORS 757.600(13), "electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state .

the proposed rules need significant revision to meet the intent and plain meaning of the statute.

The statutory provision providing that electricity from efficiency upgrades qualifies for RPS compliance is straightforward. The statute states, in whole, that:

Electricity from a hydroelectric facility that became operational before January 1, 1995, may be used to comply with a renewable portfolio standard if the electricity is attributable to efficiency upgrades made on or after January 1, 1995.⁸

The proposed rules, however, interpret this provision by imposing significant restrictions on the types of efficiency upgrades that qualify for the RPS and preclude “capacity upgrades,” and potentially efficiency upgrades that have associated capacity upgrades, from qualifying for the RPS. The Joint Parties strongly recommend that the Department amend the proposed rules for the reasons described herein.

- (1) The restrictions on efficiency upgrades in the proposed rules are contrary to the plain text of the statute and contrary to the legislative history.

Rules of statutory construction require the Department to adopt rules that do not exceed the authority granted by a statute.⁹ The Department may not depart from a legal standard expressed or implied in the law that the Department is administering.¹⁰ The Department must address these requirements by examining the text and context of the statute along with the legislative history that “may be used to confirm seemingly plain meaning and even to illuminate it.”¹¹

The plain text of the statute allows RPS credit for all electricity from “efficiency upgrades” to hydroelectric facilities made on or after January 1, 1995. There is no textual indication that qualifying efficiency upgrades should be limited in any way to those made to “existing” equipment of any kind, and there is no basis in the text for a specific limitation to “existing generators, turbines, or software relating to turbines or generators.” Additionally, there is nothing explicit or implicit in the context of the statutory language that suggests the limitations in the proposed rules.

The legislative history of the Oregon RPS statute supports the assertion that the Department may not restrict efficiency upgrades as described in the proposed rules. The legislature considered similar restrictions, as presented in testimony before committees in both the House and the Senate, but that the Legislature chose not to incorporate such restrictions into the RPS statute. For example, on March 20, 2007, David Moskowitz, representing Waterwatch and Trout Unlimited, presented testimony before the Senate Committee on Environment and Natural Resources. In his testimony, Mr. Moskowitz

⁸ ORS 469A.020(3). See also ORS 469A.025(4) (containing similar language).

⁹ See *Wolf v. Oregon Lottery Comm.*, 344 Or. 345 (2008), citing ORS 183.400.

¹⁰ See *Friends of Columbia Gorge v. Columbia River*, 346 Or. 366, 377 (2009)(internal citations omitted).

¹¹ See *State v. Gaines*, 346 Or 160, 172 (2009).

urged the Committee to adopt language in the RPS bill restricting efficiency upgrades that could qualify for RPS credit, similar to the restrictions in the proposed rules. The Committee did not act on these proposals. Similarly, on April 20, 2007, Mr. Moskowitz requested amendments limiting new diversions at existing hydroelectric facilities before the House Committee on Energy and Environment. The Committee did not act to incorporate these proposals into the final bill. Accordingly, the Joint Parties are concerned that the proposed rules may reflect an attempt to accomplish by rule what was specifically not intended by the Legislature.

- (2) The statute does not support the complete preclusion of capacity upgrades from Qualifying Electricity for the Oregon RPS.

The statute is straightforward, providing that all electricity from “efficiency upgrades” to hydroelectric facilities on or after January 1, 1995 qualifies for the RPS. The Joint Parties assume that the Department believes that the juxtaposition of this text next to language allowing electricity from generating facilities *other than* hydroelectric facilities that is “attributable to capacity or efficiency upgrades made on or after January 1, 1995”¹² means that capacity upgrades to hydroelectric facilities implicitly cannot create RPS qualifying electricity. But, the Department’s interpretation has no basis in fact and, as argued below, would contravene the statute’s intent.

