

January 12, 2024
Via Electronic Filing

Oregon Public Utility Commission
201 High St. SE, Suite 100
Salem, OR 97301-3398

Re: Docket LC 80: Energy Advocates' Comments on Staff Report and Final Recommendations

Green Energy Institute at Lewis & Clark Law School, NW Energy Coalition, Climate Solutions, and Oregon Just Transition Alliance (the "Energy Advocates") largely support Staff's Final Recommendations in its Acknowledgement of the 2023 Integrated Resource Plan and Clean Energy Staff Report. Specifically, we support Staff's recommendation to acknowledge Portland General Electric's (PGE or Company) 2023 Integrated Resource Plan (IRP) subject to conditions, decline to acknowledge the Clean Energy Plan (CEP), and direct the Company to revise and resubmit certain elements of the CEP by the next IRP Update, and direct the Company to take additional actions.

We appreciate Staff's and the Commission's consideration of our comments and recommendations throughout this proceeding. We have organized our comments following the structure of the Staff Report, with the exception of the first section addressing the Commission's recent Order No. 24-002 in UM 2273. As Order No. 24-002 adjudicates issues relevant to PGE's CEP, we begin with comments and recommendations regarding the order.

I. Comments relating to Order No. 24-002 concerning the Green Guides and Voluntary Programs

In Order No. 24-002, the Commission opined that HB 2021 compliance does not require REC retirement. The Commission determined that HB 2021 was neither a load-based nor a generation-based program.¹

In the Order, the Commission acknowledged the Green Guides as "provid[ing] guidance on environmental attribute claims. [The Green Guides] state that if a renewable energy producer, "generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the [producer] to represent, directly or by implication, that it uses renewable energy."² The Commission also stated that "[c]laiming use of renewable energy without holding the RECs is considered 'double counting'" and acknowledged that this would erode the integrity of voluntary energy purchases and renewable energy policies.³

¹ UM 2273, In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues, Order No. 24-002 1 (Jan. 5, 2024), <https://apps.puc.state.or.us/orders/2024ords/24-002.pdf> [hereinafter Order No. 24-002]

² Id. at 7 (citing 16 CFR 260.15(d)).

³ Id. at 7.

In the Order, the Commission addressed the role of retail claims and the concept of double counting. First, after declining to identify HB 2021 as a generation-based program, the Commission stated, “[w]e do not understand statements about the underlying generating resource to undermine the integrity of RECs associated with the reported electricity or to constitute a claim to have delivered renewable energy to an end user.”⁴ We take this to mean that PGE neither delivers renewable energy to its retail electricity customers nor does its retail customers have a claim to use renewable energy under HB 2021.

We appreciate the Commission's acknowledgment of the Green Guides and concerns about double counting. However, Order 24-002 lacks recognition of the Green Guides' role in protecting Oregon electricity customers, specifically those *not* participating in a subscription REC program, from misleading public statements by the utilities regarding HB 2021 and “clean” energy.

A. Protecting Oregon customers from misleading information about HB 2021 in PGE's public statements

The Energy Advocates are concerned that the Commission has addressed only one side of the double-counting issue in its order. The Commission noted that it would hold “sellers”⁵ responsible for ensuring REC *buyers* understand that the utilities will use the underlying generation for HB 2021 compliance purposes.⁶ Said another way, we understand this assurance to mean that the Commission will require the utilities to inform the REC buyer that they are only purchasing a claim to renewable energy and not supporting regulatory surplus. However, as Order No. 24-002 does not require REC retirement for compliance purposes, the utilities should not directly or indirectly indicate to Oregon retail customers that they receive the environmental, social, or economic benefits of renewable energy generation submitted to DEQ for HB 2021 compliance. Doing so would constitute double counting.

As the Commission recognized under the Green Guides, it is improper for the utilities to *imply* they deliver renewable energy under HB 2021 by using photos of wind turbines in press releases about HB 2021 or calling renewable energy generation “non-emitting” or “zero-emissions” on their Oregon-focused websites without a clear and prominent disclosure that the general public can understand.

Several of PGE's web pages should contain disclosures regarding implied renewable energy claims. We recognize that PGE's consumers *do* receive 20% renewable energy based on the company's compliance with the state's RPS, which requires the retirement of RECs. However,

⁴ Id. at 15.

⁵ We understand “sellers” to include utilities and electricity service suppliers, who are both subject to HB 2021. It is unclear if “sellers” refers to renewable energy developers who may only sell generation under the PPA, but not the unbundled RECs.

