

SB 838: Oregon Renewable Energy Act Establishing an Oregon Renewable Energy Standard

Section-by-Section Summary

SB 838 with -2 Amendments

as introduced in Senate Environment Committee, March 15th, 2007

SECTION 1. Definitions

Defines: Banked renewable energy certificates, BPA electricity, Bundled renewable energy certificates, Compliance year, Consumer-owned utility, Electric company, Electricity services supplier, Electric utility, Qualifying electricity, Renewable energy source, Retail electricity consumer, and Unbundled renewable energy certificate.

Qualifying Electricity

SECTION 2 and 3. Qualifying Electricity

- Electricity from BPA's environmentally preferred power or another similar BPA renewable product can be used to comply with the RES.
- Electricity can comply with the RES if it comes from a renewable energy facility that became operational on or after January 1, 1995, or is from an older facility but is due to an upgrade in efficiency after 1995.
- Electricity from a hydroelectric facility that is owned by an electric utility and was in operation before January 1, 1995 may be used to comply with the RES if the facility is certified as a low-impact hydroelectric facility after January 1, 1995. (Up to 50 average MW per year from such low-impact hydro facilities may be used to comply per utility as specified in Section 4 (5)).

SECTION 4. Renewable Energy Sources

- Electricity derived from wind, solar PV and solar thermal, wave, tidal, and ocean thermal and geothermal may all be used to comply.
- Electricity derived from biomass and biomass products can be used to comply, including "from organic human or animal waste, spent pulping liquor, forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce uncharacteristic stand replacing wildfire risk, wood material from hardwood timber grown on land described in ORS 321.267 (3) (private, managed, timber lands), agricultural residues, dedicated energy crops and biogas produced from organic matter, wastewater, anaerobic digesters or municipal solid waste." Biomass combustion does not comply if it comes from burning municipal solid waste or wood with chemical treatments.
- Hydropower from a facility located outside any protected area designated by the Power and Conservation Council as of July 23, 1999, or any area protected under the federal Wild and Scenic Rivers Act or the Oregon Scenic Waterways Act, or hydropower attributable to efficiency upgrades made on or after January 1, 1995 to an existing dam. Each utility may also use up to 50 average MW per year generated from a certified low-impact hydro facility described in Section 3 (4) and owned by the utility to comply with the RES.
- Electricity derived from hydrogen gas derived from an eligible source of energy may be used to comply.
- The Department of Energy can add resources by rule, excluding oil, gas, coal, and nuclear.

Renewable Portfolio Standards

SECTION 5. Specifies that electric utilities must comply with the applicable renewable portfolio standard described in Section 6 or 7 and electric service suppliers must comply with the RPS described in Section 9.

SECTION 6. Large utility renewable portfolio standard

- This section applies only to utilities that make sales equaling 1% or more of total retail electricity sales in the state.
- At least 5% of their sales must be from qualifying renewable energy sources starting in 2011 and going through 2014; 15% for 2015-2019; 20% for 2020-2024; and 25% in 2025 and subsequent years.
- If a utility grows to exceed 1% of state retail sales, they trigger the targets. If they 'drift-in' to the primary standard, they have to meet targets going forward as follows: 5% starting the fourth calendar year after

their load exceeds 1% of total state load; 15% starting the 10th calendar year; 20% starting the 15th calendar year; 25% starting the 20th calendar year.

SECTION 7. Small utility renewable portfolio standard

- Utilities that make sales of less than 1% of state sales are not subject to the energy standards in this Act. Instead, at least 5% of small utilities' sales must be from renewable sources by 2025.
- This exemption terminates if the utility or a joint operating entity (i.e. a generating cooperative like Pacific Northwest Generating Cooperative) that includes the utility as a member acquires a new contract for electricity from a coal-fired power plant or if the utility or joint operating entity makes a new investment in a coal resource.
- This exemption also terminates if a utility acquires service territory of an investor-owned utility without their consent.

SECTION 7. Exemptions from compliance with renewable portfolio standards.

- Utilities are not required to comply with the renewable portfolio standards described in Sections 6 and 7 to the extent that compliance would require acquiring energy beyond the utility's load and when doing so would displace non-fossil energy.
- Utilities are not required to comply with the large utility RPS to the extent that compliance would displace electricity from existing contracts for the mid-Columbia dams.
- COUs are not required to comply with the large utility RPS to the extent that compliance would displace any firm energy commitments of BPA electricity.

