

Cost Cap Off-Ramp Provision

An affected entity shall be considered to be in compliance for a compliance year if it meets the annual resource acquisition target or if its annual cost to comply -- as determined by summing the incremental cost of eligible resources acquired, the cost of unbundled renewable energy certificates acquired, and alternative compliance payments for a compliance year -- is equal to or greater than its annual cost cap amount.

[NOTE: Investor-Owned Utilities = "Public Utilities", IOU terminology used for clarity]

Definitions:

Cost of eligible resources – The real-levelized net present value delivered cost of eligible resources, including but not limited to the cost of capital, operation and maintenance, power purchases, renewable energy certificates, integration and transmission.

Cost of non-eligible resources – The real-levelized net present value delivered cost of non-eligible sources of power, calculated in a manner consistent with the methods used to determine the cost of eligible resources.

Incremental cost of eligible resources - The additional cost of eligible resources, compared to the appropriate non-eligible resources, taking into account costs, risk and uncertainty; which (1) for investor-owned utilities, is determined by the Commission or, (2) for consumer-owned utilities, is determined by the governing board of each municipal utility, cooperative, or peoples' utility district based on resource pricing established by the Bonneville Power Administration or resource planning and acquisition guidelines established by these governing boards.

Alternative compliance payment rate – A rate that is set as a monetary payment from affected entities denoted in dollars (\$) per megawatt-hour (MWh) to be paid if the resource acquisition target for the compliance year the target is in effect is not met. The alternative compliance payment rate multiplied by any megawatt-hour (MWh) shortfall facing an affected entity in a compliance year determines a total payment amount for that affected entity for that compliance year.

Determination of Cost Cap and Alternative Compliance Payment Rate for Investor-Owned Utilities

1. The annual cost cap shall be an amount equal to 4 (four) percent of the affected utility's annual retail revenue requirement. The Commission shall determine the cost cap amount for each investor-owned utility. Nothing in this subsection prevents the Commission from allowing the utility to recover its prudently incurred costs of compliance if due to long-term investments in eligible resources such costs exceed the cost cap for the compliance year.

2. The revenue requirement used for this calculation shall consist of operating expenses, including depreciation and taxes, added to the product of total rate base multiplied by the rate of return which includes both debt and equity. The revenue requirement used for this calculation shall consist of the electric-only portion of a utility's operations.
3. The incremental cost of eligible resources, and expenditures made directly by the utility for energy efficiency programs and low-income energy assistance for retail customers, are not to be included in revenue requirements for the purposes of calculating the annual cost cap provisions of this section.
4. The Commission shall make a determination of the alternative compliance payment rate for a compliance year for each investor-owned utility within sixty (60) days of the compliance year. This rate will be determined for each utility such that the alternative compliance payment rate will equal the higher of \$7.50 per megawatt hour in 2007 constant dollars or:
 - a. If the utility has not made a prior ACP payment, one hundred twenty-five (125) percent of the average incremental cost of eligible resources for that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
 - b. If the utility has made a prior ACP payment in only one (1) compliance year, one hundred thirty (130) percent of the average incremental cost of eligible resources for that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
 - c. If the utility has made prior ACP payments in only two (2) compliance years, one hundred thirty-five (135) percent of the average incremental cost of eligible resources for that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
 - d. If the utility has made prior ACP payments in only three (3) compliance years, one hundred forty (140) percent of the average incremental cost of eligible resources for that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
 - e. If the utility has made prior ACP payments in only four (4) compliance years, one hundred forty-five (145) percent of the average incremental cost of eligible resources for that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
 - f. If the utility has made prior ACP payments in five (5) or more compliance years, one hundred fifty (150) percent of the average incremental cost of eligible resources for that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
5. The Commission shall have the authority to find eligible resource projects to be prudent if they have a cost per megawatt-hour above the alternative compliance payment rate. Commensurate benefits to retail customers from eligible resource projects shall be considered when making such a determination. Commensurate benefits include but are not limited to long-term savings on the costs of electrical generation and distribution, desirable timing of power delivery, power quality, and grid stability. Investment in research and demonstration projects for eligible resources

where significant cost decreases are likely may, at the Commission's discretion, also provide reason for a project to be found prudent.

6. Alternative compliance payments shall not cause the utility to exceed the annual cost cap. Any necessary payments shall be made within ninety (90) days of the end of the compliance year in a manner directed by the Commission.
7. The Commission shall determine whether and how the alternative compliance payments and the cost of unbundled renewable energy certificates acquired are recovered in customers' rates within one year of the end of each compliance year. If costs are found to be prudent and recovered through rates, a rate adjustment with an accumulating account is the preferred recovery method.
8. The Commission shall determine the disposition of revenues from alternative compliance payments and any interest accrued by those revenues, except that revenues and any interest accrued by those revenues shall be used for incremental costs associated with acquiring eligible resources, or the costs of research and demonstration projects for eligible resources. However, expenditures derived from alternative compliance payment funds shall not be counted towards any subsequent cost cap amount in any subsequent compliance year.
9. The Commission shall set a deadline for the disposition of alternative compliance payments.
10. The Commission may adopt rules to implement the provisions of this Section for the investor-owned utilities.

