

Senate Bill 838 C-Engrossed: Renewable Energy Standard; Section by Section Summary

May 22, 2007

Overview of Senate Bill 838.

Senate Bill 838 establishes a Renewable Energy Standard, also known as a Renewable Portfolio Standard (RPS), for electricity. The bill requires that 25% of Oregon's electric load come from new renewable energy by 2025. The bill includes the following provisions:

1. The RPS requirement of 25% by 2025 applies to electric utilities and any electricity service suppliers that serve at least 3% of Oregon's electric load. This covers Oregon's three largest utilities, Portland General Electric, PacifiCorp and Eugene Water & Electric Board. Depending on the rate of load growth, this means most of the new resources needed to meet this standard will likely be renewable energy.
2. The RPS sets interim targets of 5% by 2011, 15% by 2015 and 20% by 2020.
3. Oregon's utilities serving between 1.5% and 3% of Oregon's electrical load are exempt from the 25% requirement provided they do not acquire coal to meet new load growth. Instead they must meet 10% of their load from new renewable energy by the year 2025. This provision applies to five consumer-owned utilities and Idaho Power Company. Oregon's 31 smaller consumer-owned utilities that serve less than 1.5% of Oregon's electric are also exempt from the 25% requirement provided they do not acquire coal to meet new load growth. Instead, the small consumer-owned utilities must meet 5% of their load from new renewable energy by 2025.
4. Eligible renewable resources include wind, solar, ocean, geothermal, biomass, hydropower and other renewable resources that became operational on or after January 1, 1995. Eligible generating facilities do not have to be located in Oregon but at least 80% of the electricity generated from these facilities must serve Oregon loads.
5. No utility will be required to give up access to low-cost firm power from BPA or low-cost hydro contracts with the Mid-Columbia dams owned by Washington PUDs.
6. The RPS is not expected to increase rates; but a cost cap is built in as a backstop to limit any possible cost impact.
7. A utility can comply with the standard by directly owning eligible resources, by buying the output of resources developed by others, or by acquiring Renewable Energy Certificates.
8. The public purpose charge is extended through 2025. The renewable energy portion of the public purpose charge is limited to renewable energy projects 20 megawatts or less in size.
9. There is a non-binding goal that one-third of the renewable energy resources will be small projects less than 20 megawatts.
10. The Department of Energy will periodically conduct a study to evaluate the impact of the standard on new jobs created in the renewable energy industry, average wage rates and other related issues.

A section by section summary follows.

Definitions: Section 1.

Section 1. Provides definitions for certain terms used in this statute, including the following:

“banked renewable energy certificate” is a renewable energy resource acquired by the utility but not used in a calendar year to meet the standard;

“bundled renewable energy certificate” is renewable energy associated with a specific renewable energy project which is used to meet the standard;

“unbundled renewable energy certificate” means a renewable energy certificate used to meet the standard which is not associated with a specific renewable energy project.

Qualifying Electricity: Sections 2 through 4.

Section 2. Provides that qualifying resources to meet the renewable energy standard are those specified in section 3 or any power designated by the Bonneville Power Administration as environmentally preferred power or similarly designated by BPA as being generated from renewable energy. Also provides that hydroelectric is an important renewable energy resource which can be used to comply with the standard as provided in other sections of the bill.

Section 3. Provides that resources used to meet the standard must come from resources operational on or after January 1, 1995. Also provides that capacity increases or efficiency upgrades made after January 1, 1995 to resources built before 1995 except hydro qualify. For hydro resources, efficiency upgrades made after January 1, 1995 to resources built before 1995 qualify. (Section 15 provides that eligible resources must be located within the service areas in the United States of the members of the Western Electricity Coordinating Council (WECC). This covers fourteen western states, including Oregon, Washington, California and 11 other western states which are members of the WECC.)

Section 4. Defines eligible forms of renewable energy, including among others wind, solar, geothermal, biogas, hydrogen, wave, tidal and ocean energy, biomass and up to 50 average megawatts per utility which meets certain environmental requirements. The Department of Energy by rule may designate other resources as renewable so long as they are not derived from fossil or nuclear energy.

Renewable Portfolio Standards: Sections 5 through 11a.

Section 5. Provides that electric utilities must comply with the applicable standard in section 6 or section 7 of this Act and that electricity service suppliers must comply with section 9.

Section 6. Provides that any utility which serves 3% or more of Oregon’s electric load must meet the following requirement:

- at least 5% of the electricity sold each year between 2011-2014 must be from qualifying resources;
- at least 15% of the electricity sold each year between 2015-2019 must be from qualifying resources;
- at least 20% of the electricity sold each year between 2020-2024 must be from qualifying resources;
- at least 25% of the electricity sold in 2025 and in each year in thereafter must be from qualifying resources.