⁶ Order No. 24-002 at 15.

under the Green Guides, implying that all electricity comes from renewable resources is misleading when the utility can only substantiate a portion of the electricity with RECs.⁷

For example, the following PGE webpages should include disclosures to avoid misleading customers about renewable energy claims under 16 CFR 260.15. This list is not exhaustive but is intended to represent the need for disclosures. Based on these websites, it is reasonable for a customer to infer that PGE delivers renewable energy to the customer.

- *Portland General Electric Files Inaugural Clean Energy Plan* is the press release for the company's Clean Energy Plan filing with the Public Utility Commission. The press release incorporates a photo of a solar array and wind turbines. The press release includes multiple statements that directly imply that to comply with HB 2021, PGE will procure and build new utility-scale renewable energy facilities.
- *Climate Goals* describes HB 2021 clean energy targets and that PGE intends to meet the targets with "clean energy," "adding more renewable facilities through wind and solar."⁸ The text implies that customers will receive renewable energy—and more of it in the future—to comply with HB 2021.
- *Our Power Plants* lists PGE's power plants, including wind and wind/solar facilities, implying delivery of renewable energy to customers.⁹
- *Energy Sources* describes the company's resources that make up the company's energy generation facilities and provides additional information on wind and solar.¹⁰ The webpage includes images of wind and solar facilities that imply the delivery of renewable energy to customers.
- *The Power of Wind* describes PGE's wind fleet, detailed information about the Biglow Canyon facility, and includes images of wind farms, implying that this generation is delivered to customers.¹¹
- *Wheatridge Renewable Energy Facility* describes the facility contributing wind energy to the grid and the facility's role in supporting HB 2021's clean energy targets. This page directly indicates that HB 2021 provides renewable energy to customers.¹²

⁷ 16 CFR 260.15, Example 2.

⁸ Climate Goals, PGE, <https://portlandgeneral.com/about/who-we-are/climate-goals> (last visited Jan. 10, 2024).

⁹ Our Power Plants, PGE <https://portlandgeneral.com/about/who-we-are/how-we-generate-energy/our-power-plants> (last visited Jan. 10, 2024).

¹⁰ Energy Sources, PGE, <https://portlandgeneral.com/about/who-we-are/how-we-generate-energy/energy-sources> (last visited Jan. 10, 2024).

¹¹ The Power of Wind, PGE <https://portlandgeneral.com/the-power-of-wind> (last visited Jan. 10, 2024).

¹² Wheatridge Renewable Energy Facility, PGE, <https://portlandgeneral.com/about/who-we-are/innovative-energy/wheatridge-renewable-energy-facility> (last visited Jan. 10, 2024).

The following PGE webpages illustrate the difficulty the company will have disclosing statements about “clean” energy. Based on these current statements, it is reasonable for a customer to infer that PGE delivers “clean” energy to the customer.

- *PGE Quick Facts* states, “Powering a growing community with clean, reliable and affordable energy” and “We’re building a smarter energy infrastructure, providing our customers the clean energy they want and bringing new energy solutions forward.”¹³ Although there are no images of renewable energy generation, customers are reasonably likely to infer that “clean” means the company delivers renewable energy.
- *Clean Energy Future* states, “We’re leading the way to a future that brings affordable, reliable and clean energy to all,” and “We’re here as your trusted energy partner to provide easy and effective solutions that power our shared mission to create a clean energy future.”¹⁴ Customers are reasonably likely to infer that “clean” means the company delivers renewable energy.

Now that the Commission has determined that HB 2021 is not a load-based program, PGE must not directly or indirectly imply that HB 2021 means customers are using “clean” electricity or renewable energy. It can avoid these types of statements or provide clear and proper disclosures to avoid misleading Oregon electricity customers. It must do this to avoid double counting.

The Commission owes Oregon retail customers the same level of protection as third-party REC buyers. This is especially true since the law’s text is likely misleading to a general audience, as it establishes “clean energy targets” and requires a “Clean Energy Plan.” As such, we recommend the Commission oversee the utilities’ public statements about HB 2021 to avoid misleading Oregon electricity customers and facilitating a violation of the Green Guides.

B. The Clean Energy Plan should describe the GHG accounting method used for HB 2021

The Energy Advocates recommend that the Clean Energy Plan (CEP) contain a short chapter dedicated to describing the GHG accounting method used for HB 2021, including: (1) summarizing how covered electricity generation is identified because RECs are not retired on behalf of customers, (2) that there are no delivery or use claims, and (3) explaining how the utilities report emissions to DEQ. We ask the Commission to require PGE to amend its CEP, adding this disclosure information before accepting PGE’s inaugural CEP. Alternatively, we ask the Commission to require these actions in the company’s subsequent CEP filing.