Determination of Cost Cap and Alternative Compliance Payment Rate for Consumer-Owned Utilities

1. The governing board of each municipal utility, cooperative, or peoples' utility district shall make an annual determination of the annual cost cap amount for a compliance year for that utility. The annual cost cap shall be an amount equal to 4 (four) percent of the affected utility's annual retail revenue requirement in effect for the compliance year. The revenue requirement used for this calculation shall consist of the electric-only portion of a utility's operations in those cases where other products or services are offered by a utility. The incremental cost of eligible resources, and expenditures made directly by the utility for energy efficiency programs and low-income energy assistance for retail customers, are not to be included in revenue requirements for the purposes of calculating the annual cost cap provisions of this section
2. The governing board of each municipal utility, cooperative, or peoples' utility district shall make an annual determination of the alternative compliance payment rate for a compliance year for that utility. This rate will be determined for each utility such that the alternative compliance payment rate will equal the higher of \$7.50 per megawatt hour in 2007 constant dollars or:

- a. If the utility has not made a prior ACP payment, one hundred twenty-five (125) percent of the average incremental cost of eligible resources recently and typically acquired by that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
 - b. If the utility has made a prior ACP payment in only one (1) compliance year, one hundred thirty (130) percent of the average incremental cost of eligible resources recently and typically acquired by that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
 - c. If the utility has made prior ACP payments in only two (2) compliance years, one hundred thirty-five (135) percent of the average incremental cost of eligible resources recently and typically acquired by that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
 - d. If the utility has made prior ACP payments in only three (3) compliance years, one hundred forty (140) percent of the average incremental cost of eligible resources recently and typically acquired by that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
 - e. If the utility has made prior ACP payments in only four (4) compliance years, one hundred forty-five (145) percent of the average incremental cost of eligible resources recently and typically acquired by that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
 - f. If the utility has made prior ACP payments in five (5) or more compliance years, one hundred fifty (150) percent of the average incremental cost of eligible resources recently and typically acquired by that utility, adjusted for inflation, expressed on a dollars per megawatt-hour basis.
3. The governing board of each municipal utility, cooperative, or peoples' utility district shall have the authority to approve eligible resource projects whose cost on a per megawatt-hour basis exceeds the alternative compliance payment rate.
 4. The calculation of this alternative compliance payment rate must be done in a manner consistent with guidance provided by the Oregon Department of Energy.
 5. Each municipal utility, cooperative, or peoples' utility district shall provide a detailed account of the calculations completed to determine its annual alternative compliance payment rate in the annual compliance report provided to the Oregon Department of Energy.
 6. The governing board of each municipal utility, cooperative, or peoples' utility district shall determine the disposition of the revenues from alternative compliance payments and interest accrued from those revenues, except that revenues and any interest accrued by those revenues shall be used for incremental costs associated with acquiring eligible resources, or the costs of research and demonstration projects for eligible resources. However, expenditures derived from alternative compliance payment funds shall not be counted towards any subsequent cost cap amount in any subsequent compliance year.

Determination of Cost Cap and Alternative Compliance Payment Rate for Electricity Service Suppliers

1. The Commission shall make an annual determination of the cost cap amount for a compliance year for each Electricity Service Supplier (ESS) serving Oregon load. This annual cost cap shall be computed as follows:
 - a. For every customer served by the ESS the Commission will determine what utility would have otherwise served the customer based on the service territory the customer is located in.
 - b. An average cost cap rate per unit of energy will be determined for each utility identified in (a) by dividing the cost cap amount for that utility by the total retail sales of that utility for the compliance year (the “cost cap average rate”).
 - c. A cost cap amount per customer of the ESS will be determined by multiplying the retail sales to the customer from the ESS by the applicable utility’s cost cap average rate.
 - d. The cost cap for the ESS for the compliance year will be the summation of each of the cost cap amounts for each customer of the ESS as calculated in (c) above.
2. The Commission shall make a determination of the alternative compliance payment rate for a compliance year for each ESS within sixty (60) days of the compliance year. This rate will be determined for each ESS such that the alternative compliance payment rate will equal the weighted average of the alternative compliance payment rates for the utilities that would otherwise serve the customers of the ESS, based on the relative proportion that each utility comprises of the overall ESS load.
3. Alternative compliance payments shall not cause the ESS to exceed the annual cost cap. Any necessary payments shall be made within ninety (90) days of the end of the compliance year in a manner directed by the Commission.
4. The Commission shall determine the disposition of the revenues from alternative compliance payments and interest accrued from those revenues, except that revenues and any interest accrued by those revenues shall be used for incremental costs associated with acquiring eligible resources, or the costs of research and demonstration projects for eligible resources. However, expenditures derived from alternative compliance payment funds shall not be counted towards any subsequent cost cap amount in any subsequent compliance year.
5. The Commission shall set a deadline for the disposition of alternative compliance payments.
6. The Commission may adopt rules to implement the provisions of this Section for the Electricity Service Suppliers.