

AR 518 – Renewable Portfolio Standards, Phase III

INFORMAL COMMENTS OF PACIFIC POWER

January 30, 2008

PacifiCorp d/b/a Pacific Power (the “Company”) appreciates the opportunity to submit these informal comments on Commission Staff’s draft incremental cost and alternative compliance payment (ACP) rules dated January 16, 2009, relating to the implementation of Senate Bill 838 (SB 838) and the Oregon Renewable Portfolio Standard (RPS). These comments represent the Company’s preliminary observations and recommendations on the draft rules. The Company intends to offer more extensive comments and edits during the workshops scheduled over the next two months.

The Company appreciates the comprehensive and challenging effort undertaken by Commission Staff in drafting these rules. However, the Company is concerned that the requirements described in the draft rules are onerous, not cost-effective, and introduce an unacceptable level of uncertainty into the RPS compliance process. SB 838 was designed with a careful balance between promoting the development of new renewable resources for Oregon and doing so in a cost-effective manner. This balance is recognized throughout SB 838 in a number of consumer protection provisions. Unfortunately, the complexities of the draft rules do not further this objective and may result in additional costs to be borne by customers. Accordingly, the Company encourages Staff and other interested parties to work cooperatively to streamline the processes described in the draft rules and, to the greatest extent possible, incorporate the use of current analytical work the utilities are already performing through integrated resource planning and avoided costs filings.

I. Incremental Costs

Assuming that the incremental cost rules include a proxy plant approach, the Company recommends that the parties explore the possibility of implementing a Commission-determined and approved proxy plant approach. As drafted, the rules require the Company to develop the inputs for the proxy plant, including estimated heat rates, availability factor, annualized replacement costs, and operation and maintenance costs, among other things. In being responsible for proxy plant inputs and values, the Company is being tasked with an onerous regulatory requirement that will likely result in the addition of new, technically-qualified personnel and resources to implement the draft rule, the costs of which will ultimately be borne by customers. Further, by requiring utilities to calculate proxy plant inputs and values, Staff is authorizing different standards for RPS compliance among utilities. This has the potential to create a complex, uncertain and prolonged regulatory process for reaching conclusion on a proxy plant methodology for the utilities, as well as create confusion with prudence determinations and costs authorized in rates.

A Commission-determined and approved proxy plant methodology will achieve a reasonable level of regulatory certainty in a cost-effective manner. The Commission could establish a rigorous review process upfront by issuing proxy plant inputs and values subject to a

defined notice and comment period whereby interested parties could comprehensively discuss the proxy plant methodology. Thereafter, the Commission could issue an order adopting the proxy plant methodology for the relevant compliance year. In doing so, the Commission would provide the utilities with clear and concise guidance necessary for compliance with the RPS. Over time, the proxy plant methodology process would become routine and further reduce the cost risks to customers of a complex regulatory process.

Finally, at a minimum, the Company recommends that Staff review the draft rule to ensure that the requested information incorporates the use of current analytical work the utilities are already performing through integrated resource planning and avoided costs filings. As drafted, the rule requires the utilities to provide a never-ending avalanche of information in the context of RPS compliance. Limiting duplication is cost-effective and ensures the consumer protection measures of SB 838 are observed.

II. Alternative Compliance Payments

The ACP is a key customer protection provision in SB 838. Specifically, the ACP protects customers from unaffordable costs associated with individual resources (including unbundled RECs) used for compliance with the RPS. The Company appreciates that Staff's draft rule intends to further the general goals of the RPS. However, in addition to the complexity of the draft rules, the Company is concerned that the rule is punitive to the utility and its customers.

The draft rule's stated primary goal that the ACP be used to replace a prior compliance year's shortfall is punitive to the utilities. The Oregon Department of Energy's October 2007 Summary of the RPS most clearly explains the application of the ACP:

In lieu of acquiring a REC to comply with a portion of the RPS, a utility or ESS may instead pay a set amount of money per megawatt-hour (MWh) into a special fund that can be used only for acquiring renewable energy resources in the future, or for energy efficiency and conservation programs.

The ACP is intended to be *in lieu of* qualifying electricity or unbundled RECs to comply with the standard. As proposed, Staff's draft rule in Section 5 requires that if a utility makes an alternative compliance payment, which is intended to be to the benefit of customers, that it must apply the funds to future incremental costs of qualifying electricity and "replace" the prior shortfall by 250 percent of the original level. This "repayment" is not contemplated by the statute and is punitive to the utility by requiring a subsequent repayment in excess of the shortfall. The statute clearly allows the use of an ACP for *compliance* with the standard. The statute has separate penalty provisions if the Company *fails to comply* with the statute.

The Company recommends that the ACP be designed in a clear and concise manner with the first use of the funds targeted to energy conservation programs. This would be consistent with the State's energy policy which identifies energy conservation as the foundation of Oregon's energy goals. If cost-effective conservation activities are not readily available, the costs should be applied to new renewable resources.