



Renewable Northwest Project

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**Renewable Northwest Project and Environment Oregon  
Comments on ODOE Rulemaking Relating to the Oregon Renewable Energy Act (SB 838)  
December 11th, 2007**

The Renewable Northwest Project and Environment Oregon appreciate the opportunity to provide comments on the draft rules (version #2) proposed by the Oregon Department of Energy related to the implementation of the Oregon Renewable Energy Act (ODOE draft rules).

RNP has previously stated our support for the ODOE draft rules in written comments on December 4 and in a public hearing on December 5. RNP and Environment Oregon here limit our focus to one issue: the date after which renewable energy credits are eligible for banking for later RPS compliance.

RNP and Environment Oregon support ODOE's draft rules #2 specifying October 1, 2007 as the start date for REC vintages eligible for banking, and urge ODOE to finalize the rules as such. RNP and Environment Oregon oppose other stakeholders' suggestion to allow for REC vintages starting in 1995 to be eligible for banking. This position is not in compliance with the intent of SB 838, and we have serious concerns about verifying the status and integrity of older renewable energy credits.

**October 1, 2007 Start Date for REC Vintages Eligible for Banking**

The ODOE draft #1A rules specified January 1, 2008 as the beginning date for REC vintages eligible for banking. The ODOE draft 2 rules move this date back to October 1, 2007 to align with the Bonneville Power Administration fiscal year and to allow public utilities that began new contracts for renewable energy at the start of the BPA fiscal year to receive credit for RPS compliance. We support this change.

**SB 838 Intent**

SB 838 strikes a delicate balance by spurring new renewable energy generation to serve Oregon, while not penalizing those who have made early investments in renewable energy. That balance is struck by grandfathering generating facilities built after January 1, 1995 (see Section 3). The 1995 date for eligible facilities provides a leg up for compliance by a utility that already made

investments in renewable energy facilities for reasons other than the Oregon RPS. Utilities that invested early in renewable energy may rely on generation from these older facilities *on a going forward basis*, just as another utility would be able to rely on new generation from a facility built in response to SB 838.

Neither a plain reading of the statute nor the legislative record authorizes the creation of compliance credits from generation at these older facilities prior to the SB 838's enactment, as PacifiCorp and other stakeholders' suggest in their comments to ODOE. Section 3 of SB 838, which includes the 1995 start date, refers only to the age of eligible generating facilities. The 1995 start date was not intended to allow utilities to include generation from past years towards compliance with an Oregon renewable portfolio standard that was not envisioned when the generation was originally acquired by the utility.

The stated intent of SB 838 is to “promote research and development of new renewable energy sources in Oregon” and to “decrease [Oregon electric utilities'] reliance on fossil fuels for electricity generation and to increase their use of renewable energy sources” (see the preamble of SB 838). The intent of SB 838 is to drive *new* renewable energy generation on a going forward basis. Permitting vintage RECs to be used for compliance with the RPS runs counter to this intent, altering the balance between giving utilities credit for pre-existing renewable energy facilities and driving new renewable energy generation. Every megawatt-hour of renewable energy generated between 1995 and 2007 that is counted for RPS compliance is one megawatt-hour less of renewable energy generation spurred by the passage of SB 838, weakening the intended effect of the bill –to promote the development of *new* renewable energy sources in Oregon.

A start date for banking RECs on October 1, 2007 does not disadvantage or penalize utilities that acquired renewable before that date. Utilities acquired renewable energy for reasons unrelated to SB 838 – i.e. acquiring least-cost generation to serve load consistent with integrated resource plans, fulfilling regulatory commitments, reducing reliance on natural gas and enhancing portfolio diversity, responding to customer demand for more renewable energy, et cetera. A start date for banking shortly after the enactment of SB 838 provides full credit to utilities that proactively acquire new renewable generating resources in response to the passage of SB 838. Utilities thus may acquire new renewable energy resources in advance of their first compliance targets.

### **Verifying the Status and Integrity of Vintage RECs**

We are troubled over the difficulty of verifying the status and integrity of vintage renewable energy credits. SB 838 charges ODOE with establishing a system for the credible tracking and verification of renewable energy credit creation, transactions and retirements (See Section 14). Lacking a robust tracking and verification system like WREGIS, opportunities for accurate accounting of RECs are virtually nonexistent. Allowing RECs from vintage years before the implementation of the WREGIS system makes it virtually impossible to determine whether a REC is in fact eligible for Oregon RPS compliance. In the past, utilities have made wholesale REC transactions, retired RECs to supply voluntary renewable energy credits and made

numerous environmental claims that require the retirement of RECs.<sup>1</sup> Accurately and credibly determining the eligibility of an individual vintage REC is therefore quite difficult – hence the need for the establishment of a system like WREGIS in the first place.

In summary, ODOE’s draft rules #2 specify an October 1, 2007 start date for banking RECs. This achieves the goals of spurring new generation of renewable energy, honoring early renewable investments made by utilities, and allowing utilities to acquire renewable energy facilities in advance of the first statutory compliance requirements. Finally, the banking start date in ODOE’s draft rules allays serious concerns about the credibility and integrity of RECs from older vintages created before the establishment of a robust REC tracking and verification system such as WREGIS.

Dated December 11, 2007  
Respectfully Submitted,

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<sup>1</sup> For example, reporting any amount of renewable energy generation – either as “wind”, “geothermal” or more generically, “renewable energy” – in a utilities system mix in public disclosures or in marketing materials constitutes an environmental claim and requires the retirement of renewable energy credits corresponding to any generation labeled as “renewable.”