

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

## ***Section-by-Section Summary***

### ***SB 838, C-engrossed version***

***As passed by Oregon House of Representatives, May 23<sup>rd</sup>, 2007.***

**Prepared by Renewable Northwest Project, May 24<sup>th</sup>, 2007.**

#### SECTION 1. Definitions

Defines: Banked renewable energy certificates, BPA electricity, Bundled renewable energy certificates, Compliance year, Consumer-owned utility, Electric company, Electric utility, Electricity services supplier, 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.
- States that the Legislative Assembly finds that hydroelectric energy is "an important renewable energy source" and specifies that hydroelectricity can be used to comply with the RES as provided below.
- 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.
- If an efficiency upgrade is made to a BPA hydroelectric facility, only the portion of the incremental electricity generation attributable to Oregon's share of the electricity can be used to comply with the RES.
- 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) below).

#### 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 that has been treated by chemical preservatives.
- Hydropower from a facility located outside any protected area designated by the Northwest 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 may be used to comply. Hydropower attributable to efficiency upgrades made on or after January 1, 1995 to an existing dam can also be used to comply. Additionally, each utility may use up to 50 average MW per year generated from a certified low-impact hydro facility described in Section 3 (4) to comply with the RES.
- Electricity derived from hydrogen gas derived from an eligible source of energy may be used to comply.
- If a generating facility employs multiple energy sources, only the portion of generation attributable to the qualifying resources described above may be used to comply.
- The State Department of Energy can approve new 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 3% 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 3% of state retail sales in any three consecutive calendar years, they 'drift-in' to the primary standard in the calendar year following the three-year period where their load grew to exceed 3% of state load. If they 'drift-in' to the primary standard, they have to meet targets going forward as follows: 5% starting the fourth calendar year after they become subject to the primary standard; 15% starting the 10<sup>th</sup> calendar year; 20% starting the 15<sup>th</sup> calendar year; 25% starting the 20<sup>th</sup> calendar year.

### SECTION 7. Small and medium utility renewable portfolio standards

- Except as provided in this section, utilities that make sales of less than 3% of state sales are not subject to Sections 1-24 of this Act.
- Utilities serving less than 1.5% of total state load must meet a smaller standard. At least 5% of these small utilities' sales must be from renewable sources by 2025.
- Utilities serving greater than 1.5% of total state load but less than 3% of state load must meet an intermediate standard. At least 10% of these medium-sized utilities' sales must be from renewable sources by 2025.
- The exemption for small and medium-sized utilities described in this section 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 subsection does not apply to:
  - wholesale market purchases for which the energy source for the electricity is unknown;
  - BPA electricity;
  - Acquisition of electricity under existing contracts entered into before the effective date of this Act;
  - A renewal or replacement contract for an expiring contract entered into before the effective date of this Act;
  - Electricity included in a contract for the purchase of qualifying renewable electricity that is necessary to shape, firm or integrate the qualifying electricity;
  - Electricity generated by a facility which a utility owns an interest in, or which an electric generating cooperative of which the utility is a member owns an interest in, in either case provided that the interest was acquired before the effective date of this Act; or
  - Investments made in a generating facility that uses coal if the investments were made for the purposes of improving the facility's pollution mitigation equipment or the facility's efficiency or are necessary to comply with governmental regulations or standards.
- This exemption also terminates if a utility acquires service territory of an investor-owned utility without their consent.
- A utility is subject to the full standard described in Section 6 beginning in the calendar year following the year in which the utility's exemption terminates under subsections (4) or (5) described above (i.e. investment in coal or acquiring of an IOUs service territory without consent).

### SECTION 8. 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 an RPS to the extent that compliance would displace electricity from existing contracts for the mid-Columbia River dams.

- Consumer-owned utilities are not required to comply with the an RPS to the extent that compliance would displace any firm energy commitments of lowest priced BPA electricity.

#### SECTION 9. Electricity service suppliers

- An electricity service supplier (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 may be required to meet an aggregate standard based on the amount of electricity sold by the ESS in each service territory and the requirements of the utilities normally serving those service territories.
- The Public Utility Commission (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 renewable energy certificates (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 31<sup>st</sup> 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 (IOUs) shall submit an implementation plan, including annual targets and progress towards meeting those targets, to the PUC. These plans must be revised and updated at least every two years.
- The implementation plan filed under this section may include procedures that will be used by an IOU to determine if the costs of constructing a facility or acquiring qualifying bundled or unbundled RECs for compliance are consistent with the PUC's least-cost, least-risk planning standards. (That is, the implementation plan may be integrated with a utility's integrated resources planning process).
- 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 (see Section 20 below) exceeds 4% of the utility's annual revenue requirement for the compliance year. Each 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 costs of capital, O&M, financing, transmission and interconnection, load following and ancillary services and costs associated with other using other assets to integrate, firm or shape qualifying electricity on a firm annual basis to meet retail electricity needs.

