OREGON ENACTS ENERGY STORAGE LEGISLATION

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Energy, Infrastructure and Resources Alert

By: William H. Holmes

On June 1, 2015, the Oregon legislature passed House Bill 2193-B, which requires certain electric companies to procure qualifying energy storage systems by January 1, 2020, subject to authorization by the Oregon Public Utility Commission (the "Commission"). An electric company may recover in rates all costs prudently incurred in the procurement of the energy storage system(s), including any above-market costs associated with procurement. The final version of the bill enjoyed broad support, passing the Oregon Senate by a vote of 17-12 and the House by a vote of 56-3. Governor Kate Brown signed the bill into law on June 10.

Under the new law, entities (except consumer-owned utilities) engaged in the business of distributing electricity to 25,000 or more retail electricity consumers in Oregon ("electric companies") will need to submit a proposal to the Commission for a project that includes the procurement of one or more qualified energy storage systems with the capacity to store at least 5 megawatt hours (MWh) of electricity. The Oregon utilities that satisfy the 25,000-customer test are Portland General Electric (PGE) and PacifiCorp.

The new law defines an "energy storage system" to be a technology that is capable of retaining energy, storing the energy for a period of time, and delivering the energy after storage. The legislation is "technology agnostic" and does not distinguish between technologies such as batteries, flywheels, compressed air energy storage, thermal and pumped storage hydropower. Rather, the legislation provides that an energy storage system is "qualified" when the technology is included in a project proposed to and approved by the Commission.

The Commission is required to adopt, no later than January 1, 2017, guidelines for electric companies to submit proposals. In developing the guidelines, the Commission will, among other things, (i) examine the potential value of applying energy storage system technology; (ii) consider ways in which to encourage electric companies to invest in different types of energy storage systems; and (iii) consider any other factor reasonably related to the procurement of qualifying energy storage systems. The Commission will likely open a docket to develop these guidelines in the near future.

On or before January 1, 2018, each electric company is required to submit to the Commission a proposal to procure one or more energy storage systems. The proposal must contain an evaluation of the potential to store energy in the electric company's system, including an analysis of the electric company's current operations and the electric company's electric system data, as well as how the addition of energy storage will complement the proposed project. The proposal must also include a description of each proposed project including (i) the technical specifications for each project; (ii) the estimated cost of each project; (iii) the benefits of each project to the electric company's electric system; and (iv) an evaluation of the cost-effectiveness of each project.

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The Commission will evaluate each proposal and determine whether the proposal is consistent with the Commission's guidelines, reasonably balances the value for ratepayers and utility operations, and is in the public interest. If the Commission determines that all of these factors are met, then it will issue to the electric company an authorization to develop its project. The Commission may require an electric company to develop the project in accordance with any competitive bidding guidelines it has prescribed. The new law contemplates that an electric company can procure energy storage by owning a qualifying system, presumably under a self-build or build-transfer arrangement, or by contracting for "the right to use the capacity of or the energy from a qualifying energy storage system," presumably using a long-term power purchase agreement or tolling arrangement.

The total capacity of the energy storage system or systems to be procured by any one electric company is capped at 1% of that company's 2014 peak load. A company's peak load is measured in megawatts ("MW"), as opposed to MWh, which measures both the capacity and discharge capability of an energy storage project. PGE reported 2014 peak load of 3,866 MW, and PacifiCorp's 2013 Integrated Resource Plan forecast a peak load in Oregon of 2,377 MW. It is unclear whether the 1% cap will be tested using the size of the project, as expressed in MW, or the discharge of the project, expressed in MWh. The Commission is expected to review and provide clarity on this and other matters in the guidelines that it will issue to implement this law.

An electric company may obtain a waiver of the 1% limit from the Commission, if, in consultation with the Oregon Department of Energy, the Commission finds that a qualifying energy storage system is of statewide significance, and one or more electric utilities participates in procuring the qualifying energy storage system and sharing in the cost. "Electric utility" is a broader term than "electric company," and includes an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in Oregon.

If you are interested in tracking the Commission's implementation of this storage requirement, the next deadline set forth in the law is September 15, 2016. On or before this date, the Commission is required to report its progress to the interim committees of the Legislative Assembly. However, as stated above, the Commission is expected to open a docket to consider and adopt guidelines to assist electric companies in developing projects. As the law is implemented we will provide you with updates on our Global Energy Law and Policy Blog found at http://www.globalpowerlawandpolicy.com/.

The final version of HB 2193-B can be found at:
https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2193/Enrolled.

KEY CONTACTS



WILLIAM H. HOLMES
OF COUNSEL

PORTLAND
+1.503.226.5767
BILL.HOLMES@KLGATES.COM

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