Adjustments to this schedule are provided if the utility falls below the 3% threshold or rises above it for a certain period of time.

Section 7. Utilities serving less than 3% of Oregon's electric load are exempt from the 25% requirement. The exemption from the 25% requirement ends if a small utility acquires load from a coal plant except for limited conditions. Utilities with the exemption which serve less than 1.5% of Oregon's load must meet 5% of their load from qualifying resources by 2025. Those utilities serving between 1.5% and 3% of Oregon's load must meet 10% of their load by 2025.

Section 8. Provides that a utility is not required to meet the standard if it would have to do any of the following:

- acquire electricity in excess of its load to meet the standard,
- substitute electricity from a qualifying resource for other non-fossil energy,
- give up power from the mid-Columbia dams, or
- give up the lowest-priced power from the Bonneville Power Administration.

Section 9. Provides that electricity service suppliers must meet the same standard as the utility in whose service area the electricity service supplier is selling power.

Section 10. Provides that compliance with the standard can be through ownership of qualifying resources (bundled certificates), through purchase of the output of specific resources (bundled certificates), through purchase of a certain amount of green tags (unbundled or banked certificates) as explained in sections 16 and 17 or through making alternative compliance payments as described in section 20.

Section 11. Establishes annual reporting requirements by the investor-owned utilities to the Public Utility Commission to show compliance with the standard, including alternative compliance payments.

Section 11a. Provides that the first plan of an investor-owned utility must be filed with the PUC by January 1, 2010.

Cost Limitation: Sections 12 and 12a.

Section 12. Provides that electric utilities are not required to comply with the standard in a year where the incremental cost of compliance would exceed four percent of the utility's annual revenue requirement for that year. The PUC will establish the annual revenue requirement for investor-owned utilities based on criteria specified in this section. The PUC will also establish the limits for the cost of compliance for electricity service suppliers, equivalent to the limits of the utility in whose service area it provides service.

Consumer-owned utilities establish their own annual limits. For consumer-owned utilities, funding for research, demonstration and development of renewable energy projects counts toward the eligible expenses.

Section 12a. Requires the Public Utility Commission to establish the methodology for determining the annual revenue requirements of investor-owned utilities by July 1, 2008.

Cost Recovery: Sections 13 and 13a.

Section 13. Provides that prudently incurred costs to meet the standard are recoverable in rates and are not considered “above-market costs” for purposes of PUC rate regulation. Also directs the PUC to create an automatic adjustment clause or another method for cost recovery. Provides that any interested person may request a formal proceeding by the PUC to establish the terms of the automatic adjustment clause.

Section 13a. Directs the PUC to create the automatic adjustment clause or another method for cost recovery by January 1, 2008.

Renewable Energy Certificates: Sections 14 through 18.

Section 14. Directs the Department of Energy to establish a system of renewable energy certificates to establish compliance with the standard. The Department may approve a regional system of trading certificates, such as the Western Renewable Generation Information System (WREGIS).

Section 15. Approves the use of a bundled renewable energy certificate if the facility is within the area served by the Bonneville Power Administration or within the service areas in the United States of the members of the Western Electricity Coordinating Council (WECC). This covers fourteen western states, including Oregon, Washington, California and 11 other western states which are members of the WECC.

Unbundled certificates can be used if located within the geographic boundary of the Western Electricity Coordinating Council. Certificates for any power designated by BPA as environmentally preferred or with a similar BPA designation that the power is from renewable resources meets the standard regardless of where it is located.

Section 16. Provides that renewable energy certificates can be traded, sold or carried forward if not used in one year. A certificate may be used for compliance both with this standard and any federal standard; but the same certificate can not be used for compliance with this standard and the standard of another state.

Section 17. Provides that unbundled certificates cannot meet more than 20% of the standard unless the source is a net metering facility or a qualifying facility under the state PURPA (ORS 758.505 through 555.). Electricity service providers are not limited in use of unbundled certificates.

Section 17a. Allows consumer-owned utilities to use unbundled certificates for up to 50% of the requirements of the standard.

Section 18. Directs the PUC to establish by rule a process for allocating renewable certificates by an investor-owned utility which sells retail electricity in more than one state.

Compliance Reports: Section 19.

Section 19. Provides that each utility and energy service supplier must make an annual report on compliance with the standard, the impact of their actions to achieve compliance with the standard on development of renewable energy, and other issues. The investor-owned utilities and electricity service suppliers must file the report with the PUC and address other factors determined by the PUC. Consumer-owned utilities must provide the report to their members or customers.

Alternative Compliance Payments: Sections 20 through 22.

