

House Bill 2857

Sponsored by COMMITTEE ON ENERGY AND ENVIRONMENT (at the request of Renewable Energy Coalition, Community Renewable Energy Association, Northwest and Intermountain Power Producers Coalition)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires eight percent of electricity sold in this state by each electric company that makes sales to 25,000 or more retail electricity consumers to be generated by small-scale renewable energy facilities or certain biomass facilities.

Increases, to 100 average megawatts of electricity per year, amount of electricity generated by certified low-impact hydroelectric facilities that may be used to comply with renewable portfolio standards.

Establishes, for purposes of public utilities that provide electric power to consumers in this state, additional standards for purchase of energy or energy and capacity from qualifying facilities.

Allows person injured by certain violations by public utility related to purchase and sale of energy or energy and capacity to recover treble damages from public utility.

A BILL FOR AN ACT

1
2 Relating to sustainable energy; creating new provisions; and amending ORS 469A.025, 469A.075,
3 469A.210, 756.185, 758.515, 758.525 and 758.545.

4 **Be It Enacted by the People of the State of Oregon:**

SMALL-SCALE RENEWABLE ENERGY STANDARD

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8 **SECTION 1.** ORS 469A.210 is amended to read:

9 469A.210. (1) The Legislative Assembly finds **and declares** that:

10 (a) [*community-based renewable energy projects*] **Small-scale renewable energy facilities**, in-
11 cluding but not limited to marine renewable energy resources that are either developed in accord-
12 ance with the Territorial Sea Plan adopted pursuant to ORS 196.471 or located on structures
13 adjacent to the coastal shorelands, are an essential element of this state's energy future[.];

14 (b) **Small-scale renewable energy facilities are one of the integral parts of this state's**
15 **emergency preparedness and, when paired with energy storage and other emerging technol-**
16 **ogy, help ensure that electricity will be available during catastrophic natural disasters;**

17 (c) **A diverse portfolio of electricity generation facilities that includes small-scale**
18 **renewable energy facilities helps reduce the risk of power outages and other technical and**
19 **financial failures;**

20 (d) **A diverse portfolio of electricity generation facilities that includes small-scale**
21 **renewable energy facilities helps reduce the need to construct transmission lines to supply**
22 **electricity to retail electricity consumers from a single large-scale electricity generation fa-**
23 **cility;**

24 (e) **Supplying electricity to retail electricity consumers that is generated by small-scale**
25 **renewable energy facilities is necessary in order to meet the renewable portfolio standards**
26 **established under ORS 469A.005 to 469A.210 and therefore necessary for improving this**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **state's air quality and public health;**

2 **(f) Small-scale renewable energy facilities have a smaller footprint on the landscape than**
 3 **large-scale electricity generation facilities and, therefore, are more easily incorporated into**
 4 **existing infrastructure;**

5 **(g) There are substantial existing small-scale renewable energy facilities that have the**
 6 **potential to continue to produce renewable energy well into the future;**

7 **(h) There is substantial potential for adding small-scale renewable energy facilities; and**

8 **(i) Absent the requirement established in this section, electric companies might other-**
 9 **wise procure electricity only from large-scale electricity generation facilities.**

10 (2) For purposes related to the findings in subsection (1) of this section, by the year 2025, at
 11 least eight percent of the [*aggregate electrical capacity of all electric companies*] **electricity sold in**
 12 **this state by each electric company** that [*make*] **makes** sales of electricity to 25,000 or more retail
 13 electricity consumers in this state must be composed of electricity generated by one or both of the
 14 following sources:

15 (a) Small-scale renewable energy [*projects*] **facilities** with a generating capacity of 20 megawatts
 16 or less that **are not owned by a person that is an electric company and that** generate electricity
 17 utilizing a type of energy described in ORS 469A.025; or

18 (b) Facilities **that are not owned by a person that is an electric company and** that generate
 19 electricity using biomass **and** that also generate thermal energy for a secondary purpose.

20 (3) Regardless of the facility's nameplate capacity, any single facility described in subsection
 21 (2)(b) of this section may be used to comply with the requirement specified in subsection (2) of this
 22 section for up to 20 megawatts of capacity.

