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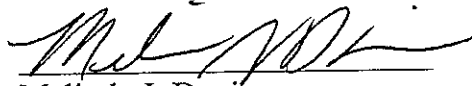
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Oregon Department of Justice
1162 Court St. NE
Salem, OR 97301-4096
Phone: (503) 378-6002
Fax: (503) 378-4017
Attorney for Respondent ODOE

- A. Attached to this petition is a true and correct copy of the Rule for which judicial review is sought.
- B. Petitioner participated in the administrative proceedings resulting in the Rule. Petitioner is adversely affected or aggrieved by the Rule as set forth in the affidavit attached to this petition.
- C. Petitioner designates the entire record for review, but is willing to stipulate that the agency record may be shortened.
- D. This is an appeal of a virtually identical rule to that in Case No. A 138472. ICNU appealed the original rule (OAR 330-150-0030) and ODOE determined that the original rule was procedurally deficient. ODOE repealed the original rule and adopted this Rule (OAR 330-160-0030).

DATED this 3rd day of November, 2008.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.



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Of Attorneys for the Industrial Customers of
Northwest Utilities

IN THE COURT OF APPEALS OF THE STATE OF OREGON

THE INDUSTRIAL CUSTOMERS OF)
NORTHWEST UTILITIES, an Oregon non-) Oregon Department Of Energy Adoption
profit corporation,) of Permanent Rule Implementing a
) Renewable Energy Certificate Tracking
) System
Petitioner,) OAR 330-150-0005 to 330-150-0030
)
vs.)
) CA A _____
OREGON DEPARTMENT OF ENERGY,)
)
Respondent.)
_____)

AFFIDAVIT OF MICHAEL B. EARLY

1 I, Michael B. Early, being first duly sworn on oath, depose and say:

2 1. My full name is Michael Brent Early. I am the Executive Director of the
3 Industrial Customers of Northwest Utilities ("ICNU"). My business address is: 333
4 S.W. Taylor, Suite 400, Portland, OR 97204.

5 2. The matters set forth below are based on my personal knowledge, and I am
6 competent to testify to these facts.

7 3. ICNU is an Oregon non-profit corporation whose members consist of
8 industrial users of electricity. ICNU's members include customers of Portland General
9 Electric Company ("PGE") and PacifiCorp.

10 4. On September 3, 2008, the Oregon Department of Energy ("ODOE")
11 adopted final rules establishing a system of tracking Renewable Energy Certificates

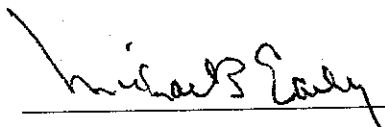
1 (“RECs”) for compliance with SB 838, Oregon’s Renewable Portfolio Standard (“RPS”).
2 OAR §§ 330-160-0005 to 330-160-0030.

3 5. OAR § 330-160-0030 prevents Oregon utilities such as PGE and
4 PacifiCorp from using RECs acquired prior to January 1, 2007 to comply with the RPS.
5 As a result, ODOE’s final rules will make compliance with the RPS more expensive.
6 This will increase the cost of electricity for customers, such as ICNU’s members.

7 6. ICNU’s members are therefore adversely affected or aggrieved by ODOE’s
8 adoption of OAR § 330-160-0030.

1 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE
2 BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS
3 MADE FOR USE AS EVIDENCE AND IS SUBJECT TO PENALTY FOR PERJURY.

4 SIGNED THIS 3rd day of November, 2008, at Portland, Oregon.

5 

6 MICHAEL B. EARLY

State of Oregon

County of Multnomah

Subscribed and sworn to (or affirmed) before me this 3rd day of
November, 2008, by

Michael B. Early



Notary Public



OREGON
DEPARTMENT OF
ENERGY

**Oregon Administrative Rules
Renewable Portfolio Standard**

OAR 330-160-0005 to 330-160-0030

(for ORS 469A)

Effective September 3, 2008

(New Rules)

**Oregon Department of Energy
625 Marion Street NE
Salem, Oregon 97301-3737
(503) 378-4040
Toll-Free 1-800-221-8035
Fax (503) 373-7806**

**DEPARTMENT OF ENERGY
DIVISION 160**

**ESTABLISH A RENEWABLE ENERGY CERTIFICATE SYSTEM
FOR THE OREGON
RENEWABLE PORTFOLIO STANDARD (RPS)**

330-160-0005

Purpose

The purpose of these rules is to establish a system of renewable energy certificates to provide a means of compliance with the Oregon Renewable Portfolio Standard (RPS).

Stat. Auth.: ORS 469A.130.

Stats. Implemented: ORS 469A.130 – ORS 469A.145.

330-160-0015

Definitions

- (1) "Banked Renewable Energy Certificate" has the meaning in ORS 469A.005.
- (2) "Bundled Renewable Energy Certificate" has the meaning in ORS ORS 469A.005.
- (3) "Compliance Year" has the meaning in ORS 469A.005.
- (4) "Director" means the Director of the Oregon Department of Energy.
- (5) "Electricity Service Supplier" has the meaning in ORS 469A.005.
- (6) "Electric Utility" has the meaning in ORS ORS 469A.005.
- (7) "Qualifying Electricity" has the meaning in ORS 469A.005.
- (8) "Renewable Energy Certificate" (REC or Certificate) means a unique representation of the environmental, economic, and social benefits associated with the generation of electricity from renewable energy sources that produce Qualifying Electricity. One Certificate is created in association with the generation of one megaWatt-hour (MWh) of Qualifying Electricity. While a Certificate is always directly associated with the generation of one MWh of electricity, transactions for Certificates may be conducted independently of transactions for the associated electricity.
- (9) "Renewable Energy Source" has the meaning in ORS 469A.005.
- (10) "Unbundled Renewable Energy Certificate" has the meaning in ORS 469A.005.
- (11) "Vintage" means the month and year that qualifying electricity was created in accordance with WREGIS protocol.