The Department has an obligation to consider the context of statutory language in drafting rules,¹³ but not at the expense of the actual statutory text at issue.¹⁴ In most instances, any efficiency upgrade to a hydroelectric facility will result in an incidental capacity upgrade. That is, efficiency upgrades necessarily increase the nameplate capacity of a facility. So, if the Department adopts a rule that completely precludes capacity upgrades at hydroelectric facilities from producing electricity that qualifies for the RPS, electricity from efficiency upgrades at those facilities would also be precluded. This would stand in direct contravention to the language in the statute expressly allowing electricity from efficiency upgrades to qualify for the RPS. Therefore, the Joint Parties recommend that the Department adopt a final rule that clearly allows electricity from efficiency upgrades to hydroelectric facilities to qualify for the RPS despite capacity upgrades incidental to the efficiency upgrades.

- (3) Neither the purpose of the Oregon RPS nor Federal Energy Regulatory Commission (“FERC”) Guidance on production tax credits justify the restrictions on efficiency upgrades or the complete preclusion of capacity upgrades in the proposed rules.

The purpose of the Oregon RPS statute was to, among other things, promote research and development of new renewable energy sources to decrease reliance on fossil fuels, and to increase use of renewable energy sources and accelerate the transition to a

¹² ORS 469A.020(2).

¹³ See *State v. Gaines*, *supra*.

¹⁴ See *Friends of Columbia Gorge v. Columbia River*, *supra* (expressing the proposition that an agency may not depart from a legal standard expressed or implied in the statute).

more reliable and more affordable energy system.¹⁵ The proposed rules do not support these goals by unduly restricting efficiency upgrades and advocating for the complete preclusion of all hydroelectric facility capacity upgrades from qualifying for the RPS. The proposed rules would have the effect of discouraging beneficial efficiency upgrade projects at hydroelectric facilities that would in fact “decrease reliance on fossil fuels...[,]...increase...use of renewable energy sources,” and accomplish other implicit environmental purposes of the statute. These environmentally beneficial projects include efforts to optimize near real time hydro operations with computer software, to increase power production by diverting water from one portion of a hydroelectric facility to another, and to capture energy from newly mandated instream flow releases at existing facilities that are intended to benefit aquatic wildlife resources.

For example, at PacifiCorp’s Soda Springs dam, the company is currently in the process of constructing a state of the art fish ladder and fish screen. The increased instream flow at Soda Springs dam will be routed to the first pool of the fish ladder to provide attraction water for the ladder. This water will be screened to meet agency design criteria (and thus have no fish in it) and must be routed through an energy dissipation valve to reduce the energy in the water before it enters the fish ladder. This energy dissipation could be achieved by installing a new small turbine, however, the proposed rules may be interpreted such that the energy produced from such an installation would not qualify for the RPS, since the energy would come from a new turbine (which would increase the capacity of the facility). Further, although this water is already diverted into the fish ladder at the dam, putting this water through a turbine (i.e. generating energy from it rather than simply wasting that energy in a valve) on its way to the ladder would be a new appropriation for beneficial use, which is also prohibited by the proposed rules.

In another example, PacifiCorp recently constructed a new “forebay” at the Lemolo 1 development on the North Umpqua. This forebay was constructed to create a wetland that provides aquatic habitat and eliminate spills that create erosive events in the river. The additional storage in the forebay allows for an increase in the capacity of the Lemolo 1 plant and an increase in the megawatt-hours produced. This capacity increase may also be prohibited by the proposed rules, although no additional water is diverted from the existing dam.

In a final example, PGE’s Sullivan facility on the Willamette River, PGE was able to increase its diversion of water to increase the efficiency of its turbines while at the same time decrease the diversion of water that was running through a significantly more inefficient turbine owned by another party. In this case, river flows were unaffected and a greater amount of energy was produced, but technically the diversion for PGE was increased. No one should argue that such an innovative system was not encouraged by the Renewable Energy Standard, nor should they argue that there was any detriment to the river, fish or other species.

¹⁵ See Enrolled Senate Bill 838, 2007 Regular Session (*as cited in Industrial Customers of Northwest Utilities v. Oregon Department of Energy*, Oregon Court of Appeals, filed Oct. 20, 2010).

