

**OPUC Staff Draft Rule
Alternative Compliance Payments
Division 083
Renewable Portfolio Standards
March 16, 2009**

OAR 860-083-00XX

Alternative Compliance Payments [ORS 469A.180]

Definitions

[These definitions are in staff's draft rule on compliance reports:]

“Banked renewable energy certificate” has the meaning given that term in ORS 469A.005(1).

“Bundled renewable energy certificate” has the meaning given that term in ORS 469A.005(3).

“Commission” means the Public Utility Commission of Oregon.

“Renewable energy source” has the meaning given that term in ORS 469A.005(10).

“Qualifying electricity” has the meaning given that term in ORS 469A.005(9).

“Retail electricity consumer” has the meaning given that term in ORS 469A.005(11).

“Unbundled renewable energy certificate” has the meaning given that term in ORS 469A.005(12).

[Definitions to be added to OAR 860-083-0005]

“Alternative compliance rate” has the meaning given that term in ORS 469A.180(2).

“Applicable filing for an electric company” means an implementation plan under ORS 469A.075, a filing for a change to rates for retail electricity consumers that includes costs of qualifying electricity in rates for the first time, or a compliance report under ORS 469A.170. Applicable filing does not include filings to change rates before 2011.

“Applicable filing for an electricity service supplier” means a compliance report under ORS 469A.170.

“Compliance year” has the meaning given that term in ORS 469A.005(4).

“New qualifying electricity for an electric company” means qualifying electricity where the costs are first included in an applicable filing for a compliance year. New qualifying electricity can be from new generating facilities, generating facilities with significant investments, or new contracts to purchase electricity.

“New qualifying electricity for an electricity service supplier” means qualifying electricity from new generating facilities, generating facilities with significant investments, or new contracts to purchase electricity that the supplier plans to use to serve customers of electric companies subject to ORS 469A.052 and are first operational in a compliance year.

“Proxy plant” means, unless otherwise specified by the commission, a base-load combined-cycle natural gas-fired generating facility that is used to estimate the costs of non-qualifying electricity corresponding to new long-term qualifying electricity with the same beginning amortization year.

- (1) No later than October 1, 2010, and no later than October 1 of each succeeding even-numbered calendar year, the commission will set an alternative compliance rate for the next even-numbered compliance year and the year immediately following that even-numbered compliance year for each electric company subject to renewable portfolio standards contained in ORS 469A.052.
- (2) The commission will consider the following factors, and any other factors as determined by the commission, when setting an alternative compliance rate for an electric company that will provide an adequate incentive for the electric company to purchase or generate qualifying electricity in lieu of using alternative compliance payments to meet the applicable renewable portfolio standard set forth in ORS 469A.052:
 - (a) Forecasts of the likely costs of new qualifying electricity compared to the cost of non-qualifying electricity;
 - (b) Likely future deliveries of qualifying electricity from contracts and generating facilities owned by the electric company, both planned and existing;
 - (c) The number of unbundled renewable energy certificates the electric company anticipates using to meet the applicable renewable portfolio standard; and
 - (d) Commission determinations made under ORS 469A.170₂ in reviewing compliance reports by the electric company and information from a review of the company's compliance report for the previous compliance year, including but not limited to:
 - (A) The methods of compliance with the renewable portfolio standard including, but not limited to, the relative use of: bundled and unbundled renewable energy certificates that were not banked; banked renewable energy certificates; and alternative compliance payments;
 - (B) The timing of electricity purchases;
 - (C) The market prices for electricity purchases and unbundled renewable energy certificates;
 - (D) Whether the actions taken by the electric company are contributing to long-term development of generating capacity using renewable energy sources;
 - (E) The effect of the actions taken by the electric company on the rates payable by retail electricity consumers;
 - (F) Good faith forecasting differences associated with the projected number of retail electricity consumers served and the availability of electricity from renewable energy sources; and
 - (G) Consistency of the compliance reports for the two previous compliance years with the applicable implementation plan filed under ORS 469A.075, as acknowledged by the commission, including conditions specified by the commission under ORS 469A.075(3).
- (3) The commission may consider the following additional factors when setting an alternative compliance rate for an electric company:

- (a) Uncertainties associated with forecasts of the incremental cost of new qualifying electricity and the incremental cost of compliance in implementation plans required by ORS 469A.075. Uncertainties include, but are not limited to:
 - (A) Forecasts of the costs of renewable resources;
 - (B) Fuel price forecasts for proxy plants required under OAR 860-083-XXX [*the incremental cost rule*]; and
 - (C) Whether federal tax incentives for renewable resources will be extended beyond current sunset dates;
 - (b) Uncertainties about future market prices for renewable energy certificates including, but not limited to:
 - (A) Uncertainties associated with forecasts of the incremental costs of new qualifying electricity; and
 - (B) The effects of policies by other states and the federal government on the availability and price of renewable energy certificates; and
 - (c) Plans by the electric company to use alternative compliance payments.
- (4) The commission may approve the use of the alternative compliance funds in the holding accounts described in ORS 469A.180(4) for the purposes specified in ORS 469A.180(5) upon a filed request by the electric company, in an order issued upon conclusion of the electric company's general rate case or in another proceeding as directed by the commission.
- (a) If such funds are used for the acquisition of qualifying electricity, the renewable energy certificates associated with such electricity may be used by the electric company for future compliance with the renewable portfolio standard.
 - (b) Upon a request by the electric company, or in response to a filing of an implementation plan by the electric company, the commission may order that all or a portion of such funds be transferred to the nongovernmental entity receiving funds under ORS 757.612 (3)(d). The commission may specify the proportions of such funds to be used for acquiring qualifying electricity and for energy conservation programs within the company's service area.
 - (c) The electric company must provide service of a request or proposal to expend such funds upon persons appearing on the service list of the most recent implementation plan acknowledgement proceeding for the electric company. The commission will allow an opportunity for public comment before making a decision to expend such funds.
- (5) In deciding which uses to approve for alternative compliance funds in the holding accounts described in ORS 469A.180(4) the commission may consider the following factors and any other factors as determined by the commission:
- (a) The findings of the Legislative Assembly in enacting the renewable portfolio standards;
 - (b) Timeliness of the proposed use of such funds compared to other funding opportunities;
 - (c) The amount of such funds in the electric company's holding accounts;

- (d) The likely impacts of using such funds for the acquisition of long-term qualifying electricity;
 - (e) Whether there are opportunities to fund cost-effective energy conservation programs within the electric company's service area beyond a level that might not otherwise be achieved;
 - (f) Whether there are opportunities to fund cost-effective efficiency upgrades to the electricity generating facilities owned by the electric company beyond a level that might not otherwise be achieved; and
 - (g) Whether the impacts in subsections 5(e) and 5(f) of this rule might occur earlier with the use of such funds.
- (6) The commission will adopt an alternative compliance rate for the compliance year for each electricity service supplier subject to ORS 469A.065 no later than 15 months before each compliance year in the following manner:
- (a) The alternative compliance rate for an electricity service supplier will be the weighted average of the alternative compliance rates for the electric companies subject to ORS 469A.052 in whose service areas the electricity service supplier provides electricity.
 - (b) The weights for subsection 6(a) of this rule will be the retail sales in megawatt-hours by the electricity service supplier in each electric company service area for the year prior to the applicable compliance year.
- (7)(a) The commission may approve expenditures of the alternative compliance funds in the holding accounts described in ORS 469A.180(6) for the purposes stated therein through a proceeding as directed by the commission.
- (b) An electricity service supplier may request that the commission direct that current or prospective alternative compliance funds in the holding accounts described in ORS 469A.180(6) be paid directly to the nongovernmental entity receiving funds under ORS 757.612 (3)(d). The nongovernmental entity must use the funds to acquire energy conservation for the customers of the electricity service supplier.