

By year-end, the Commission will adopt a methodology for timely recovery of costs related to the renewable portfolio standards (Docket UM 1330). The Commission will establish rules to implement other provisions of the bill in Docket AR 518. Further, at least every two years, the Commission will review utility implementation plans to meet the standards.

Under Section 14 of SB 838, ODOE is responsible for establishing a system of renewable energy certificates that electric utilities and electricity service suppliers will use for compliance with the renewable portfolio standards. ODOE has opened a rulemaking proceeding to accomplish this task, with public comment closing on December 11, 2007. All parties to ODOE's rulemaking support adoption of the Western Renewable Energy Generation Information System (WREGIS) for this purpose. The Commission already requires use of WREGIS for portfolio rate options² and for tracking PGE's wholesale sales of renewable energy certificates.³

Section 16 of the bill allows for indefinite "banking" of renewable energy certificates for complying with the renewable portfolio standards. ODOE asserts it has discretion under SB 838 to establish the eligible certificate "vintage" — the date the certificate is generated along with the associated eligible electricity (sometimes referred to as the "first banking date" or "first date of issuance"). In comments to ODOE, Pacific Power, Associated Oregon Industries and the Oregon Business Association assert that the law does not support ODOE's position. Instead, they argue SB 838 requires that certificates generated as of January 1, 1995, be eligible for complying with the standards.⁴

PUC staff counsel agrees with ODOE's position.

ODOE proposes a first banking date of October 1, 2007. As staff explains in the attached comments, we find this date reasonable. At the same time, electric utilities began to take possible renewable portfolio standards into account in resource planning and acquisition when likely passage of the bill was on the horizon. Therefore, staff also would find reasonable a first banking date as early as January 1, 2007. Staff's attached comments explain our concerns with the integrity of renewable energy certificates older than this date. Renewable Northwest Project supports a first banking date that is after the date of SB 838 enactment.

² See Regular Agenda Item 2, January 10, 2006, public meeting.

³ See Commission Order No. 07-083.

⁴ Section 3 of SB 838 establishes January 1, 1995, as the oldest facility date to qualify under the bill. (Capacity and efficiency upgrades after that date also qualify if the resource is otherwise eligible.)

Staff's comments include three recommendations:

- 1) The rules should require the utility to document that "bundled" certificates were procured with the underlying qualifying electricity.
- 2) The rules should establish a process for resolving disputes related to eligibility of:
 - a) a specific generating facility; and
 - b) renewable energy certificates from a qualifying generating facility, including but not limited to the portion of a mixed-fuel facility attributable to qualifying electricity.
- 3) The rules should include a general waiver provision that would allow the Director to waive a particular rule for good cause.

PROPOSED COMMISSION MOTION:

Staff be authorized to submit the attached comments on the Oregon Department of Energy rulemaking related to SB 838.

Attachment



Oregon

Theodore R. Kulongoski, Governor

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December 11, 2007

To: Kip Pheil, Oregon Department of Energy

From: Lisa Schwartz, senior analyst

Subject: Rulemaking related to Oregon's renewable portfolio standards (SB 838)

The Public Utility Commission of Oregon (Commission) provides the following supplemental comments on draft rules proposed by the Oregon Department of Energy (ODOE) related to SB 838.

- 1) **330-150-0020** – The Commission supports the adoption of the Western Renewable Energy Generation Information System (WREGIS) as the system of renewable energy certificates that electric utilities and electricity service suppliers will use for compliance with the renewable portfolio standards in SB 838. This is the system established for tracking renewable energy certificates throughout the Western interconnection.
- 2) **330-150-0025** – As staff explained in initial comments, ODOE's rules should specify a *procedure* for matching “bundled” WREGIS certificates to the originally qualifying electricity. Alternatively, the rules should require documentation that the certificates were procured with the underlying qualifying electricity. In this case, the rule would specify the intent of the required documentation; ODOE would develop implementation procedures consistent with the rule. Such a rule is important for maintaining the integrity of certificates banked over a long period of time as well as certificates associated with qualifying electricity that is substituted with non-qualifying sources after the time of generation — for example, for firming and shaping.

Conversely, proposed rule 330-150-0025(2)¹ is neither necessary nor useful. Section 14(2) of SB 838 clearly allows substitution of qualifying electricity after the time of generation.

- 3) **330-150-0030** – The Commission finds reasonable ODOE's proposal to establish October 1, 2007, as the first banking date for renewable energy certificates eligible to comply with the renewable portfolio standards. The Legislature enacted the Oregon Renewable Energy Act “to promote research and development of new renewable energy sources in Oregon” and “for Oregon's electric utilities to decrease their reliance on fossil fuels for electricity generation and to increase their use of renewable energy sources.” We note that at ODOE's informal workshop and later hearing, the Oregon Municipal Electric Utilities Association recommended a date no later than October 1, 2007, consistent with the start date of new power contracts with Bonneville Power Administration for qualifying renewable energy.

¹ The proposed rule states, “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.”

At the same time, with likely passage of the bill on the horizon, electric utilities began to take possible renewable portfolio standards into account in resource planning and acquisition. Therefore, we also would find reasonable a first banking date as early as January 1, 2007.

We have concerns about the integrity of older renewable energy certificates. The earlier the first banking date, the more difficult it is to establish that the renewable energy certificates are in fact available for compliance with the renewable portfolio standards — in other words, the utility did not previously claim the certificates in power source disclosures to retail consumers,² sell them in the wholesale market, or use them to meet consumer purchases for voluntary renewable energy programs.

- 4) **Dispute resolution** – As staff recommended in initial comments, the rules should establish a dispute resolution process for disagreements related to eligibility of: a) a specific generating facility or b) renewable energy certificates from a qualifying generating facility, including but not limited to the portion of a mixed-fuel facility attributable to qualifying electricity. *See* Section 4(7) of SB 838.
- 5) **General waiver provision** – The rules should include a provision that allows a person to request, and ODOE to grant or deny, a waiver from any specified rule. The Commission does this routinely now in its rulemakings. We recommend language similar to the following: “For good cause shown, a person may request the Director waive any of the rules in this Division.”

Thank you for your consideration.

c: Michael Graine
Diana Enright
Sven Anderson
Bill Drumheller

² For example, any amount of generation included as “wind” in the utility’s power source disclosure for a given year cannot be used to comply with renewable portfolio standards in another year.