The legislative record and the resulting statute clearly show the legislature recognized the importance of hydropower in meeting the RPS goals. Indeed ORS 469A.010(3) specifically calls out the importance of hydropower as a qualifying resource for the RPS:

The Legislative Assembly finds that hydroelectric energy is an important renewable energy source and electricity from hydroelectric generators may be used to comply with a renewable portfolio standard as provided in ORS 469A.005 – 469A.210.

This language was referenced by the carrier of SB 838 on the floor of the House May 23, 2007. The carrier, then-Representative Jackie Dingfelder, also noted the inclusion of efficiency upgrades to existing hydro facilities as RPS-eligible. She also added that her legislative committee had broadened the eligibility of certified “low-impact” hydroelectric facilities to include those even in “protected areas.”

The Joint Parties support the goals of the statute and have been working with other stakeholders throughout the rule drafting process to create a reasonable definition of hydroelectric efficiency upgrades that recognizes these goals. The Joint Parties also acknowledge the Department’s attempt to craft the proposed rules in a manner that is consistent with the Federal Energy Regulatory Commission’s (“FERC”) Energy Policy Act of 2005 Renewable Energy Production Tax Credit guidance. In fact, some of the stakeholders recommended that the Department use this guidance document to inform the proposed rules, which provides insight into FERC’s process for determining efficiency upgrade tax credit eligibility.

However, the Department appears to have unacceptably relied on the FERC guidance as a prescriptive and limiting document, rather than as a descriptive document intended to provide examples of types of efficiency upgrades that should be included under the Oregon RPS. In the end, although the FERC guidance should serve as a useful document in the drafting process, the Joint Parties recommend that the Department refrain from using it to place limitations on the definition of “efficiency upgrades” that the statute does not justify. In the PGE example given above, the PGE facility qualifies for tax credits under section 45 of the Internal Revenue Code (the PTC); however, under the proposed rules, the facility would not qualify for producing RECs. This makes little sense and is unnecessarily confusing for the public, or utilities, to understand.

In conclusion, the Joint Parties submit the proposed amendments in Attachment A to address concerns discussed herein. The intent of the proposed amendments is to remove the unjustified restrictions on the types of efficiency upgrades to hydroelectric facilities that can produce qualifying electricity under the Oregon RPS and provide alternative language associated with the treatment of capacity upgrades to ensure that electricity from efficiency upgrades is not disqualified from the Oregon RPS due to an associated, but incidental, capacity upgrade. The Joint Parties also include language to ensure that efficiency upgrades at hydroelectric facilities that produce qualifying electricity are consistent with the environmental and other goals of the RPS statute. This

ATTACHMENT A

DEPARTMENT OF ENERGY DIVISION 160

ESTABLISH A RENEWABLE ENERGY CERTIFICATE SYSTEM FOR THE OREGON RENEWABLE PORTFOLIO STANDARD (RPS)

330-160-0005

Purpose

The purpose of these rules is to establish a system of renewable energy certificates to provide a means of compliance with the Oregon Renewable Portfolio Standard (RPS).

Stat. Auth.: ORS 469A.130.

Stats. Implemented: ORS 469A.130 – ORS 469A.145.

330-160-0015

Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 160, the following definitions apply unless the context requires otherwise:

- (1) “Banked Renewable Energy Certificate” has the meaning in ORS 469A.005.
- (2) “Bundled Renewable Energy Certificate” has the meaning in ORS ORS 469A.005.
- (3) “Compliance Year” has the meaning in ORS 469A.005.
- (4) “Department” means the Oregon Department of Energy.
- (5)-(4) "Director" means the Director of the Oregon Department of Energy.
- (6)-(5) “Electricity Service Supplier” has the meaning in ORS 469A.005.
- (7)-(6) “Electric Utility” means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state has the meaning in ORS ORS 469A.005.
- (8)-(7) (8) “Initially Delivered” means the first point of interconnection upon generation .
- (9) “Qualifying Electricity” has the meaning in ORS 469A.005.
- (910)-(8) “Renewable Energy Certificate” (REC or Certificate) means a unique representation of the environmental, economic, and social benefits associated with the generation of electricity

from renewable energy sources that produce Qualifying Electricity. One Certificate is created in association with the generation of one megaWatt-hour (MWh) of Qualifying Electricity. While a Certificate is always directly associated with the generation of one MWh of electricity, transactions for Certificates may be conducted independently of transactions for the associated electricity.