SECTION 9. Electricity service suppliers

- An ESS must meet the requirements applicable to the utilities in whose territory the ESS' customers are located.
- If an ESS serves customers located in the service territories of multiple utilities, they will be required to meet aggregate standard based on the amount of electricity sold by the ESS in each service territory.
- The PUC will establish procedures for implementation of an RPS for ESSs serving customers in IOU services territory, and COUs will establish procedures for implementation of an RPS for ESSs serving customers in their service territories.

SECTION 10. Manner of complying

- Utilities can comply with the applicable renewable portfolio standard by a) using bundled RECs issued for electricity generated during the compliance year; b) using unbundled RECs issued for electricity generated during the compliance year or banked bundled or unbundled RECs; or c) making alternative compliance payments.
- RECs issued or acquired by a utility on or before March 31st of a given calendar year can be used to comply with the preceding calendar year, allowing a 3 month 'true-up' period. If used to 'true-up' the previous year, these RECs cannot be used to comply with the current calendar year.

SECTION 11. Implementation plan, annual reports.

- Investor-owned utilities shall submit an implementation plan, including annual targets, to the PUC, and report at least every two years on progress made toward meeting the targets.
- An IOU will develop and file an initial implementation plan with the PUC no later than January 1, 2010.

Cost Cap

SECTION 12. Limits on cost of compliance

- Utilities are not required to comply with a renewable portfolio standard described in Sections 6 or 7 to the extent that the incremental cost of compliance, the cost of unbundled renewable energy certificates and the cost of alternative compliance payments exceeds 4% of the utility's annual revenue requirement for the compliance year. The PUC will establish the revenue requirement for an investor-owned utility; the governing body of a consumer-owned utility will establish its revenue requirement.
- The revenue requirement will be based on electricity-related operations and does not include amounts spent on energy efficiency programs, low-income energy assistance, the incremental cost of compliance with the RPS, the cost of unbundled RECs or alternative compliance payments. The revenue requirement does include: all operating expenses of the utility during the compliance year, including

depreciation and taxes; and, for IOUs, the total rate base of the company in the compliance year multiplied by the rate of return established by the PUC for debt and equity.

- The incremental cost of compliance is the difference in net present value between the levelized annual delivered cost of the qualifying electricity and the levelized annual delivered cost of reasonably available non-qualifying electricity. This cost includes capital, O&M, financing, transmission and interconnection, load following and ancillary services and costs associated with integration and shaping.

Cost Recovery

SECTION 13. Cost recovery

- All prudently incurred costs associated with compliance are recoverable for an investor-owned utility, including interconnection and other costs associated with transmission and delivery of qualifying electricity. Costs associated with compliance are not an above-market cost for purposes of ORS 757.600-757.687
- The PUC shall establish an automatic adjustment mechanism or another method for timely recovery of prudently incurred costs incurred by an IOU to construct or acquire renewable energy facilities or associated electricity transmission. The IOU must file with the commission seeking approval of the use of an automatic adjustment mechanism.

Renewable Energy Certificates

SECTION 14. REC System

- The State Department of Energy, in consultation with the PUC, shall establish a system of RECs that can be used for compliance, and allows electronic issuance, transfer and tracking of RECs through a regional trading system, including but not limited to the Western Renewable Energy Generation Information System (WREGIS).
- The validity of a bundled REC for purposes of compliance will not be affected by the substitution of any other electricity for the underlying qualify electricity at any point after generation, allowing for power swapping, shaping and firming of the underlying electricity.

SECTION 15. RECs that may be used for compliance

- A bundled REC may be used for compliance if the facility that generates the qualify electricity for which the certificate was issued is located in the United States and within the geographic boundary of the WECC and the electricity is delivered to BPA or to an electric utility serving Oregon.
- An unbundled REC may be used for compliance if the facility that generated the qualify electricity for which the certificate was issued is located within the geographic boundary of the WECC.
- RECs issued for BPA environmentally preferred power or other similarly designated BPA electricity may be used for compliance regardless of the location of the generating facility.

SECTION 16. Use, transfer, and banking of RECs

- RECs may be traded, sold or otherwise transferred by utilities.
- RECs that are not used to comply in a given compliance year may be banked and carried forward indefinitely for compliance in a later year, but banked RECs must be used before other RECs and the oldest banked RECs must be used first.
- Utilities are responsible for demonstrating that RECs used for compliance are derived from qualifying renewable energy sources and that the RECs have not been traded, sold or otherwise transferred to another party.
- The same REC can be used both for the state RPS and any federal RPS but not for another state's standard. RECs used to comply with another state's RPS cannot be used to comply with this RPS.