23 **(4) An electric company must comply with the requirements of subsection (2) of this**
 24 **section in each calendar year by using bundled renewable energy certificates issued or ac-**
 25 **quired during the compliance year. To the extent otherwise permitted under ORS 469A.005**
 26 **to 469A.210, an electric company may acquire and use the same bundled renewable energy**
 27 **certificates to comply with both this section and ORS 469A.052.**

28 **(5) Beginning on the effective date of this 2019 Act and until the year 2025, and as nec-**
 29 **essary to comply with the requirements of subsection (2) of this section, an electric company**
 30 **subject to subsection (2) of this section shall make best efforts to continually increase the**
 31 **annual percentage of electricity sold in this state by the electric company that is generated**
 32 **by sources described in subsection (2)(a) and (b) of this section.**

33 **(6) The Public Utility Commission shall adopt rules as necessary to implement this sec-**
 34 **tion.**

35 **SECTION 2.** ORS 469A.075 is amended to read:

36 469A.075. (1) An electric company that is subject to a renewable portfolio standard shall develop
 37 an implementation plan for meeting the requirements of the renewable portfolio standard and file
 38 the implementation plan with the Public Utility Commission. Implementation plans must be revised
 39 and updated at least once every two years.

40 (2) At a minimum, an implementation plan must contain:

41 (a) Annual targets for acquisition and use of qualifying electricity; and

42 (b) The estimated cost of meeting the annual targets, including the cost of transmission, the cost
 43 of firming, shaping and integrating qualifying electricity, the cost of alternative compliance pay-
 44 ments and the cost of acquiring renewable energy certificates.

45 **(3) An implementation plan for an electric company that is subject to ORS 469A.210 shall,**

1 **in addition to meeting any other requirements for the content of the implementation plan,**
 2 **contain:**

3 (a) **Annual targets for the acquisition and use of electricity generated by small-scale**
 4 **renewable energy facilities; and**

5 (b) **The estimated cost of meeting the annual targets, including the cost of transmission,**
 6 **the cost of firming, shaping and integrating qualifying electricity, the cost of alternative**
 7 **compliance payments and the cost of acquiring renewable energy certificates.**

8 [(3)] (4) The commission shall acknowledge an implementation plan no later than six months
 9 after the implementation plan is filed with the commission. The commission may acknowledge the
 10 implementation plan subject to conditions specified by the commission.

11 [(4)] (5) The commission shall adopt rules:

12 (a) Establishing requirements for the content of implementation plans;

13 (b) Establishing the procedure for acknowledgment of implementation plans under this section,
 14 including provisions for public comment;

15 (c) Providing for the integration of an implementation plan with the integrated resource plan-
 16 ning guidelines established by the commission for the purpose of planning for the least-cost, least-
 17 risk acquisition of resources; and

18 (d) Providing for the evaluation of competitive bidding processes that allow for diverse owner-
 19 ship of renewable energy sources that generate qualifying electricity.

20 [(5)] (6) An implementation plan filed under this section may include procedures that will be
 21 used by the electric company to determine whether the costs of constructing a facility that gener-
 22 ates electricity from a renewable energy source, or the costs of acquiring bundled or unbundled
 23 renewable energy certificates, are consistent with the renewable portfolio standards of the commis-
 24 sion relating to least-cost, least-risk planning for acquisition of resources.

25 **SECTION 3.** ORS 469A.025 is amended to read:

26 469A.025. (1) Electricity generated utilizing the following types of energy may be used to comply
 27 with a renewable portfolio standard:

28 (a) Wind energy.

29 (b) Solar photovoltaic and solar thermal energy.

30 (c) Wave, tidal and ocean thermal energy.

31 (d) Geothermal energy.

32 (2) Except as provided in subsection (3) of this section, electricity generated from biomass and
 33 biomass by-products may be used to comply with a renewable portfolio standard, including but not
 34 limited to electricity generated from:

35 (a) Organic human or animal waste;

36 (b) Spent pulping liquor;

37 (c) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest
 38 or rangeland ecological health and to reduce uncharacteristic stand replacing wildfire risk;

39 (d) Wood material from hardwood timber grown on land described in ORS 321.267 (3);

40 (e) Agricultural residues;

41 (f) Dedicated energy crops; and

42 (g) Landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters or
 43 municipal solid waste.