~~(101)~~⁽⁹⁾ “Renewable Energy Source” has the meaning in ORS 469A.005.

~~(112)~~ “RPS” means the Oregon renewable portfolio standard as established in ORS 469A.

~~(123)~~ “Stranded electricity” means qualifying electricity that:

~~(a)~~ was generated between January 1, 2007 and the effective date of these amended rules by a generating unit that was registered in WREGIS on or before the effective date of these rules and;

~~(b)~~ is not associated with a WREGIS-issued renewable energy certificate and;

~~(c)~~ was reported to the Department on or before ~~March~~May 1, 2011.

~~(134)~~⁽¹⁰⁾ “Unbundled Renewable Energy Certificate” has the meaning in ORS 469A.005.

~~(145)~~⁽¹¹⁾ “Vintage” means the month and year that qualifying electricity was created in accordance with WREGIS protocol or an interim tracking system approved by the Department pursuant to OAR 330-160-0020(4).

~~(156)~~⁽¹²⁾ “WREGIS” means the Western Renewable Energy Generation Information System², which ~~is~~ means the renewable energy certificate tracking and reporting system established by the California Energy Commission and the Western Governors Association and governed by the Western Electricity Coordinating Council for use by states and provinces throughout the western power interconnection.

Stat. Auth.: ORS 469A.130.

Stats. Implemented: ORS 469A.130 – ORS 469A.145

330-160-0020

Establishment of Renewable Energy Certificate System

- (1) Except as otherwise provided in OAR 330-160-0030(4), ~~R~~renewable energy certificates that are issued, monitored, accounted for and transferred by or through the regional renewable energy certificate system and trading mechanism known as the Western Renewable Energy Generation Information System (WREGIS) shall be the only renewable energy certificates that can be used by an electric utility or electricity service supplier to establish compliance with the Oregon Renewable Portfolio Standard (RPS).
- (2) All entities that wish to demonstrate compliance or participate in the renewable energy certificate system associated with the Oregon RPS must establish and maintain accounts

in good standing with the WREGIS renewable energy certificate system. These entities must comply with all information, data reporting and verification requirements of WREGIS and the WREGIS Operating Rules, including costs required for compliance. These accounts must be established before January 1, 2009 or before the earliest vintage of Certificate to be used to comply with the Oregon RPS, whichever is later.

(3) All entities that wish to demonstrate compliance or participate in the renewable energy certificate system associated with the Oregon RPS must participate in the system in accordance with the WREGIS Operating Rules, except as otherwise provided in 330-160-0030(4). The Operating Rules for WREGIS are publicly available from the WREGIS web site at www.wregis.org/content/blogcategory/26/47/ under the "Operating Rules" section. If there are substantial changes to the WREGIS Operating Rules which, at the Director's discretion, may significantly impact the ability of the WREGIS renewable energy certificate system to facilitate the Oregon RPS the Director may, after public consultation with interested parties, implement rulemaking to address those concerns.

(4) If, by July 1, 2011, the Department determines that the WREGIS system cannot be used to retroactively create renewable energy certificates for each megawatt hour of stranded electricity, the Department will establish, by September 1, 2011, an interim tracking system for the singular purpose of ensuring that stranded electricity can be used to comply with the Oregon RPS. The interim tracking system will issue, monitor, account for and permit transfer of renewable energy certificates associated with stranded electricity for the purposes of compliance with the Oregon RPS. Renewable energy certificates created by the interim tracking system may be used to establish compliance with the Oregon RPS to the same extent as renewable energy certificates issued by WREGIS.