SECTION 17. Limits on use of unbundled RECs

- IOUs may not use unbundled RECs for more than 20% of their compliance with the large utility RPS.
- For compliance years before 2020, COUs subject to the large utility RPS may use unbundled RECs for up to 50% of their compliance. Beginning in 2020, COUs may not use unbundled RECs for more than 20% of their compliance.
- The limitations on the use of unbundled RECs do not apply to RECs from net metered facilities or off-grid facilities in Oregon, or to RECs from electricity generated in Oregon by a Qualifying Facility under ORS 758.505-758.555 (state PURPA).

SECTION 18. Multi-state electric utilities.

The PUC shall establish by rule a process for allocating the use of RECs by a multi-state utility.

Compliance Reports

SECTION 19. Compliance reports.

- Each utility that is subject to the standard shall make an annual compliance report. Investor-owned utilities and ESSs report to the PUC. Consumer-owned utilities report to the members or customers of the utility, which the PUC will review to determine compliance.

Alternative Compliance Payments

SECTION 20. Investor-owned utilities; electricity service suppliers.

- The PUC will establish an alternative compliance rate for each investor-owned utility or ESS subject to the standard, expressed in dollars per megawatt-hour. The rate must provide adequate incentive for the utility to purchase or generate electricity in lieu of using alternative compliance payments.
- The commission shall require alternative compliance payments from any investor-owned utility or ESS that does not comply with the standard by using RECs. An IOU or ESS may also elect to use the ACP subject to a prudence review by the PUC.
- An IOU or ESS may not be required to make alternative compliance payments to the extent that the cost of doing so would exceed the cost cap established in Section 12.
- The commission shall determine the extent to which alternative compliance payments may be recoverable in rates. The utility will deposit any amounts recovered in rates in a holding account established by the utility, which will accrue simple interest at the utility's rate of return, and can only be spent on the cost of acquiring new renewable energy capacity, efficiency upgrades to existing facilities owned by the utility, or on energy conservation programs. The PUC must approve any expenditures by an IOU from the holding account.
- Amounts collected from customers and spent from the holding account are not included in the rate base and the utility cannot earn a rate of return on them.

SECTION 21. Consumer-owned utilities

- The governing body of a consumer-owned utility shall establish an alternative compliance payment rate set in the same manner, to the extent possible, as that used by the PUC.
- Amounts collected as an alternative compliance payment may only be spent on the cost of acquiring new renewable energy capacity, efficiency upgrades to existing facilities owned by the utility, or on energy conservation programs.

Penalty

Section 22. Penalty

- If an IOU or ESS fails to comply with the standard, the PUC may impose a penalty in an amount determined by the commission, in addition to any alternative compliance payment required under section 20.
- Moneys collected through penalty payments shall be transferred to the Energy Trust or its successor.

Green Power Rate

SECTION 23. Green power rate.

- Utilities shall allow customers to elect a green power rate. The rate shall reasonably reflect costs paid by the utility for the electricity. Prudently incurred costs will be recoverable by an IOU.
- Electricity procured under a green power rate may not be used for compliance with the renewable energy standard.
- This section does not apply to IOUs or ESSs subject to ORS 757.604 (SB 1149) who are already required to offer a voluntary green power rate.
- An electric utility may comply with this requirement by contracting with a third party provider.

Community-Based Renewable Energy Projects

SECTION 24. Goal for community-based renewable energy projects.

- The Legislature declares that it is the goal of the state that by 2025, at least 8% of Oregon's electricity come from projects with a generating capacity of less than 20 megawatts. All agencies shall establish policies and procedures promoting this goal.

Job Impact Study

SECTION 25. Job impact study

- The state Dept of Energy shall periodically conduct a study to evaluate the impact of this Act on jobs, including the number of new jobs created, the average wage rates, and the provision of health care and other benefits for those jobs, as well as the availability of workforce training opportunities. The first study will be conducted within two years.

SECTION 26.

- Sunsets the job impact study on January 2, 2026.

Public Purpose Charge

SECTION 27 and 28.

- Amends ORS 757.612 (SB 1149) to extend the public purpose charge through January 1, 2026, re-directs the renewable energy portion of the public purpose charge toward small-scale renewable energy projects, and reinstates state PURPA for investor-owned utilities.

Miscellaneous

SECTION 29

- The unit and section captions in this act are for convenience only and are not part of statutory law.

SECTION 30

- This act goes into effect upon passage.