Other CEP sections should provide cross-references to the disclosure chapter. OAR 860-027-0400(5) supports this concept, requiring the [CEP] to be “clear and simple as possible, with the goal” that it is “understood by non-expert members of the public.” Because the Green

¹³ PGE Quick Facts, PGE, <https://portlandgeneral.com/about/info/quick-facts> (last visited Jan. 10, 2024).

¹⁴ Oregon’s Clean Energy Future, PGE, <https://portlandgeneral.com/about/who-we-are/clean-energy-future> (last visited Jan. 10, 2024).

Guides are not binding, there is a *greater* need for the Commission to provide oversight, not less, as the utilities may lose sight of the U.S. Federal Trade Commission’s interpretive rules over time. These recommendations should be the minimum precautions and disclosures necessary to protect customers from misinformation about HB 2021 and the integrity of the RECs generated from renewable energy resources used to comply with the law. Oregon retail electricity customers must—and deserve to—understand that even if HB 2021 was heralded as the “100% Clean Electricity for All” law, it does not provide “clean” electricity.

Moving forward, the Energy Advocates recommend pursuing CUB’s proposal to use the Portfolio Options Committee to identify disclosure practices for the utilities to follow that are consistent with the Green Guides. Specifically, the Committee should establish disclosure practices necessary for environmental benefit claims (16 CFR 260.4) and renewable energy claims (16 CFR 260.15) for standard public statements about HB 2021 and public statements about programs implicating RECs.¹⁵

II. Energy Advocates Recommendations Related to Staff’s Recommendations

As noted in the introduction, the Energy Advocates support many of Staff’s Recommendations. As such, we have first provided a list of recommendations we support below, and then provide additional recommendations on several issues.

The Energy Advocates support the following Staff Recommendations:

CBRE Action

Staff Recommendation 1: Acknowledge PGE’s CBRE Action Item subject to the condition that PGE pursue the broader range of procurement actions that it identified in comments in this docket.¹⁶

Energy and Capacity Action

Staff Recommendation 2: Acknowledge PGE’s Energy and Capacity Action Items subject to the following condition: Before issuing its next utility-scale RFP, PGE will file a proposal for a Long Lead Time Resource RFI developed via a stakeholder process in LC 80 and facilitate a stakeholder discussion (workshop) on the findings of the RFI and allow sufficient time for stakeholder review of its RFI before proposing its next steps.

Energy Advocates believe that more clarity needs to be developed as part of the proposed stakeholder process to identify a separate RFP pathway for Long-Lead Resources that does not expect them to immediately compete on price with near-term resources. This is especially true

¹⁵ CUB proposed this pathway during UM 2273 Oral Argument when discussing the REC issue.

¹⁶ LC 80, Sudeshna Pal, Portland General Electric: Acknowledgment of 2023 Integrated Resource Plan and Clean Energy Plan, Staff Report 11 (Dec. 14, 2023), <https://edocs.puc.state.or.us/efdocs/HAU/lc80hau325590032.pdf> [hereinafter LC 80 Final Staff Report]

because the early projects will be more expensive than what a mature technology will cost. Also, the evaluation of possible Long-Lead Resources needs to factor in the local economic and community development benefits that they can provide over time.

Transmission Access

The Energy Advocates appreciate PGE's commitment to perform a transmission study before the next IRP update, as described in its Round 2 Comments. We support Staff's expectations for providing meaningful transmission analysis, including a clear description of the drivers, a clear description of the investment options, a detailed cost/benefit analysis, and an exploration of alternatives.

CEP Acknowledgement Recommendation

Staff Recommendation 3: Decline to acknowledge PGE's expected reduction of greenhouse gas emissions in the Clean Energy Plan as credible based on the preferred portfolio and direct the Company to make the following revisions and resubmit the revised plan before its IRP/CEP Update in 2025:

PGE shall conduct hourly production cost simulation of its preferred portfolio under the Reference Case in a manner that separately tracks hourly purchases and hourly sales. PGE will use this analysis to revise its GHG emissions forecast and to revise its submission to DEQ.

PGE shall update the Preferred Portfolio accordingly and provide a brief narrative explanation of the key planning insights derived from this exercise.

Avoided Cost – Energy Efficiency

Staff Recommendation 4: Direct PGE to work with Staff to propose a new method for calculating avoided costs in Docket No. UM 1893. The avoided cost proposal should resolve the shortcomings identified by PGE and Staff, including but not limited to the shift from one avoided capacity value to annual values, the impact of constraints observed in the model, and the need to procure clean electricity not captured by forward market prices.

Small Scale Renewable Resources

Staff Recommendation 5: Direct PGE in the next IRP/CEP Update to include an SSR compliance analysis. The SSR analysis should state the projected SSR compliance position, broken out by relevant resource types, and outline the actions the Company plans to take to fill any identified SSR shortfalls.

