HB 2471: Municipal Electric Utility Formation in Oregon

Oregon municipal utilities provide safe and reliable service to their customers—often at a lower cost than investor owned utilities.

Examples of city utilities in Oregon include Ashland, Bandon, Canby, Cascade Locks, Drain, Eugene, Forest Grove, Hermiston, Milton-Freewater, McMinnville, Monmouth and Springfield.

Recent changes to the RPS standard have taken away the ability of cities to form a utility by making it cost prohibitive and eroded the ability of cities to regulate within their boundaries.

RPS Requirements for “Small Electric Utilities”

469a.055:

(1) Except as provided in this section, an electric utility that makes sales of electricity to retail consumers in an amount that **equals less than three percent of all electricity sold to retail electricity consumers *is not* subject to 469A.005 to 469a.210 (including the “large utility” RPS requirements)**

(2) Beginning in calendar year 2025, at least 5% of electricity sold in a calendar year must be qualifying if utility makes sales in an amount that equals less than 1.5% of all electricity sold to retail electricity consumers

(3) Beginning in calendar year 2025, at least 10% of electricity sold in a calendar year must be qualifying if utility makes sales in an amount that equals or is more than 1.5% but less than 3% of all electricity sold to retail electricity consumers

However, the **exemption provided by subsection 1 terminates** for a consumer owned utility if the utility acquires service territory of an electric company without consent of the electric company.

SB 1547 as Enrolled:

Amendments to ORS 469a.055:

"(6) If an electric utility acquires service territory of another electric utility without the consent of the electric utility from which service territory was acquired, then beginning in the calendar year following the acquisition, the percentage of the acquiring electric utility's electricity sold to all retail electricity consumers of the acquiring electric utility that is sold to retail electricity consumers that are located in the acquired service territory is subject to the renewable portfolio standard that is applicable to the electric utility from which service territory was acquired and the provisions of ORS 469A.005 to 469A.210 that apply to the renewable portfolio standard.

<u>LOC interpretation:</u>

Essentially, if you form a new utility, 100% of the utility is subject to the RPS of the IOU at the time of acquisition beginning in the calendar year following acquisition.

ORS 469a.060 Exemption

- A large-utility RPS requirement would likely be cost-prohibitive for a municipal electric utility (most of our existing municipal electric utilities are quite small).

- However, there is an exemption in **ORS 469a.060 (3):**
  - Consumer owned utilities are not required to comply with the RPS described in ORS 469a.052 and 469a.055 to the extent that:

    "Compliance would require the utility to reduce the utilities purchases of the lowest priced electricity from Bonneville Power Administration. The exemption provided by this subsection applies only to firm commitments for BPA electricity that BPA has assured will be available to a utility to meet agreed portions of the utility's load requirements for a defined period of time."

What is the practical application of the exemption in ORS 469a.060?

- If city X decides to form a new municipal electric utility, and the existing investor-owned utility does not consent, they would not be considered a “small electric utility” under ORS 469a.060 and would therefore be subject to a more significant RPS requirement regardless of number of customers served or size of the utility.

- However, as new municipal electric utilities are eligible for BPA hydro, ORS 469a.060 indicates that you don’t have to reduce preference power from BPA in order to meet the RPS (i.e. – no displacement of available BPA hydro)

Example:

City X creates a new electric utility and needs 10 MW of power to serve their customers.

BPA will provide 9.5 MW of electricity needed with preference power. With the exemption of ORS 469a.060 (3), City X would not have to reduce its use of low cost BPA hydro. City X would fill the remainder of its electricity need with 0.5 MW of qualifying renewables under the RPS.

If the exemption does not apply:

City X would reduce available BPA hydro from 9.5 MW to 7.5 MW (75%) as they would need to meet the RPS requirement in full (25% = 2.5 MW). RPS would take priority, thereby displacing available low cost hydro that has been set aside for consumer owned utility formations.

HB 4026 (2016):

- HB 4036 (did not pass) would have eliminated the exemption in 469a.060 (3) if formation of a municipal electric utility occurred without consent.

- The impact would have been that any new municipal electric utility formation would be subject to the RPS of the investor owned utility with no exemption for BPA hydro, thus reducing available BPA hydro that has been set aside specifically for these types of utility formations.

- This means that if a municipal utility would be able to accommodate 90-95% of their electricity through BPA hydro, they would not be able to use all of the BPA hydro available to them. This would also significantly increase the cost of compliance.

SB 1547 (B-Engrossed & as Enrolled):

What happened to the exemption language?

- LOC believes the exemption was restored with final passage of SB 1547. We believe we need clarity to make this abundantly clear in the statute and provide certainty going forward.

- “By the beginning of the calendar year” is a concern – leaves us with a need to ensure the language allows for adequate time to acquire BPA hydro.

HB 2471 (with -1 amendments):

- Provides for adequate time (10 years) to acquire BPA hydro.
  - 3-year binding notice before you may purchase federal power at Tier 1 rate.
  - Prior to binding notice, must meet BPA standards for service.
  - 50 aMW available every 2 years from BPA = additional potential phase-in time if more than one utility is seeking Tier 1 power from BPA.

- Avoids displacement/reduction of available hydro.

- Clarifies exemption application for ORS 469a.060.

- Preserves ability for new municipal electric utility formation.

- Requires use of FERC methodology for determination of whether stranded costs are appropriate. Federal Energy Regulatory Commission (FERC) Order 888 created wholesale competition through open access non-discriminatory transmission. FERC order 888 also developed the concept of stranded costs for "retail turned wholesale" situations (new municipal utilities). But stranded costs are not always awarded or appropriate. The utility is made whole through a condemnation case and the determination of whether stranded costs are appropriate is made on a case by case basis.

Policy considerations:

- Formation of municipal electric utilities should be preserved and formation should not be cost-prohibitive.

- Oregon be positioned to take advantage of available low cost hydro from BPA. This power has already been set aside.
  - 250 MW – 40 MW from recent (2013) Washington PUD formation = 210 MW of available preferred power Tier 1 rate