

**BEFORE THE OREGON DEPARTMENT OF ENERGY**  
**November 29, 2007**

**INITIAL COMMENTS OF PACIFICORP TO ESTABLISH RENEWABLE  
ENERGY CERTIFICATE TRACKING AND REPORTING SYSTEM FOR THE  
OREGON RENEWABLE PORTFOLIO STANDARD**

Pursuant to the Oregon Department of Energy's (the "Department") Notice of Proposed Rulemaking to establish a renewable energy certificate tracking and reporting system for the Oregon Renewable Portfolio Standard ("RPS"), PacifiCorp respectfully submits these comments recommending, *inter alia*, that the Department (1) adopt WREGIS as the tracking system for the RPS and (2) revise the proposed rules to provide that, consistent with Sections 2 and 3 of the RPS statute, Senate Bill 838 ("SB 838"), all Qualifying Electricity produced since January 1, 1995 by a Renewable Energy Source shall qualify toward the issuance of Renewable Energy Certificates ("RECs") under Section 14 of SB 838 (as these terms are defined therein), except to the extent that the renewable energy attributes have previously been used to satisfy the requirements of a renewable energy program in another state or have been included in an Oregon voluntary renewable energy tariff program.

**I. INTRODUCTION**

PacifiCorp is an investor-owned utility serving approximately 1.7 million customers and owning approximately 10,400 MW of generation in six states, including California, Idaho, Oregon, Utah, Washington, and Wyoming. In Oregon, PacifiCorp serves approximately 445,000 residential customers and more than 80,000 industrial and commercial customers.

PacifiCorp has reviewed the Department's proposed rules issued November 5, 2007, and actively participated in the Department's November 6, 2007 workshop. While PacifiCorp appreciates the Department's efforts to address compliance with the RPS, important provisions of the proposed rules are inconsistent with the intent of SB 838. In these comments, PacifiCorp sets forth the following issues of particular concern: (1) all Qualifying Electricity produced since January 1, 1995 by a Renewable Energy Source qualifies toward the issuance of RECs under Section 14 of the RPS statute, which is consistent with the intent of SB 838; and (2) the Department Director should be required to consult with interested parties prior to implementing a rulemaking to address perceived significant changes to the WREGIS Operating Rules that may significantly impact the ability of WREGIS to facilitate the Oregon RPS.

**II. DISCUSSION**

PacifiCorp was actively involved in the negotiations of SB 838 and supported and advocated for the adoption of SB 838 before the Oregon Legislature. As the Department is aware, SB 838 is a carefully crafted measure designed to ensure that Oregon residents

benefit from renewable energy in a cost-effective manner. The Department's proposed rules should represent this objective by reflecting the intent of SB 838, which includes allowing for Qualifying Electricity generated on and after January 1, 1995 from Renewable Energy Sources to be eligible for receiving RECs. Accordingly, PacifiCorp provides the following initial comments on the Department's proposed rules.

- A. The proposed January 1, 2008 effective date for banking and/or using RECs to comply with the RPS is not a date provided for in the law and is not within the Department's authority to adopt, is contrary to the intent of SB 838, penalizes the early adopters of renewable energy, and should be modified to reflect Qualifying Electricity produced by Renewable Energy Sources on or after January 1, 1995.**

The proposed rules provide that RECs derived from the WREGIS renewable energy certificate system that are certified prior to January 1, 2008, will be ineligible for compliance with the RPS. *See* Proposed OAR 330-150-030. The Department has indicated that this certificate date was selected because it is consistent with the effective date of the proposed rules.

As an administrative agency, the Department only has that authority delegated to it by the Legislature. Section 14 of SB 838 authorizes the Department, in consultation with Oregon Public Utility Commission, to establish a REC "system" that can be used for compliance with the RPS. In exercising this authority, the Department may allow use of RECs issued by a regional system such as WREGIS. PacifiCorp supports the Department's proposed rule establishing WREGIS as the tracking system for RECs to determine compliance with the Oregon RPS.

SB 838 does not, however, authorize the Department or the regional system (i.e. WREGIS) to determine what constitutes Qualifying Electricity or Renewable Energy Sources, or the date of electric production from Renewable Energy Sources that qualifies to receive RECs. SB 838 has already made those determinations. With regard to the latter, Sections 2 and 3 of SB 838 provide that Qualifying Electricity produced since January 1, 1995 by a Renewable Energy Source qualifies toward the issuance of RECs under Section 14. Section 2 of SB 838 defines Qualifying Electricity to include electricity generated from a Renewable Energy Source that meets the requirements of Section 3. Section 3 of SB 838, with enumerated exceptions, provides that electricity may be used to comply with SB 838 "if the electricity is generated by a facility that becomes operational on or after January 1, 1995." Importantly, neither of these sections, nor any other section of SB 838, specifies any date other than January 1, 1995, for electric production to begin counting as Qualifying Electricity.

SB 838's selection of January 1, 1995 as the first date for electric generation to count as Qualifying Electricity demonstrates a thoughtful attempt to balance the encouragement of new Renewable Energy Sources while not unduly penalizing those developers and utilities that were pioneers in the development of Renewable Energy Sources in the West.

The interrelationship between Sections 14 and 3 of SB 838 is that RECs are to be issued for all Qualifying Electricity generated by Renewable Energy Sources (as these terms are defined) on and after January 1, 1995. Although not specifically provided in the statute, PacifiCorp would agree that exceptions would be appropriate where the renewable energy attributes have previously been used to satisfy the requirements of a renewable energy program in another state or have been included in an Oregon voluntary renewable energy tariff program.

If the Department were to adopt its proposed rule, it would not only be contrary to the statutory directive, it would penalize the pioneers – both developers and utilities – in the renewable energy industry in the West. The Legislature did not intend this and the Department is not authorized to adopt a rule with a different date than specified by the statute.

**B. The proposed rules should include a requirement that the Department Director consult with interested parties prior to implementing a rulemaking to address perceived significant changes to WREGIS Operating Rules that may have a significant impact on Oregon RPS compliance.**

Proposed OAR 330-150-0020(3) states that if a substantial change occurs to the WREGIS Operating Rules that significantly impacts the ability of WREGIS to facilitate the Oregon RPS, the Department Director, in its discretion, will implement a rulemaking to address any concerns. The proposed rules, however, do not describe in further detail what constitutes a substantial change to WREGIS Operating Rules or a significant impact to RPS compliance.

Accordingly, PacifiCorp respectfully requests that the rules include a requirement that the Director consult with interested parties actively participating in WREGIS and the RPS prior to implementing a rulemaking to address perceived substantial changes to the WREGIS Operating Rules or potential significant impacts. PacifiCorp proposes the following revision to the proposed rules:

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 WREGIS Operating Rules. 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 consultation with interested parties, implement rulemaking to address those concerns.

This inconsequential change will allow the Director the opportunity to learn from participating parties and to more fully understand the ramifications of any changes to WREGIS Operating Rules prior to implementing a rulemaking.

### III. CONCLUSION

For all of the foregoing reasons, PacifiCorp respectfully requests that the Department reconsider the proposed rules under SB 838 as described herein.

Respectfully submitted this November 29, 2007 at Salem, Oregon.

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