(a) To be eligible for the interim tracking system, an electric utility, electricity service supplier, or generator must electronically provide the Department the following information:

(i) Generation data, including metering data, identical to that required by WREGIS; and
(ii) Attestation from an officer of the electric utility, electricity service supplier, or generator stating that the information being provided pursuant to 330-160-0020(4) is true and accurate to the best of their knowledge; and

(iii) Additional information requested by the Department necessary to process a generating unit's stranded electricity in the interim tracking system.

(b) The Department may conduct verification audits for all stranded electricity issued RECs through the interim tracking system or may designate an independent third party for verification services. Any electric utility, electricity service provider or generator that has participated in the interim tracking system is subject to these verifications.

Stat. Auth.: ORS 469A.130.

Stats. Implemented: ORS 469A.130.

Types of Renewable Energy Certificates

- (1) A bundled or unbundled renewable energy certificate may be used to comply with the RPS when it is issued through the WREGIS renewable energy certificate system or a Department approved interim tracking system pursuant to OAR 330-160-0020(4), is identified within the WREGIS as Oregon eligible, and is otherwise consistent with the rules and requirements of the Oregon RPS. The Department, ~~acting through the appropriate WREGIS protocol~~, will identify those generating facilities eligible for creation of Certificates that can be used to satisfy the Oregon RPS.
- (2) ~~(1) A~~ Each bundled renewable energy certificate used to comply with the RPS must ~~include~~ be supported by documentation demonstrating that one megawatt-hour of ~~energy~~ electricity that was associated with the ~~transfer of the WREGIS bundled~~ renewable energy certificate ~~to the electric utility or electricity service supplier. This documentation shall consist of a completed data field in the WREGIS certificate that contains a valid North American Electric Reliability Corporation (NERC) electronic tagging number (“e-Tag”) or another unique identification value adopted by the WREGIS that indicates one megawatt-hour of energy was delivered to~~ (1) the Bonneville Power Administration, (2) to the transmission system of an electric utility or (3) to another delivery point designated by an electric utility for the purpose of subsequent delivery to the electric utility.:
- ~~(a) the transmission system of the electric utility, or to a delivery point designated by an electric utility for the purposes of subsequent delivery to the electric utility; or~~
 - ~~(b) the Bonneville Power Administration for delivery, or subsequent delivery, to an electric utility.~~
- (3) To demonstrate that a renewable energy certificate is bundled under Subsection (2) of this rule, an electric utility must either:
- ~~— Electronically affix to the certificate a valid North American Electric Reliability Corporation (NERC) electronic tagging number (“e-Tag”) or another unique identification value adopted by WREGIS or the Department, which demonstrates that one megawatt hour of electricity was delivered to a point described in Subsection (2) of this rule; or~~
 - (a) Submit ~~other~~ documentation to the Department demonstrating that:
 - (i) The qualifying electricity associated with the bundled renewable energy certificate was initially delivered to the (1) Bonneville Power Administration, (2) to the electric utility’s ~~interconnected transmission or distribution system~~ of an electric utility, or (3) to another delivery point designated by an electric utility or the Bonneville Power Administration

for the purpose of subsequent delivery to the electric utility in the month and year it was generated; and

(ii) The renewable energy certificate for the qualifying electricity was acquired by an electric utility by: (1) a trade, purchase or other transfer of electricity by an electric utility or by the Bonneville Power Administration on behalf of an electric utility that includes the certificate that was issued for the electricity or (2) generation of the electricity from a facility owned by the electric utility for which the certificate was issued; or ~~owned the facility where the qualifying electricity was generated or had rights to the qualifying electricity when it was generated.~~

(b) For each megawatt hour of electricity delivered to an electric utility or to another delivery point designated by an electric utility or the Bonneville Power Administration for the purpose of subsequent delivery to the electric utility, electronically affix to the certificate a valid North American Electric Reliability Corporation (NERC) electronic tagging number (“e-Tag”) or another unique identification value adopted by WREGIS or the Department.

