



RENEWABLE ENERGY COALITION

The Renewable Energy Coalition Urges the Passage of HB 2857 and HB 3274 to Support Oregon Small-Scale Renewable Facilities and Strengthening the Public Utility Regulatory Policies Act (PURPA)

HB 2857 and HB 3274 improve important cornerstones of Oregon's renewable energy and climate policies that ensure that small, community based and family owned renewable energy projects are built in this state. Without Oregon laws like the community renewable mandate and PURPA, the vast majority of new renewable resources would be large utility owned electric generation located out of state, and current operating projects would be forced to shut down. These laws ensure that at least a portion of new and existing generation is locally owned, which is lower cost and provides significant economic development benefits in this state.

What is the Renewable Energy Coalition?

The Renewable Energy Coalition was established in 2009, and is comprised of nearly forty members who own and operate over fifty small renewable energy facilities and who are also attempting to develop new projects. REC is open to all renewable energy generation types, and several types of entities are members, including irrigation districts, water districts, corporations, cooperatives, and individuals. Most of the Renewable Energy Coalition's members are existing hydro-electric projects that have operating and selling to utilities for numerous years; however, many are attempting to construct new renewable energy projects through the state of Oregon. Despite being generally lower cost and providing local community benefits, all of REC's members sell power under PURPA because, without this law, PGE, PacifiCorp and Idaho Power would refuse to purchase electricity from them because they are small in size and the investor owned utilities do not own them (and cannot therefore make a profit on their purchases). The Coalition's goal is to ensure fair and reasonable contract terms and conditions, interconnections, and prices for small renewable energy projects selling power under PURPA.

More information about the Renewable Energy Coalition is at: <http://www.recoalition.com>

What are HB 2857 and HB 3274?

These are two very similar bills to protect existing and require the expansion of local, low cost small Oregon small and community based renewable energy facilities. HB 2857 is broader in scope, and includes improvements to Oregon's Renewable Portfolio Standard's provisions mandating that the utilities purchase community renewable energy and PURPA. HB 3274 includes many of the exact same provisions and for the most part accomplishes the same objectives, but is more narrowly tailored to recognize the specific benefits of small low impact hydro-electric facilities, including those installed on irrigation and water districts in rural Oregon.

Renewable Energy Coalition Supports HB 2857 and HB 3274 to Support Oregon Based Community and Small Scale Renewable Facilities

Key Provisions of HB 2857 and HB 3274 Include:

Gives the PUC the Tools to Ensure that the State’s Current PURPA Goals and Policies Are Properly Implemented

Oregon law recognizes that the state has abundant renewable resources and that its goals are promote their development and insure that their rates are just and reasonable, that the policy of the state of Oregon is to increase their marketability and provide a settled and uniform climate, and that community based renewable projects are an essential element of this state’s energy future. Specifically, in 1983 the Oregon legislature passed a mini-PURPA statute following the federal PURPA statute that was passed in 1979, and adopted a forward thinking renewable energy policy, and the legislature stated that it “finds and declares that:

- (1) The State of Oregon has abundant renewable resources.
- (2) It is the goal of Oregon to:
 - (a) Promote the development of a diverse array of permanently sustainable energy resources using the public and private sectors to the highest degree possible; and
 - (b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest.
- (3) It is, therefore, the policy of the State of Oregon to:
 - (a) Increase the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon’s citizens; and
 - (b) Create a settled and uniform institutional climate for the qualifying facilities in Oregon.”¹

Legislative findings, goals and policies do not have the same force and effect of law as clear and unambiguous mandates. HB 2857 (Section 4) and HB 3274 (Section 5) use the same language to turn these goals and policies into firm mandates to the Public Utility Commission. The Public Utility Commission is the primary state agency that implements PURPA, and both bills empower this regulatory agency to have the power to ensure proper implementation of PURPA.