Section 20. Directs the PUC to establish an alternative compliance rate in dollars per megawatt-hour for investor-owned utilities and energy service suppliers. Alternative compliance payments at the PUC rate may be used to meet the standard. The PUC will determine to what extent such payments by investor-owned utilities can be recovered in rates; such payments cannot be included in the rate base. Funds received from the alternative compliance payments must be spent for renewable energy, efficiency upgrades to utility-owned facilities and energy conservation programs within the utility's service area.

Section 20a. Directs the PUC to set the initial alternative compliance rate by July 1, 2009.

Section 21. Requires each consumer-owned utility's governing board to establish an alternative compliance rate.

Penalty: Section 22.

Section 22. Provides the PUC with authority to impose penalties on investor-owned utilities and electricity service suppliers for failure to meet the standard. Funds raised from penalties are provided to the Energy Trust of Oregon for energy conservation and renewable energy.

Green Power Rate: Section 23.

Section 23. Requires all utilities to provide a green power rate option for their customers. Resources procured under a green power rate may not be used to meet the renewable energy standard.

Community-Based Renewable Energy Projects: Section 24.

Section 24. Provides that it is the State of Oregon's goal by 2025 that at least 8% of Oregon's electric load is met from small-scale renewable energy less than 20 megawatts in size. This is the equivalent to one-third of the renewable energy standard. All state agencies must establish policies promoting this goal.

Job Impact Study: Sections 25 and 26.

Section 25. Directs the Department of Energy to periodically conduct a study of the impact of the renewable energy standard on jobs in Oregon, including the number of new jobs created in the renewable energy sector, average wage rates of such jobs, benefits for those jobs, workforce training and other related issues.

Section 26. Sunsets the job study requirement on January 2, 2026.

Public Purpose Charge: Sections 27, 28 and 29.

Section 27. Extends the sunset on the public purpose charge from the current January 1, 2012 to January 1, 2026. This charge is imposed on large investor-owned electric utilities and funds energy efficiency and renewable energy. Section 27 also provides that the renewable energy portion of the charge must be spent exclusively on projects 20 megawatts or less in size. Also provides that utilities paying the public purpose charge must still comply with the Public Utility Commission's rules and requirements regarding purchase and transmittal of power from qualifying facilities as provided in ORS 758.505 to ORS 758.555.

Section 28. Provides that the provisions in Section 27 regarding use of the public purpose charge for renewable energy become effective on January 1, 2008.

Section 29. Current law also imposes a public purpose charge on any consumer-owned utility which provides direct access to any class of retail electric consumers, .i.e., provides direct service to customers outside its service area. (No consumer-owned utilities have done so at this time.) The public purpose charge under current law is in effect for ten years from the date any consumer-owned utility offers such direct access retail service. Section 29 extends the duration of any such charge to January 1, 2026.

Sections on People's Utility Districts: Sections 30 44.

Section 30. Clarifies the definition of utility property in ORS Chapter 261 to include any property used to develop, generate store or transmit electricity.

Section 31. Provides that PUDs may participate jointly with rural cooperatives and municipal utilities in generation of electricity and in formation of joint operating agencies.

Section 32. Provides that if a PUD jointly owns property with another tax-exempt entity, only the portion of the property directly owned or used by the PUD is subject to taxation.

Section 33. Defines "common facilities" to include property owned by a PUD and at least one other PUD, city or cooperative.

Section 34. Adds section 35 to ORS Chapter 261.

Section 35. Authorizes a PUD to become a member of a cooperative or LLC for jointly constructing or otherwise acquiring and operating electricity generation and transmission facilities.

Section 36. Extends the existing limits on PUD financial liability to the measures in Section 35.

Section 37. Revises public contract law to allow PUDs to acquire renewable energy certificates.

Section 38. Gives PUDs the ability to acquire renewable energy certificates and to borrow money to acquire renewable energy, including renewable energy certificates.

Section 39. Exempts PUDs from certain public contract provisions in order to acquire renewable energy.

Section 40. Amends ORS 261.348 to authorize PUDs to invest surplus funds for renewable energy.

Section 41. Authorizes PUDs to issue revenue bonds to acquire renewable energy.

Section 42. Makes change in definition of “utility properties” in Chapter 262 consistent with the change made in Chapter 261 by section 30.

Section 43. Authorizes joint operating agencies to market electricity and renewable energy certificates.

Section 44. Makes changes to ORS 262.075 regarding joint operating agencies consistent with section 43.

Cost Recovery for Conservation Measures: Sections 45 and 46.

Section 45. Adds section 46 to ORS Chapter 757.

Section 46. Allows the PUC to authorize investor-owned utilities to invest more than the public purpose charge in cost-effective energy conservation. Limits the amount and impact which such expenditures can have on customers with a load greater than one average megawatt.

Miscellaneous: Sections 47 and 48.

Section 47. Provides that the caption headings in the bill have no statutory effect,

Section 48. Provides that the bill takes effect immediately on passage.