(4) The Department may review any documentation submitted under Subsection (3) of this rule for purposes of verifying compliance with the RPS.

~~(5)~~(2) A bundled renewable energy certificate does not need to demonstrate that the electricity identified by the NERC e-Tag is qualifying electricity or that the originating source identified by the NERC e-Tag is a renewable energy source.

Stat. Auth.: ORS 469A.130.

Stats. Implemented: ORS 469A.135 – ORS 469A.145.

330-160-0030

Allowed Vintage of Renewable Energy Certificates

- (1) The system of renewable energy certificates established through this rule may be used to comply with or participate in the Oregon RPS through the use of Certificates with a vintage of January 2007 or later.
- (2) No renewable energy certificate that derives from the WREGIS renewable energy certificate system or from a Department approved interim tracking system pursuant to OAR 003-160-0020(4) with a vintage before January 2007 will be eligible for compliance with the Oregon RPS.
- (3) Banked renewable energy certificates with a vintage of January 2007 or later, both bundled and unbundled, may be held for future use within the WREGIS renewable energy certificate system or a Department approved interim tracking system pursuant to OAR 003-160-0020(4) to comply with the Oregon RPS.

- (4) Generating facilities that produce qualifying electricity shall be eligible to receive certificates associated with generation beginning on January 1, 2007.

Stat. Auth.: ORS 469A.130.

Stats. Implemented: ORS 469A.130.

330-160-0040

Low-impact Hydro Electric Facilities

Pursuant to ORS 469A.020(4), the Department recognizes the Low Impact Hydropower Institute (LIHI) as the national agency to certify hydroelectric facilities as low impact for purposes of the Oregon RPS. A hydroelectric generation facility with current certification from the Low Impact Hydropower Institute and that complies with other requirements of ORS 469A is eligible for the Oregon RPS.

Stat. Auth.: ORS 469A.025, OL 2010, Ch. 71(SS)

Stats. Implemented: ORS 469A.025

Hist.: DOE 11-2010(Temp), f. & cert. ef. 8-31-10 thru 2-26-11

330-160-0050

Hydroelectric Facility Upgrades

- (1) Efficiency upgrades, in the context of Oregon RPS qualifying electricity from a hydroelectric facility power, refers to additional incremental hydroelectric power electricity production at an existing hydroelectric facility achieved through investments in including from upgrades to existing generators, or turbines, or software upgrades, directly relating to generators or turbines near real time optimization, power plant efficiency improvements, and other Department approved equipment changes other upgrades as the Department determines; Provided, however, that in no case shall efficiency upgrades do not include increased generation achieved through increased impoundments or increased appropriation or diversions of water.
- (2) The Department will determine the eligibility of incremental hydroelectric power production at an existing hydroelectric facility for purposes of Oregon RPS compliance.
- (a) Eligibility may not be based on any operational changes at the facility that are not directly associated with investments in efficiency upgrades as defined described in Subsection (1) of this rule.
- (b) The determination of the percentage increase in the efficiency of hydroelectric power production as described in Subsection (1) of this rule shall be based on the best available evidence, including but not limited to, representations by the Federal Energy Regulatory Commission or, for federal projects, by the authorized power marketing agency or agencies with jurisdiction over the federal projects.

(c) The annual electricityhydroelectric power production eligible for RPS-eligible renewable energy certificates is the annual hydroelectric power production at the facility multiplied by the percentage increase in efficiency from subsection (b) of this subsection.

(3) Capacity upgrades to a hydroelectric project are not eligible for the Oregon RPS. Capacity upgrades to a hydroelectric project include any increase in generating capacity other than an increase from an efficiency upgrade. A capacity upgrade to a hydroelectric facility that is the result of an efficiency upgrade shall not disqualify the incremental hydropower that results from the efficiency upgrade from qualifying as Oregon RPS eligible hydroelectric power.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.020

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