Strengthens the Renewable Portfolio Standard’s Community Renewable Energy Mandate

Since its passage in 2007, Oregon’s Renewable Portfolio Standard has recognized that it is important that a modest percentage of the state’s renewable energy should be community-based projects, and not just large utility owned projects. The original RPS (SB 838) included a goal that 8% of the state energy would be community-based projects. In 2016, the Renewable Portfolio Standard was amended to remove the costs of coal generation from Oregon customer’s rates, and gradually increase the requirement to that 50% of the investor owned utilities’ energy

¹ ORS 758.515. In addition, the state’s renewable portfolio standard “finds that community-based renewable energy projects, including but not limited to marine renewable energy resources that are either developed in accordance with the Territorial Sea Plan adopted pursuant to ORS 196.471 or located on structures adjacent to the coastal shorelands, are an essential element of this state’s energy future.” ORS 469A.210(1).

come from specified types of renewable energy by 2040. SB 1547 also changed the state's 8% "goal" into a "mandate", applied this mandate to only Portland General Electric Company and Pacific Power (rather than the entire state), and based the requirement on "aggregate electrical capacity" instead of "electricity". No one--not the PUC, the utilities or renewable energy generators--knows exactly what the Legislature meant by the term "aggregate electrical capacity", and HB 2857 (Section 1) and HB 3274 (Section 1) return to a measurement based on "electricity", which is consistent with the original measurement in the Renewable Portfolio Standard. Sections 1 and 2 of both bills also include additional clarification and improvements to the community-based mandate, including: 1) explicitly requiring the utility to acquire the renewable energy certificates associated with the purchased power because they are important to ensure that the energy is purchased with its "renewable attributes" (the Renewable Energy Coalition believes that the law already provides for this but the utilities have argued that, unlike almost all other renewable mandates in the nation, they do not need to acquire the renewable attributes to satisfy the mandate); 2) PGE and Pacific Power make their best efforts beginning on the effective date of the act towards continually increasing its percentage of electricity to meet the standard so that the utilities will reach that 8% over time rather than "just in time" to meet the 2025 deadline; 3) The utilities shall report on their progress towards meeting the 8% standard in renewable portfolio standard implementation plans they already prepare so that to enable the Public Utility Commission and stakeholders to track the utilities' progress towards meeting this standard; and 4) ensuring that the projects are owned and operated by the community rather than utility shareholders.

Practical and Minimal Protections for Small Scale Renewable Energy Generators to Ensure a Settled and Uniform Institutional Climate

Under PURPA, the Public Utility Commission sets the prices Portland General Electric Company, Pacific Power and Idaho Power pay to qualifying renewable generators based on their "avoided costs", which are incremental cost to an electric utility of electric energy or capacity which, but for the purchase from the qualifying facility, such utility would generate itself or purchase from another source. In plain English, this means that the renewable energy generators are paid based on the costs that the utility would otherwise pay for or build the project, which ensures that ratepayers are protected.

These prices are generally in effect for a period of a year. In the past, utilities have filed "surprise" price changes and requested expedited consideration of their price changes, which can kill projects that were not expecting prices to suddenly change. A healthy environment in which small scale renewable energy projects can reliably invest is vital to their ability to plan and obtain a fixed price contract, or power purchase agreement, with their utility. This can only occur if renewable energy generators have at least limited notice and opportunity to review these prices changes. HB 2857 (Section 5) and HB 3274 (Section 6) include the same language to give greater notice and hearing rights to customers and qualifying renewable energy facilities when a utility proposes to change its price schedule paid to qualifying facilities, and gives certainty regarding when the new prices will take effect. This is important because the utilities have argued that current law provides no rights to review the filings or request a hearing on the filing prior to the prices going into effect.

Existing and Operating Projects Provide Important Benefits to the Utilities

Oregon has a small, but important, small number of community-based renewable energy projects. These primarily include operating low impact hydroelectric facilities and biomass, but also some community and family owned wind, geothermal and solar facilities. All of these renewable facilities provide important benefits to their local communities which depend upon them for providing reliable, low cost power and important local jobs. These existing projects generally have operational lives much longer than their contracts with the utilities, and they generally renew their contracts. Utilities have historically planned on these existing renewable energy facilities selling power after the expiration of their contracts, and these QFs help to defer new resources. In other words, without existing projects renewing their contracts, the utilities would need to acquire new, more expensive resources sooner. The state of Idaho recognizes that these existing facilities provide value by helping to defer the utilities' need to buy or build new resources, and Oregon should also ensure that the prices paid accurately reflect these benefits. HB 2857 (Section 5(3)) and HB 3274 (Section 6(3)) address this problem. HB 2857 ensures that a renewable facility that is providing capacity to a utility will be paid for its capacity contribution when it renews its contract, which is important to ensure that they are not treated as a "new facility" when the renewable energy project renews its contract.