44 (3) Electricity generated from the direct combustion of biomass may not be used to comply with
 45 a renewable portfolio standard if any of the biomass combusted to generate the electricity includes

1 wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or
2 chromated copper arsenate.

3 (4) Electricity generated by a hydroelectric facility may be used to comply with a renewable
4 portfolio standard only if:

5 (a) The facility is located outside any protected area designated by the Pacific Northwest Elec-
6 tric Power and Conservation Planning Council as of July 23, 1999, or any area protected under the
7 federal Wild and Scenic Rivers Act, P.L. 90-542, or the Oregon Scenic Waterways Act, ORS 390.805
8 to 390.925; or

9 (b) The electricity is attributable to efficiency upgrades made to the facility on or after January
10 1, 1995.

11 (5)(a) Up to 50 average megawatts of electricity per year generated by an electric utility from
12 certified low-impact hydroelectric facilities described in ORS 469A.020 (4)(a) may be used to comply
13 with a renewable portfolio standard, without regard to the number of certified facilities operated
14 by the electric utility or the generating capacity of those facilities. A hydroelectric facility described
15 in this paragraph is not subject to the requirements of subsection (4) of this section.

16 (b) Up to [40] **100** average megawatts of electricity per year generated by certified low-impact
17 hydroelectric facilities described in ORS 469A.020 (4)(b) may be used to comply with a renewable
18 portfolio standard, without regard to the number of certified facilities or the generating capacity
19 of those facilities. A hydroelectric facility described in this paragraph is not subject to the require-
20 ments of subsection (4) of this section.

21 (6)(a) Direct combustion of municipal solid waste in a generating facility located in this state
22 may be used to comply with a renewable portfolio standard. The qualification of a municipal solid
23 waste facility for use in compliance with a renewable portfolio standard has no effect on the quali-
24 fication of the facility for a tax credit under ORS 469B.130 to 469B.169.

25 (b) The total amount of electricity generated in this state by direct combustion of municipal
26 solid waste by generating facilities that became operational in this state on or after January 1, 1995,
27 may not exceed nine average megawatts per year for the purpose of complying with a renewable
28 portfolio standard.

29 (7) Electricity generated from hydrogen gas, including electricity generated by hydrogen power
30 stations using anhydrous ammonia as a fuel source, may be used to comply with a renewable port-
31 folio standard if:

32 (a) The electricity is derived from:

33 (A) Any source of energy described in subsection (1) or (2) of this section; or

34 (B) A hydroelectric facility that complies with subsection (4) of this section and that is certified
35 as a low-impact hydroelectric facility as described in ORS 469A.020 (4); and

36 (b) The output of the original source of energy is not also used to comply with a renewable
37 portfolio standard.

38 (8) If electricity generation employs multiple energy sources, that portion of the electricity
39 generated that is attributable to energy sources described in this section may be used to comply
40 with a renewable portfolio standard.

41 (9) The State Department of Energy by rule may approve energy sources other than those de-
42 scribed in this section that may be used to comply with a renewable portfolio standard. The de-
43 partment may not approve petroleum, natural gas, coal or nuclear fission as an energy source that
44 may be used to comply with a renewable portfolio standard.

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1 **COGENERATION AND SMALL POWER PRODUCTION FACILITIES**

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3 **SECTION 4.** ORS 758.515 is amended to read:

4 758.515. (1) The Legislative Assembly finds and declares that[:]

5 [(1)] the State of Oregon has abundant renewable resources.

6 (2) *[It is the goal of Oregon to]* **The Public Utility Commission shall:**

7 (a) Promote the development of a diverse array of permanently sustainable energy resources
8 using the public and private sectors to the highest degree possible; *[and]*

9 (b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying
10 facility shall over the term of a contract be just and reasonable to the electric consumers of the
11 electric utility, the qualifying facility and in the public interest[.];

12 [(3) *It is, therefore, the policy of the State of Oregon to:*]

13 [(a)] (c) Increase the marketability of electric energy produced by qualifying facilities located
14 throughout the state for the benefit of Oregon's *[citizens]* **residents**; and

15 [(b)] (d) Create a settled and uniform institutional climate for the qualifying facilities in Oregon.

16 **SECTION 5.** ORS 758.525 is amended to read:

17 758.525. [(1)] (1)(a) At least once every two years each electric utility shall prepare, publish and
18 file with the Public Utility Commission a schedule of avoided costs equaling the utility's forecasted
19 incremental cost of electric resources over at least the next 20 years.

