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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 330
DEPARTMENT OF ENERGY

FILED

10/25/2017 2:50 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Implementing legislation regarding renewable energy certificates under the Renewable Portfolio Standard program.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/29/2017 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Salem, OR 97301

Filed By:
Wendy Simons
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/29/2017

TIME: 9:00 AM

OFFICER: Wendy Simons

ADDRESS: Meitner Room

550 Capitol St NE

Salem, OR 97301

NEED FOR THE RULE(S):

The proposed changes to 330-160-0015 are needed to make permanent an existing temporary rule and to add rule language to further clarify implementation of Oregon Laws 2016, chapter 28 (SB 1547). The rule will extend the deadline by five months for stakeholders to apply for thermal renewable energy certificates (T-RECs) associated with qualifying thermal generation that occurred between the effective date of Oregon Laws 2016, chapter 28 (SB 1547), March 8, 2016, and the date that relevant Oregon Department of Energy (ODOE) rules were effective, December 21, 2016. Additionally, the rule will remove the requirement that generator representatives must be registered for thermal generation by the deadline. Finally, the proposed rule would add a definition for "distribution utility," to align with a change made to statute by Senate Bill 1547.

The proposed changes to 330-160-0025 and -0030 update existing rule language to reflect the changes made to existing statute by Oregon Laws 2016, chapter 28 (SB 1547). Specifically, the rules on renewable energy certificate (REC) banking would be updated to reflect the statutory removal of unlimited REC banking, while the rules on types of RECs would be updated to include a newly allowable pathway for generating bundled RECs when electricity service suppliers and distribution utilities mutually agree upon a delivery point for generation.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Administrative Rules, Division 330-160:

http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_330/330_160.html

Oregon Laws 2016, Chapter 28 (Senate Bill 1547):

<https://olis.leg.state.or.us/liz/2016R1/Downloads/MeasureDocument/SB1547/Enrolled>

FISCAL AND ECONOMIC IMPACT:

The rule changes are expected to have minimal fiscal impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) Regarding the proposed changes to 330-160-0015, minimal impact is anticipated for state agencies. It is already the responsibility of the Oregon Department of Energy to certify facilities as Renewable Portfolio Standard (RPS)-eligible, to update those facilities' RPS certification, to update the RPS-related rules as required by statute, and to engage with stakeholders periodically; therefore, any additional administration required by the Department will be minimal. The proposed rule changes do not affect local government units.

Regarding the proposed changes to 330-160-0025 and -0030, the Department estimates there will be no additional fiscal impact on state agencies, local government units or the public from these rule changes beyond what was anticipated during the passage of Senate Bill 1547.

(2) Regarding the proposed changes to 330-160-0015: There are currently 16 facilities located in Oregon that are already certified RPS-eligible and that would likely qualify to generate T-RECs. Of these existing facilities, approximately one-fourth are small businesses meeting the criteria of ORS 183.310(10). It is unknown how many new facilities will register to generate T-RECs, and of those how many will meet the criteria to be considered a small business under ORS 183.310(10). However, regardless of ownership, many of the facilities that could qualify to generate T-RECs are likely to employ fewer than 50 people and to operate in low-margin or struggling natural resource-based business sectors such as agriculture and forest products.

The proposed rules would not add requirements for any facilities owned by a small business, but rather would make it easier for them to apply to receive T-RECs for stranded thermal generation.

Regarding the proposed changes to 330-160-0025 and -0030, the Department estimates there will be no additional compliance costs from these rule changes beyond what was anticipated during the passage of Senate Bill 1547.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

All stakeholders interested in this rule were invited to participate in a Department-hosted workshop held in August

2017, and to comment on a draft of the proposed rules. Notices were provided to all individuals and entities who have signed up to receive updates on ODOE rulemakings related to the RPS or to biomass. Additionally, notice was provided via the Department's website.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The proposed rule changes in 330-160-0015 are to make permanent a temporary rule which benefits stakeholders by extending a filing deadline and for which stakeholders have previously been notified, while the other proposed changes are to align Department rule with 2016 legislation. The Department convened a stakeholder workshop, where all interested stakeholders were invited to participate, and it also circulated draft rules for comment in advance of filing proposed rules.