In addition to Staff's recommendation, the Energy Advocates recommend a discussion about net metering, net metering with storage, renewables under PURPA (solar/wind/battery),

community solar, and CBREs. Including these resources towards PGE's compliance targets may help PGE promote these resources rather than hinder their development or initiate backsliding. This discussion could take place through the continuation of AR 622 - Small Scale Renewable Energy Projects Rulemaking.

Energy Advocates encourage PGE to take a more proactive approach to the broad category of SSRs, as part of a transition to a more distributed and smart grid with resilience built into the strategic location of small-scale generation and storage resources, of all the types listed above.

Community Engagement

Staff Recommendation 6: Direct PGE to work collaboratively with Staff, stakeholders, peer utilities, and the CBIAGs in a dedicated working group to develop clear, actionable improvements to community and stakeholder engagement in subsequent IRP/CEPs by December 31, 2024. If PGE cannot complete this effort by this timeline, PGE should provide a detailed status update by the same date and explain how it will ensure that remaining issues are resolved as soon as practicable.

In addition, we would like to highlight CRITFC's comment regarding the importance of engagement and partnership with tribal communities, particularly those activities that occur within their reservation boundaries.

Community Benefits

Staff Recommendation 7: Direct PGE to conclude its process to develop informational and portfolio CBIs and provide baseline metrics prior to filing its next IRP/CEP Update. If PGE cannot complete this effort by this timeline, PGE should provide a detailed status update and explanation of how it will ensure that remaining issues are resolved as soon as practicable.

In our Round 2 comments, we recommended that the Commission direct PGE to specify how each of its action plan items advances progress on identified CBIs. Staff did not include this recommendation in its final recommendations. In its Staff Report, Staff identified its priority is to "better tie portfolio analysis and the resulting strategy to CBIs."¹⁷ While we understand this desire, we reiterate our recommendation here because the CBIs are an important metric to gauge the company's action items.

Specifically, one of Staff's important insights for PGE's path to decarbonization calls for PGE to become more quantitative with its evaluation of community benefits and impacts and the role of community-based resources. We believe that this quantification must include both community-based economic, reliability and resilience benefits as well as system benefits associated with reduced congestion and peak loads within their service territory. Least cost energy supply should not be the sole determinant. PGE needs to approach the CBIs and CBREs, as a member of the community and not just a provider of least-cost energy services. Secondary benefits to ratepayers should be given more weight because the local economic

¹⁷ Id. at 22.

development benefits to the community (its ratepayers) will flow back to PGE as their prosperity increases.

Federal Incentives

Recommendation 8: Direct PGE to include a report on federal incentive implementation and its key impacts on the Company's Action Plan and 2030 resource strategy with its next IRP/CEP Update.

III. Comments and Recommendations Regarding Staff Expectations for Future IRPs

The Energy Advocates support many of Staff's Expectations for Future IRPs.

GHG Modeling:

We appreciate Staff's continual acknowledgment of the importance of developing a GHG "modeling framework to conduct hourly dispatch analysis of the Preferred Portfolio" that will "demonstrate that the Preferred Portfolio can achieve the Company's 2030 GHG target under DEQ accounting rules [Recommendation 6]. Staff reiterates that this capability is expected by the next IRP/CEP. We appreciate Staff's explanation that this modeling effort will be made with inputs from Staff and stakeholders.

Portfolio Analysis:

Staff recommends that PGE provide portfolio analysis that allows a more direct comparison of tradeoffs of different resource strategies. Specifically, identifying the need to more precisely capture the CBIs of portfolios beyond the inclusion of CBREs and to allow comparison of the CBIs of the different portfolio of actions.

Energy Advocates continue to believe that more fundamental changes to the portfolio modeling approach are needed. In addition to the requirement to integrate CBIs into each portfolio, the CEP portfolio designs should focus on alternate pathways to the needed, but yet not commercial, technologies that are options for providing the resilience that our future electricity system will need. Also, analysis of these possible pathways to a clean electricity future needs to be evaluated not just on energy cost, but also on the local economic and community benefits each pathway provides. Such analysis will be an essential part of figuring out how to best incorporate Long Lead Resources.

Reliability Analysis:

Staff revised its reliability analysis expectations based on PGE's response to Staff's Round 2 comments. The Energy Advocates support Staff's revisions.

IV. Conclusion

We thank Staff for their thoughtful comments and recommendations. We largely support Staff's conclusions and recommendations and encourage Staff to consider our comments and recommendations.

Respectfully submitted this 11th day of January 2024.

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