



GREEN ENERGY  
INSTITUTE  
Lewis & Clark Law School

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**Re: Comments on Draft Rules (AR 651)**

Climate Solutions and Green Energy Institute thank OPUC staff for a robust and inclusive stakeholder process in the AR 651 docket. We appreciate the opportunity to provide these comments, which relate to the ESS reporting component of the draft rules. Climate Solutions is a regional non-profit working to accelerate clean energy solutions to the climate crisis. Green Energy Institute at Lewis & Clark Law School develops equitable, comprehensive, effective strategies to prevent catastrophic climate change by furthering the just transition to a sustainable, carbon-free energy grid.

**Timing of Subsection (4) Reports**

As stakeholders noted during the April 11<sup>th</sup> workshop, there appears to be a clerical error in the draft rules. We understand that the current language ‘from the effective date of these rules through May 30, 2023...’ is intended to read ‘from the effective date of these rules through May 30, 2027...’ Staff has then proposed that reports be filed pursuant to subsection (4) of the draft rules beginning in 2027. We *strongly urge* staff to reconsider this framework.

Section 5(B)(3)(a) of HB 2021 requires that an ESS provide an estimate of annual GHGs associated with electricity sold by the electricity service supplier to retail electricity consumers *for the current year and following three years*. Given that the first of the ambitious targets set out in HB 2021 is *an 80% reduction in GHGs by 2030*, we reiterate our concern that a 2027 report would give neither OPUC nor stakeholders adequate opportunity for review.

Let us explore the implications of waiting until 2027 for a full report. In the instance that ESS filings for the next 5 years are limited to only GHG emissions reported to DEQ, and those emissions at any point do not reflect continual and reasonable progress toward the HB 2021 reduction targets, or worse, reflect backsliding, the Commission and public will be unable to determine root causes for this lack of progress. There will be no access to data on MWs generated and GHGs per MW. There will be no access to data on cost per MW. There will be no access to data on development of resources and specific actions to facilitate rapid reductions in GHG emissions. There will be no access to this data until 2027, *just three years before the 80% GHG reduction target* kicks in. We will essentially be left in the dark with no remedies to place an ESS back on track toward meeting the targets. Commissioners will be unable to look at the granular data layers underneath the GHG emissions reports and will be effectively hobbled in

their ability to assess whether policy changes are necessary to ensure HB 2021 implementation is not sidetracked. We are on a very short timeline to 2030 and we only get one shot at this.

The HB 2021 targets are of paramount importance to the state's decarbonization strategy. We urge staff to take a second look at the proposed reporting framework. We reiterate our recommendation that the first report be required as soon as feasible and no later than 2024. This schedule conforms to the three-year cadence prescribed in HB 2021 and would ensure the trajectory to 80% reduction of GHGs is well underway before the end of the decade.

### **Confidential Information**

As stated in our previous comments, we recognize the competitive nature of the retail electricity market in Oregon. An ESS is entitled to protect its market position. As such, we understand that *some limited* information in ESS reports may be considered confidential. However, we take issue with the suggestion of several ESS entities that most, or all, of the information in the subsection (4) reports should be considered confidential.

Climate Solutions was a strong supporter of HB 2021 and heavily involved in negotiations leading to its passage. We therefore hold a vested interest in its success. Public engagement is an overarching principle of HB 2021. In order to fully and meaningfully engage, stakeholders must have access to information. Indeed, public disclosure is not just aligned with the spirit of HB 2021. It is in the language of the statute as well, as illustrated by the requirements of Section 25(B)(f):

The commission shall require an electricity service supplier to *publicly disclose* [emphasis added] a summary of the aggregated energy supply mix and associated emissions of the power sources that serve the direct access retail electricity consumers of the electricity service supplier, or such other aggregated information comparable to information provided by electric companies to retail electricity consumers as the commission may require.

We enumerate below several reasons, though not an exhaustive list, for the public's interest in disclosure:

1. **MW generation and GHG per MW** – This data adds a layer of granularity to the GHG emissions reported to DEQ, and helps the public understand how much electricity is being generated and its associated climate risks.
2. **GHG emissions forecasts for the following three years** – This data gives the public an understanding of continual and reasonable progress being made, an important consideration in HB 2021 implementation.
3. **Cost per MWH forecasted for the following three years** – This data is necessary to determine whether the stated goal in HB 2021, to provide clean *and affordable* energy, is being accomplished.
4. **Anticipated actions to facilitate rapid reductions of greenhouse gas emissions at reasonable costs** – This information pertains to both the GHG reduction targets and affordability and is important for stakeholders to understand.

5. **Development of resources** – This information is associated with targets and resource adequacy, and has implications for transmission, interconnection, and siting, all of which are issues related to stakeholder concerns.

The draft rules state that ‘confidential information will be treated consistent with OAR 860-001-0070, OAR 860-001-0060 and Public Records Law.’ However, as discussed at the April 11<sup>th</sup> workshop, those sections of code and statute do not pertain to the *specific categories of information* that can reasonably be considered confidential. We urge staff to delineate limited categories of confidential information, carefully circumscribed and defined, *in rule* and with particular consideration of the public’s strong interest in disclosure. Additionally, there should be a clear and compelling reason for identifying information as confidential. These measures will give stakeholders adequate notice concerning those categories of information that will not be publicly available.

### **Continual and Reasonable Progress for a Zero Emissions ESS**

At the April 11<sup>th</sup> workshop we inquired as to the relevance of the continual and reasonable progress requirement for a zero emissions ESS. We now submit that it would be *unreasonable* within the parameters of HB 2021 to require an ESS to go beyond zero emissions (i.e. to require net negative emissions). In such an instance, this is the best interpretation of the word ‘reasonable’ within the continual and reasonable progress standard. We do, however, suggest that a zero emissions ESS still be required to file the GHG emissions and subsection (4) reports to ensure no backsliding.

### **Connection to the UM 2225 Docket**

As discussed at the April 11<sup>th</sup> workshop, ESS reports are the counterpart to Clean Energy Plans for utilities, which are being considered in the UM 2225 docket. We do see a benefit to one or more cross-docket workshops aimed at ensuring parity between ESS reports and CEPs in terms of process, requirements, and timelines.

Thank you again for the opportunity to provide these comments. As always, feel free to reach out should you have any questions.

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