20 (b) Prices contained in *[the]* schedules filed by public utilities *[shall]* **must** be reviewed and ap-
21 proved by the commission. **The public utility that files the schedule shall bear the burden of**
22 **proving that the prices contained in the schedule are fair, just and reasonable for customers**
23 **of the public utility and qualifying facilities. The commission shall hold a hearing on a**
24 **schedule filed with the commission if a customer of the public utility or a qualifying facility**
25 **requests a hearing on the schedule within 60 days after the date the schedule is published**
26 **and filed with the commission under paragraph (a) of this subsection. The commission shall**
27 **give notice of the time and place of a hearing held pursuant to a request under this para-**
28 **graph, and shall hold the hearing no earlier than 60 days after the date that the request for**
29 **the hearing is received.**

30 (c) Schedules filed by public utilities that adjust avoided costs may not take effect until
31 **the latest of:**

32 (A) **One hundred twenty days after the date on which the public utility files the schedule;**

33 (B) **One hundred twenty days after the date on which the public utility serves notice of**
34 **filing the schedule on each qualifying facility that will be affected by the adjustment; and**

35 (C) **Thirty days after the date on which the commission approves the schedule.**

36 (2) An electric utility shall offer to purchase energy or energy and capacity whether delivered
37 directly or indirectly from a qualifying facility. Except as provided in subsection [(3)] (4) of this
38 section, the price for such a purchase shall not be less than the utility's avoided costs. At the option
39 of the qualifying facility, exercised before beginning delivery of the energy or energy and capacity,
40 such prices may be based on:

41 (a) The avoided costs calculated at the time of delivery; or

42 (b) The projected avoided costs calculated at the time the legal obligation to purchase the en-
43 ergy or energy and capacity is incurred. **Avoided costs calculated under this paragraph shall**
44 **include the electric utility's transmission costs to transmit electric energy from a point of**
45 **origin of generation, or between transfer stations, to the point at which the energy is**

1 transferred to distribution lines for delivery to end users.

2 (3) If an electric utility makes an offer to purchase energy and capacity to a qualifying
3 facility that, at the time of the offer, is already being paid by the electric utility for energy
4 and capacity, the electric utility shall, as part of a contract to purchase the energy and ca-
5 pacity, provide the qualifying facility with the option of delivering the energy and capacity
6 in exchange for an immediate payment of the projected fixed costs of capacity for the term
7 of the contract that the electric utility would avoid by purchasing the output of the qualify-
8 ing facility. Projected fixed costs of capacity for purposes of this subsection shall include but
9 need not be limited to the capital, land, tax, salary and insurance costs of baseload, peaking,
10 renewable generation and storage facilities.

11 [(3)] (4) Nothing contained in ORS 543.610, 757.005 and 758.505 to 758.555 shall be construed to
12 require an electric utility to pay full avoided-cost prices for a purchase from a qualifying facility
13 on which construction began before November 8, 1978, but the price for a purchase from such a fa-
14 cility shall be sufficient to encourage production of energy or energy and capacity.

15 [(4)] (5) The rates of an electric utility for the sale of electricity shall not discriminate against
16 qualifying facilities.

17 (6)(a) A public utility shall offer, and the commission shall approve, standard avoided cost
18 rates and contracts for purchases of energy or energy and capacity from qualifying facilities
19 with a design capacity of not more than 10,000 kilowatts alternating current.

20 (b) For purposes of this subsection:

21 (A) The design capacity of a qualifying facility shall be calculated as the maximum
22 amount of electric energy in alternating current that the qualifying facility, including any
23 energy storage devices associated with the facility, is capable of delivering to the electrical
24 grid, as measured on a rolling one-hour basis, without exceeding facility controls, intercon-
25 nection capacity or transformer capacity; and

26 (B) A qualifying facility that includes any associated energy storage devices shall be eli-
27 gible for all applicable standard avoided cost rates and contracts offered to other qualifying
28 facilities with a similar design capacity, if:

29 (i) The energy storage devices are charged with energy solely from the qualifying facility
30 with which the energy storage devices are associated; and

31 (ii) The qualifying facility meets the requirements of the Federal Energy Regulatory
32 Commission for qualifying facilities.