HOUSING IMPACT STATEMENT:

As required under ORS 183.530 and 183.534, The Department believes these rules will cause no impact to the following costs for developing a typical 1,200 square foot detached single family dwelling on a 6,000 square foot parcel of land:

- (1) materials and labor costs
 - (2) administrative construction or other costs
 - (3) land costs, or
 - (4) other costs.
-

RULES PROPOSED:

330-160-0015, 330-160-0025, 330-160-0030

AMEND: 330-160-0015

RULE SUMMARY: The proposed rule would make two changes to the requirements for stranded thermal generation: the deadline for applying would be changed from August 1, 2017 to January 1, 2018 and the requirement for registering for thermal generation in the Western Renewable Energy Generation System (WREGIS) on or before August 1, 2017 would be removed. These changes are identical to changes made in a temporary rule filed by the Department, effective July 24, 2017 and expiring January 19, 2018. Additionally, the proposed rule would add a reference to the existing statutory definition for "distribution utility."

CHANGES TO RULE:

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 469A.005.¶¶
- (3) Compliance Year has the meaning in ORS 469A.005.¶¶
- (4) Department means the Oregon Department of Energy.¶¶
- (5) Director means the Director of the Oregon Department of Energy.¶¶
- (6) "Distribution Utility" has the meaning in ORS 469A.005.¶¶
- (7) Electricity Service Supplier has the meaning in ORS 469A.005.¶¶
- (78) Electric Utility has the meaning in ORS 469A.005.¶¶
- (89) Federal Columbia River Power System (FCRPS) means the transmission system constructed and operated by Bonneville Power Administration (BPA) and the hydroelectric dams constructed and operated by the U.S. Army

Corps of Engineers and the Bureau of Reclamation in Oregon, Washington, Montana and Idaho.¶

(910) Generator representative means an electricity generating facility's owner, operator or WREGIS account holder.¶

(101) High Water Mark Contract means a power sales contract between a consumer-owned utility and BPA that contains a contract high water mark, and under which the utility purchases power from BPA at rates established by BPA in accordance with the tiered rate methodology.¶

(112) Joint Operating Entity means an entity that was lawfully organized under State law as a public body or cooperative prior to September 22, 2000, and is formed by and whose members or participants are two or more public bodies or cooperatives, each of which was a customer of BPA on or before January 1, 1999.¶

(123) Multiple-fuel facility means a facility that is capable of generating electricity using more than one type of fuel. A facility that uses fossil fuel for generator start-up but otherwise uses a single eligible resource and is not required to register in WREGIS as a multi-fuel generating unit, as defined by WREGIS, is not a multiple-fuel facility.¶

(134) Oregon's share as used in ORS 469A.020(3), means the portion of Federal Columbia River Power System generation attributable to the Oregon load of hydroelectric efficiency upgrades that BPA provides to:¶

(a) Each consumer-owned utility serving load located in Oregon, pursuant to a High Water Mark Contract;¶

(b) Each Joint Operating Entity with retail utility members serving load located in Oregon, pursuant to a High Water Mark Contract; and¶

(c) Each investor-owned utility participating in the Residential Exchange Program that serves load located in Oregon.¶

(145) Qualifying Electricity has the meaning in ORS 469A.005.¶

(156) Qualifying thermal energy means thermal energy that meets the requirements of OAR 330-160-0080.¶

(167) 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.¶

(178) Renewable Energy Source has the meaning in ORS 469A.005.¶

(189) Residential Exchange Program means the arrangement, based on section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act, whereby regional utilities sell BPA an amount of power equal to their residential and small-farm load at their average system cost in exchange for federal electric power, and pass on the benefits to their residential and small-farm customers in the form of a bill credit.¶

(1920) RPS means the Oregon renewable portfolio standard as established in ORS 469A.¶

(201) Secondary purpose means an end use for thermal energy that:¶

(a) Is for heating, cooling, humidity control, or mechanical or chemical work; and¶

(b) For which fuel or electricity would otherwise be consumed.¶

(212) Station service means the energy that is used to operate an electric or thermal generating plant. It includes energy consumed for plant lighting, power, and auxiliary facilities in support of the electricity generation system. Station service includes thermal energy used to process the facility's fuel.¶

(223) Stranded electricity means qualifying electricity that:¶

(a) Was generated between January 1, 2007, and March 4, 2011, by a generating unit that was registered in WREGIS on or before March 4, 2011; and¶

(b) Was reported to the Department on or before March 11, 2011.¶

(234) Stranded thermal energy means qualifying thermal energy that:¶

(a) Was generated between March 8, 2016 and the effective date of this rule;¶

~~(b) Was generated by a facility that was registered for thermal generation in WREGIS on or before August December 21, 2017;~~¶

