

Draft Policy Considerations for Oregon Forest Biomass Workgroup

February 17, 2009

HB 2210 – 10\$/Green Ton Biomass Haulers Income Tax Credit

- Change “transfer” definition to reflect industry practice: The definition of transfer should be changed so that agricultural producers and biomass collectors that use self-produced/collected biomass to produce biofuel and/or bioenergy are eligible to claim the credits. This would be more consistent with the legislature’s intent in passing this provision.
- Pre-certification of biomass tax credit: Biomass tax credits should be certified by the department of energy or department of revenue. A process similar to the certification of the BETC credits would make the biomass tax credit marketable and encourage more collection of biomass.
- Number of times credits can be transferred should be increased to at a minimum two: Most small producers or collectors of biomass do not have the appetite to consume the biomass tax credits in full nor do they have the resources to effectively market the tax credits. Increasing the number of times biomass tax credits can be transferred or sold will improve their marketability.
- Sale of biomass tax credits to pass thru tax entities like partnerships, LLCs etc: As per the department of revenue, partnerships, LLCs and other pass thru tax entities are not taxpayers under ORS 315.144; they cannot buy or be the transferee of biomass tax credits. Therefore the tax credits have to be sold to each member of the pass thru entity. This creates unnecessary paperwork and impedes the marketability of the tax credits. Biomass tax credits should be allowed to be sold or transferred to pass thru tax entities.

Pre-95 Biomass energy facilities

Renewable energy facilities in service prior to 1995 are not considered to produce renewable energy under the Oregon renewable portfolio standards (RPS). Power produced by pre-95 biomass energy plants should qualify as renewable energy for meeting Oregon RPS (white paper attached).

Thermal Biomass Energy

Consider recognition of thermal biomass energy (steam) as renewable energy for meeting Oregon RPS requirements.

Federal Production Tax Credit

Equalize treatment for open loop biomass in federal production tax credit.

Carbon Neutrality of Biomass Energy Emissions

Biomass energy emissions should be considered as carbon neutral.

EXISTING BIOMASS PLANTS WITHIN OREGON'S RPS

In 2007, as part of the Oregon Renewable Energy Act (SB 838), the State Legislature established a Renewable Portfolio Standard (RPS) for Oregon's utilities. The law requires that Oregon's largest utilities obtain 25% of their total sales from renewable sources by the year 2025, with lower interim targets beginning in 2011.

Within that law is the requirement that, in order to be counted towards RPS goals, the electricity must be "qualifying electricity" (Section 2). Qualifying electricity is further defined as coming from a Renewable Energy Source, that became operational on or after January 1, 1995 (Section 3). Renewable Energy Sources (Section 4) include wind, solar, wave, tidal, ocean thermal, biomass, and certain kinds of hydroelectric.

Oregon's fleet of forest products industry based biomass power facilities contains several facilities that were constructed and went into operation prior to the January 1, 1995 date. These pioneering facilities were constructed, for the most part, in response to the U.S. Congress' passage, in 1978, of the Public Utility Regulatory Policy Act (PURPA). PURPA required, for the first time, that investor owned utilities purchase the output of small renewable and highly efficient cogeneration facilities at the utility's "avoided cost".

The Oregon forest products industry responded by building several biomass fueled power facilities at mill sites, selling to Oregon's investor owned utilities under the Oregon Public Utility Commission's rules interpreting and implementing PURPA. In order to achieve an economy of scale, these facilities were built larger than could be fueled from the mill sites' available low cost sources of wood waste, and depended on other mills wood waste or the woods to round out their fuel supply. These plants typically took contracts of 20 years or longer. Several plants have ceased operation as the host mills have gone out of business, but a handful of these pioneer plants remain in operation today. By the end of 2111, all of these plants will be out of their original PURPA contracts.

Because of the Oregon RPS requirement, beginning in 2011, that renewable sources counting towards the RPS be new since January 1, 1995, these few pioneer plants face an uncertain, and likely short, future. Among renewable sources, biomass is the only resource that has a competitive situation for its ongoing fuel requirements. Geothermal plants are protected from competitors by leases, solar by access to the sun, wind by tower spacing, etc. Conversely, biomass plants compete between old and newer facilities for the same fuel resource.

Since the 1980's, Oregon has assembled perhaps the finest array of programs to incent new renewable resource development, especially biomass (BETC, RPS, forest fuel tax credits, developer ownership of green tags, public purpose charge). The forest products industry has continued to respond to these incentives, building several new biomass facilities within the last 3 years, plus additional high pressure boilers that can support future biomass power. Several other biomass projects are currently on the drawing board, with numerous others in the study phase. These new plants also qualify for 10 years of a 1 cent/KWH escalating federal Production Tax Credit (PTC). Existing plants have received the PTC since 2005, but will lose the credit at the end of 2009.

With the inability to qualify their plants for Oregon's RPS going forward, the existing biomass plants find themselves in a dire situation once outside their original contracts. They may still sell their power at "avoided cost", but the additional "green tags" have no value since they cannot be used for Oregon RPS compliance. With new plants having higher "bundled" prices for renewable power and green tags, and an advantageous tax position, the existing plants find themselves unable to compete for open market fuel, particularly in fuel shortage periods such as in the current situation with numerous lumber mill closings and curtailments. The fact that older plants may have paid off their original debt is not enough of an advantage to level the playing field.

It would truly be a shame to see these older plants close or curtail, though they have many years of useful life left, only to be replaced by spending tens of millions of "new" dollars to build basically the same facility. Even a more perverse outcome is for the older facility to be dismantled, and to emerge as "new" in another location in Oregon.

The solution is clearly to recognize this unique situation among biomass facilities under Oregon's RPS statute, and alter the requirement that the biomass plants be new since January 1, 1995 in order to qualify to be counted. This simple change would enhance the value of their output and make them once again competitive in the fuel m