33 (c) A qualifying facility that utilizes generation technology characterized as variable or
34 intermittent shall be eligible for standard avoided cost rates and contracts that have been
35 approved by the commission for qualifying facilities that utilize generation technology char-
36 acterized as firm, baseload or nonvariable if the qualifying facility is capable, through the
37 use of associated energy storage devices or otherwise, of:

38 (A) Reasonably demonstrating an ability to meet the contribution to the public utility's
39 peak capacity of the qualifying facilities that utilize generation technology characterized as
40 firm, baseload or nonvariable; or

41 (B) Committing to the contractual requirements associated with the standard avoided
42 cost rates approved by the commission for qualifying facilities that utilize generation tech-
43 nology characterized as firm, baseload or nonvariable.

44 **SECTION 6.** Section 7 of this 2019 Act is added to and made a part of ORS 758.505 to
45 758.555.

SECTION 7. Notwithstanding ORS 756.500:

(1) **Nothing in ORS 758.505 to 758.555 is intended to provide the legal basis for assumption by the Public Utility Commission of subject matter jurisdiction over a dispute between a public utility and a qualifying facility over an executed contract or an established legally enforceable obligation for the qualifying facility to sell energy or energy and capacity to the public utility.**

(2) **The commission has subject matter jurisdiction over a complaint brought by a qualifying facility against a public utility in order to establish the terms and conditions of a legally enforceable obligation for the qualifying facility to sell energy or energy and capacity to a public utility.**

(3) **A qualifying facility seeking a judicial declaration, interpretation or enforcement of a contract or legally enforceable obligation for the qualifying facility to sell energy or energy and capacity to a public utility is not required to first seek review by the commission.**

SECTION 8. ORS 756.185 is amended to read:

756.185. (1)(a) Any public utility which does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation.

(b) **If the party seeking damages alleges and proves that the wrong or omission as described in paragraph (a) of this subsection was the result of gross negligence or willful misconduct, the public utility is liable to the person injured [thereby] by the wrong or omission in treble the amount of damages sustained in consequence of the violation.**

(c) **If the wrong or omission as described in paragraph (a) of this subsection was a violation of any of the following, the public utility is liable to the person injured by the wrong or omission in treble the amount of damages sustained in consequence of the violation:**

(A) **ORS 758.505 to 758.555 or the federal Public Utility Regulatory Policies Act of 1978 (P.L. 95-617);**

(B) **A contract entered into pursuant to ORS 758.505 to 758.555 or the federal Public Utility Regulatory Policies Act of 1978 (P.L. 95-617); or**

(C) **A legally enforceable obligation for the purchase by a public utility, as defined in ORS 758.505, of energy or energy and capacity from a qualifying facility, as defined in ORS 758.505.**

(d) Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(3) Any recovery under this section does not affect recovery by the state of the penalty, forfeiture or fine prescribed for such violation.

(4) This section does not apply with respect to the liability of any public utility for personal injury or property damage.

SECTION 9. ORS 758.545 is amended to read:

758.545. (1) If an electric utility fails to make a good faith effort to comply with a request from a qualifying facility to transmit energy or energy and capacity produced by the qualifying facility to another electric utility or to the Bonneville Power Administration, the electric utility shall purchase the qualifying facility's energy or energy and capacity at a price which is the higher of:

1 (a) The electric utility's avoided cost; or

2 (b) The index rate.

3 **(2) A public utility may not charge a qualifying facility for the use of the public utility's**
4 **transmission facilities unless the public utility joins a regional transmission organization or**
5 **an independent system operator.**

6 [(2)] (3) As used in this section, "good faith effort" shall be demonstrated by the electric utility's
7 publication of a generally applicable, reasonable policy of the electric utility to allow a qualifying
8 facility to use the electric utility's transmission facilities on a cost-related basis.

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MISCELLANEOUS

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SECTION 10. The amendments to ORS 758.525 by section 5 of this 2019 Act apply to
13 **contracts entered into on and after the effective date of this 2019 Act.**

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SECTION 11. The unit captions used in this 2019 Act are provided only for the conven-
16 **ience of the reader and do not become part of the statutory law of this state or express any**
17 **legislative intent in the enactment of this 2019 Act.**

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