(eb) Was generated by a facility for which an application for certification as Oregon RPS-eligible was submitted to

the Department on or before ~~August~~ January 1, 2017; and-¶

(~~c~~) Was reported to WREGIS no later than six months after the application for certification as Oregon RPS-eligible was approved by the Department.-¶

(~~24~~5) Thermal Renewable Energy Certificate (T-REC) means a REC created in association with the generation of 3,412,000 British thermal units of qualifying thermal energy, which is equivalent to one REC created in association with the generation of one megawatt hour of Qualifying Electricity.-¶

(~~25~~6) Unbundled Renewable Energy Certificate has the meaning in ORS 469A.005.¶

(~~26~~7) Vintage means the month and year that qualifying electricity was created in accordance with WREGIS protocol.¶

(~~27~~8) WREGIS means the Western Renewable Energy Generation Information System, which is 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.

Statutory/Other Authority: ORS 469A.130, OL 2016, Ch. 28 (SB 1547)

Statutes/Other Implemented: ORS 469A.130 - 469A.145, OL 2016, Ch. 28

AMEND: 330-160-0025

RULE SUMMARY: The proposed rule would update the description of delivery requirements for bundled renewable energy certificates (RECs) to reflect changes made by Senate Bill 1547 (2016), specifically that electricity service suppliers (ESSes) and distribution utilities must mutually agree upon a delivery point for generation eligible to produce bundled RECs.

CHANGES TO RULE:

330-160-0025

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, and is otherwise consistent with the rules and requirements of the Oregon RPS. The Department will identify those generating facilities eligible for creation of Certificates that can be used to satisfy the Oregon RPS.¶¶

(2) Each bundled renewable energy certificate used to comply with the RPS must be supported by documentation demonstrating that one megawatt-hour of electricity that was associated with the bundled renewable energy certificate was delivered to the Bonneville Power Administration, to the transmission system of an electric utility or, to another delivery point designated by an electric utility for the purpose of subsequent delivery to the electric utility, or to a delivery point mutually agreed to by a distribution utility and an electricity service supplier for the purpose of subsequent delivery to the distribution utility serving the customer of the electricity service supplier.¶¶

(3) To demonstrate that a renewable energy certificate is bundled under Subsection (2) of this rule, an electric utility must either:¶¶

(a) Electronically affix to the certificate a valid North American Electric Reliability Corporation (NERC) electronic tagging number (e-Tag) or another unique identifier 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¶¶

(b) In a manner prescribed by the Department, submit documentation to the Department demonstrating that:¶¶

(A) The renewable energy certificate for the qualifying electricity was acquired 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 by an electric utility by generation of the electricity for which the certificate was issued; and¶¶

(B) The qualifying electricity associated with the bundled renewable energy certificate was initially delivered to a point described in Subsection (2) of this rule.¶¶

(4) An electric utility required to demonstrate compliance with the RPS through the use of bundled renewable energy certificates, and which demonstrates that a renewable energy certificate is bundled pursuant to 330-160-0025(3)(b), may be required to electronically affix to that certificate a unique identifier adopted by WREGIS or the Department.¶¶

(5) The Department may conduct verification audits or may designate a third party for verification services to review any documentation submitted under Subsection (3) of this rule for purposes of verifying compliance with the RPS.¶¶

(6) 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.

Statutory/Other Authority: ORS 469A.130, OL 2017, Ch. 28 (SB 1547)

Statutes/Other Implemented: ORS 469A.135 - 469A.145, OL 2017, Ch. 28

AMEND: 330-160-0030

RULE SUMMARY: The proposed rule would update the language on allowable REC vintages to reflect new REC banking rules in statute as established by Senate Bill 1547 (2016).

CHANGES TO RULE:

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 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 helbanked for future use within the WREGIS renewable energy certificate system ~~and used for compliance~~ with the Oregon RPS according to the requirements of ORS 469A.140.¶¶
- (4) Generating facilities that produce qualifying electricity shall be eligible to receive certificates associated with generation beginning on January 1, 2007.¶¶
- (5) Renewable energy certificates created by WREGIS that are associated with stranded electricity or with stranded thermal energy may be used to comply with the Oregon RPS.¶¶
- (6) Generating facilities that meet the requirements of OAR 330-160-0080 and that produce qualifying thermal energy shall be eligible to receive T-RECs associated with generation on or after March 8, 2016.

Statutory/Other Authority: ORS 469A.130, OL 2017, Ch. 28 (SB 1547)

Statutes/Other Implemented: ORS 469A.130, OL 2017, Ch. 28 (SB 1547)