Building Local Renewable Projects Are Lower Cost Because They Avoid the Utilities' Need to Build Expensive New Transmission Lines

Pacific Power is in an active renewable resource expansion and its acquiring and owning hundreds of megawatts of power, the vast majority owned by PacifiCorp and outside of the state of Oregon. For example, Pacific Power recently decided to acquire over 1,100 megawatts of new Wyoming wind at a cost of approximately \$1.5 billion *plus* an approximately \$700 million in transmission costs to get that power from Wyoming to its load in Oregon. However, since September 2016, PacifiCorp has entered into only *one* new power purchase agreement with a new project, which was the tiny 200 kilowatt Three Sisters Irrigation District hydro project.² This project was only made possible through federal funds and the Energy Trust of Oregon, and these public funds would likely have not been necessary if Pacific Power's prices were accurately calculated to reflect that local projects do not need expensive new transmission lines to be built.

Portland General Electric Company appropriately compensates local projects reduce the costs of new transmission, but Pacific Power's rates do not. HB 2857 (Section 5(2)) and HB 3274 (Section 6(2)) fix the problem that renewable facilities are not compensated for the value they provide as a local source of power as compared to the Pacific Power's source of power that must be shipped over transmission lines. We will not have any meaningful Oregon PURPA projects selling power to Pacific Power until Pacific Power's rates recognize that the utility avoids by avoiding transmission costs and benefiting from local sources of generation.

² <http://kbnd.com/kbnd-news/local-news-feed/430819>

Ensures that Small Projects Are Not Required to Negotiate Their Prices and Contract Terms

The Public Utility Commission has adopted published prices and standard contracts that small scale projects can select without negotiating with their utility, which is a counterparty that does not want to purchase their power. In 2005, the size threshold for published prices and standard contracts was set at 10 megawatts, to address this bias, remove transaction costs associated with contract negotiation when such costs act a market barrier to the small scale renewable energy facility development, there is asymmetrical information, and an unlevel playing field that obstruct the negotiation of non-standard contracts. Since 2005, Portland General Electric, Pacific Power and Idaho Power have frequently sought to lower the size threshold to as low as 100 kilowatts, but the current eligibility is 10 megawatts for all projects, except 3 megawatts for solar. HB 2857 (Section 5)(6)), ensures that renewable facilities are eligible for standard prices and contracts if they are 10 megawatts in size or smaller and that includes the amount of any energy storage devices associated with the utility.

Provides Access to Courts and Damages for Small Scale Renewable Energy Facilities

Historically, all renewable energy facilities have access to courts when they have a dispute about their fully executed contract with their utility, and the ability to obtain treble damages and attorneys' fees when a utility wrongs them based on a utility statute when the wrong or omission was the result of gross negligence or willful misconduct.³ In contrast, disputes between the utility and renewable energy generator prior to contract execution were generally resolved by the Public Utility Commission. Recently the Public Utility Commission has taken jurisdiction over fully executed contract disputes with utilities and since April 2017, there have been over 50 complaints between Portland General Electric Company and various small scale renewable energy generators 10 megawatts and lower at the Commission. The PUC simply does not have the resources or the expertise to adjudicate all of these disputes, and numerous projects have died simply because they cannot obtain prompt resolution of their disputes. HB 2857 (Section 7) and HB 3274 (Section 8) provide access to the Oregon courts to decide contract disputes between qualifying facilities and utilities. HB 2857 (Section 7) and HB 3274 (Section 8) also ensure that utilities are treble damages if a utility is found to be in violation of a contract with a qualifying facility, which is important because some utilities have asserted that the existing treble damages statute does not cover contracts with qualifying facilities.

Protects Small Scale Projects From Paying for Unnecessary Transmission Investments that Either Do Not Exist or Benefit Others

HB 2857 (Section 9) and HB 3274 (Section 10) provide that a utility may not charge a qualifying facility for the use of its transmission system unless it joins a regional transmission organization (RTO) or independent system operator (ISO). RTOs and ISOs electric power transmission system operators that coordinate, control, and monitor a multi-state electric grid, and are important to improve the transmission grid and prevent monopoly utilities from using their sole ownership of the transmission system to discriminate against non-utility owned generators, like

³ ORS 756.185.

those selling under PURPA. An RTO or ISO would allow greater access to the use of the transmission system including more efficient use of transmission resources. The bills would also ensure that Oregon's policies on transmission upgrades in the interconnection process are consistent with Federal Energy Regulatory Commission policies that all transmission customers to pay for network upgrades that are identified in transmission studies. FERC has adopted this policy to ensure that transmission providers do not discriminate against generation not owned or developed by the transmission provider, and because network upgrades generally benefit all users of the transmission system.