(12) "Western Renewable Energy Generation Information System" means the renewable energy certificate tracking and reporting system established by the California Energy Commission and the Western Governors Association and governed by the Western Electricity Coordinating Council for use by states and provinces throughout the western power interconnection.

Stat. Auth.: ORS 469A.130.

Stats. Implemented: ORS 469A.130– ORS 469A.145

330-160-0020

Establishment of Renewable Energy Certificate System

- (1) Renewable energy certificates that are issued, monitored, accounted for and transferred by or through the regional renewable energy certificate system and trading mechanism known as the Western Renewable Energy Generation Information System (WREGIS) shall be the only renewable energy certificates that can be used by an electric utility or electricity service supplier to establish compliance with the Oregon Renewable Portfolio Standard (RPS).
- (2) All entities that wish to demonstrate compliance or participate in the renewable energy certificate system associated with the Oregon RPS must establish and maintain accounts in good standing with the WREGIS renewable energy certificate system. These entities must comply with all information, data reporting and verification requirements of WREGIS and the WREGIS Operating Rules, including costs required for compliance. These accounts must be established before January 1, 2009 or before the earliest vintage of Certificate to be used to comply with the Oregon RPS, whichever is later.
- (3) All entities that wish to demonstrate compliance or participate in the renewable energy certificate system associated with the Oregon RPS must participate in the system in accordance with the WREGIS Operating Rules. The Operating Rules for WREGIS are publicly available from the WREGIS web site at www.wregis.org/content/blogcategory/26/47/ under the "Operating Rules" section. If there are substantial changes to the WREGIS Operating Rules which, at the Director's discretion, may significantly impact the ability of the WREGIS renewable energy certificate system to facilitate the Oregon RPS the Director may, after public consultation with interested parties, implement rulemaking to address those concerns.

Stat. Auth.: ORS 469A.130.

Stats. Implemented: ORS 469A.130.

330-160-0025

Types of Renewable Energy Certificates

A bundled or unbundled renewable energy certificate may be used to comply with the RPS when it is issued through the WREGIS renewable energy certificate system, is identified within the WREGIS as Oregon-eligible, and is otherwise consistent with the rules and requirements of the Oregon RPS. The Department, acting through the appropriate WREGIS protocol, will identify those generating facilities eligible for creation of Certificates that can be used to satisfy the Oregon RPS.

(1) A bundled renewable energy certificate must include documentation that one megawatt-hour of energy was associated with the transfer of the WREGIS renewable energy certificate to the electric utility or electricity service supplier. This documentation shall consist of a completed data field in the WREGIS certificate that contains a valid North American Electric Reliability Corporation (NERC) electronic tagging number ("e-Tag") or another unique identification value adopted by the WREGIS that indicates one megawatt-hour of energy was delivered to:

- (a) the transmission system of the electric utility, or to a delivery point designated by an electric utility for the purposes of subsequent delivery to the electric utility; or
- (b) the Bonneville Power Administration for delivery, or subsequent delivery, to an electric utility.

(2) A bundled renewable energy certificate does not need to demonstrate that the electricity identified by the NERC e-Tag is qualifying electricity or that the originating source identified by the NERC e-Tag is a renewable energy source.

Stat. Auth.: ORS 469A.130.

Stats. Implemented: ORS 469A.135 – ORS 469A.145.

330-160-0030

Allowed Vintage of Renewable Energy Certificates

- (1) The system of renewable energy certificates established through this rule may be used to comply with or participate in the Oregon RPS through the use of Certificates with a vintage of January 2007 or later.
- (2) No renewable energy certificate that derives from the WREGIS renewable energy certificate system with a vintage before January 2007 will be eligible for compliance with the Oregon RPS.

- (3) Banked renewable energy certificates with a vintage of January 2007 or later, both bundled and unbundled, may be held for future use within the WREGIS renewable energy certificate system to comply with the Oregon RPS.
- (4) Generating facilities that produce qualifying electricity shall be eligible to receive certificates associated with generation beginning on January 1, 2007.

Stat. Auth.: ORS 469A.130.

Stats. Implemented: ORS 469A.130.

CERTIFICATE OF SERVICE

I certify that on November 3, 2008, I served a true copy of this

Petition for Judicial Review on:

Michael W. Grainey
Director
Oregon Department of Energy
625 NE Marion St.
Salem, OR 97301
Phone: (503) 378-5489
Fax: (503) 373-7806
Email: Michael.w.grainey@state.or.us

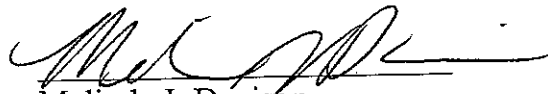
Hardy Myers
OSB No. 64077
Oregon Attorney General
Oregon Department of Justice
1162 NE Court St.
Salem, OR 97301-4096
Phone: (503) 378-6002
Fax: (503) 378-4017
Attorney for Respondent ODOE

by United States Postal Service, certified, postage prepaid.

I also certify that on November 3, 2008, I filed the original Petition
for Judicial Review with the State Court Administrator at this address:

State Court Administrator
1163 State Street
Salem, Oregon 97301-2563

by United State Postal Service, certified, postage prepaid.



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