## **Cost Recovery and Automatic Adjustment Mechanism**

### 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, shaping, firming, integration and delivery of qualifying electricity. Costs associated with compliance are not an above-market cost for purposes of ORS 757.600-757.687 (relating to eligible uses of the public purpose charge established by Senate Bill 1149)
- The PUC shall establish an automatic adjustment mechanism (AAM) as defined in ORS 757.210 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. Notwithstanding other laws, the PUC shall conduct a proceeding to establish the terms of the AAM at the request of an interested party. The PUC shall provide parties to the proceeding with the procedural rights outlined in ORS 756.500 to 756.610 including but not limited to opportunity to develop evidentiary records, conduct discovery, introduce evidence, conduct cross-examination and submit written briefs and oral argument. The PUC shall issue a written order with the findings of the evidentiary record developed in the proceeding.
- An IOU must file with the commission seeking approval of the use of an automatic adjustment mechanism to recover rates. Notwithstanding other laws, the PUC shall conduct a proceeding to determine whether to approve a proposed change to rates under the AAM at the request of an interested party. The PUC shall provide parties to the proceeding with the procedural rights described above and issue a written order with findings on the evidentiary record developed in the proceeding. A filing made under this subsection

## **Renewable Energy Certificates**

### SECTION 14. REC System

- The State Department of Energy (DOE), 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. The DOE may allow use of RECs tracked 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 (first in, first out)
- Utilities and ESSs 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 compliance with both the state RPS and any federal RPS. 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, including banked unbundled RECs, for more than 20% of their compliance with the large utility RPS described in Section 6.

- For compliance years before 2020, COUs subject to the large utility RPS may use unbundled RECs, including banked 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.
- There are no limits on the use of unbundled RECs for compliance with the small or medium utility RPSs described in Section 7.
- The limitations on the use of unbundled RECs in this section 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 (i.e. PacifiCorp).

### **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.
- The PUC shall use this report to determine compliance with an RPS and shall consider:
  - The relative amounts of RECs and other payments used by the utility to comply;
  - The market prices for electricity or REC purchases;
  - Whether the actions taken by the utility are contributing to long term development of renewable generating capacity;
  - The effect of the actions taken by the utility on retail rates paid by the utility's customers;
  - Good faith forecasting differences associated with the projected number of retail electricity consumers and the availability of electricity from renewable sources (i.e. intermittent generating sources);
  - For IOUs, consistency with the implementation plan filed under Section 11 and acknowledged by the PUC; or
  - Any other factors deemed reasonable by the PUC.
- The PUC shall establish rules and requirements for compliance reports submitted by IOUs and ESSs.

### **Alternative Compliance Payments**

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

- The PUC shall establish an alternative compliance payment (ACP) rate for each investor-owned utility or ESS subject to the standard, expressed in dollars per megawatt-hour.
- In establishing the ACP rate, the PUC shall base it on the cost of qualifying electricity, contracts that the IOU or ESS has acquired for future delivery of qualifying electricity and the number of unbundled RECs the utility or ESS anticipates using in the compliance year to comply with the RPS. The PUC shall also consider any determinations made in their review of the company's compliance report under Section 19.
- The PUC must set the rate to 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 under Section 19 (review of the compliance report).
- 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.
- Funds in a holding account established under this Section 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.

- The PUC shall require ESSs to establish holding accounts substantially similar to those provided for IOUs.
- The PUC shall establish initial ACP rates as required under this Section no later than July 1, 2009.

#### 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, energy conservation programs or on expenses associated with research, development and demonstration projects related to the generation of qualifying electricity by the utility (e.g. on wave power demonstration projects).

#### **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 of Oregon or its successor.

#### **Green Power Rate**

##### SECTION 23. Green power rate.

- All Oregon utilities not already required to offer a voluntary green power rate under ORS 757.604 (SB 1149) shall now 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 voluntary green power rate may not be used for compliance with the renewable energy standard.
- 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 state 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 of the effective date of this Act.

##### SECTION 26.

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

#### **Public Purpose Charge**

##### SECTION 27, 28 and 29.

- 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.
- These amendments take effect January 1, 2008.

## **People's Utility Districts**

### SECTION 30-44.

- Amends several statutes under ORS 261 to allow People's Utility Districts (PUDs) to acquire electricity generating facilities on their own or in partnership with other COUs or generating cooperatives and to acquire, own, trade, sell and otherwise transfer renewable energy certificates.

## **Cost Recovery for Conservation Measures**

### SECTION 45 and 46.

- The PUC may authorize an IOU to include in its rates the costs of funding or implanting cost-effective energy conservation measures implemented after the effective date of this Act. These costs may include weatherization programs that conserve energy.
- These costs are in addition to the public purpose charge established by ORS 757.612 (SB 1149).
- The PUC shall ensure that a retail electricity consumer with a load greater than one average megawatt is not required to pay more than 3% of the consumer's total cost of electricity for the public purpose charge and the total cost of any amounts included in rates under this Section and that the customer does not receive any benefits of from energy conservation measures if the costs of the measures are included in rates through this Section. (Essentially, large electricity consumers will have nothing to do with this section and energy conservation measures and expenses affecting these large customers shall be limited to those under the existing public purpose charge).

## **Miscellaneous**

### SECTION 47

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

### SECTION 48. Emergency Clause

- This act goes into effect upon passage.