



HOUSE OF REPRESENTATIVES

Via Electronic Mail

October 4, 2022

Oregon Public Utility Commission
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**Re: HB 2021 (2021 Session) Implementation Plan
OPUC October 4, 2022, Special Public Meeting – Agenda Item 1 – UM 2225**

Chair Decker and members of the Commission:

Thank you for your service. I write to request that the Public Utility Commission (“Commission”) address several questions relating to its implementation, policies, plans, and role relative to House Bill 2021 (“HB 2021”), which took effect on September 25, 2021.¹ As a sponsor of HB 2021 with great interest in both Oregon’s energy sector and the impacts of climate change on Oregon’s infrastructure, economy, and way of life, I am committed to successful implementation of HB 2021 and the policies woven throughout.

However, it is important to note that there are only eight years left to meet HB 2021’s first hard mandate of 80% emissions reduction below baseline emissions by 2030. Recognizing the scale of action required, I am concerned that Oregon faces significant risk of not meeting HB 2021’s requirements, both in terms of the initial 2030 emissions reduction mandate and other requirements, such as “continual progress” compliance obligations.

Significant new generation resources are required to achieve the specified reductions in emissions. For example, Portland General Electric (“PGE”) recently estimated that it alone needs 3-4 thousand megawatts (MW) by 2030,² around 5 times Oregon’s existing solar generation.³

¹ Among other obligations, I understand that utilities were also required to immediately begin planning for HB 2021 compliance upon its passage, and that utility procurement to meet HB 2021 requirements would continue under existing Commission processes. *See* Public Utility Commission of Oregon, Comments to House Committee on Energy and Environment, HB 2021-1 Implementation at page 1 (March 26, 2021) available at <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/CommitteeMeetingDocument/236918>

² Portland General Electric September 2022 IRP Roundtable Presentation Slide 13 available at https://assets.ctfassets.net/416ywc11aqmd/70ZtUZu614Muls6lKSpNm0/72d85334b7e9f4152a169c230393970e/IRP_Roundtable_September_22-8_92822.pdf (“PGE is forecasting 3-4 GW of new resource need to meet the HB 2021 decarbonization target.”) PGE clarified on the call that this is to meet the 2030 target. Call recording at 1:07:30, available at <https://www.youtube.com/watch?v=mU9MMUa54G8>.

³ The increase is even greater when accounting for additional generation required by Pacific Power.

Such an undertaking is even more challenging given that Oregon’s procurement cycles are not annual, but are staggered behind other Commission process, and power projects themselves can take several years to develop and construct, even without interconnection timelines delays. Regarding transmission, which is a critical constraint to successful decarbonization, it will likely take 10-15 years to develop any new major lines, as evidenced by the recent Boardman to Hemingway permit issuance.

The Commission has a critical role in ensuring the realization of actions and outcomes directed under HB 2021 and, with little room for deferral, success or failure in electric decarbonization efforts will depend greatly on the Commission’s use of its powers and authority to implement and bring about the outcomes required by HB 2021.

As I understand it, the Commission’s implementation efforts for HB 2021 are primarily occurring through its docket no. UM 2225, with a particular emphasis on the Clean Energy Plans (“CEPs”) component of HB 2021; and that a Special Public Meeting will be held on October 4, 2022 to weigh in on staff proposals and the overall direction and implementation plan for HB 2021, including follow-up on the Commission’s public meeting related to an initial HB 2021 plan and roadmap on May 31, 2022 (“May UM 2225 Public Meeting”), and its related Order 22-206 dated June 3, 2022 (“First PUC HB 2021 Order”).

In the legislative context, I am seeking to better understand the Commission’s role and obligations in the implementation of HB 2021 and its plans for engagement in that work. It is not my intention to interfere with any open docket, but rather to ensure I have the information needed to inform my legislative work and any legislative concepts that may follow on HB 2021 for the 2023 Legislative Session. With this context, I respectfully request that the Commission address the questions below.

1. THRESHOLD ISSUES

- a. Has the Commission determined how many MW will be required of new renewables to meet the 2030, 2035, and 2040 mandates? How many MW per year, and per RFP cycle, will be required to be constructed to meet these milestones?**

The timescale of the challenge in front of us amplifies the importance of data-driven projections. I realize that the Commission will ultimately look to each electric company’s eventual CEP for some of the details on these questions, but I also assume the Commission has completed some of its own preliminarily estimates to inform the scale, nature, and required trajectory of successful compliance with HB 2021’s primary objectives. I would appreciate the opportunity to review those estimates to better understand the pathway ahead.

- b. What actions, analysis, or determinations has the Commission undertaken to resolve questions about the “binding nature” of HB 2021, and how will those inform further rulemaking priorities, decisions, roadmaps, and implementation?**

During relevant public process, I understand that Commissioners have engaged in some debate about whether HB 2021 is binding or not.⁴ As Commissioner Thompson noted in various ways, this is important given the Commission’s critical role in regulating utilities, which may “need some pretty heroic and innovative actions” to comply with HB 2021’s emission reduction targets.

A clear understanding of the binding nature of HB 2021 and the legal criteria established is foundational to all implementation and roadmap decisions. As a legislator who helped craft the bill, I will note that aspirational language proposed during the process that would have required electricity providers to “seek to provide” 100% non-emitting electricity,⁵ was explicitly not adopted. Instead, the law directs that the electricity provider “shall” reduce greenhouse gas emissions and establishes numerous compliance obligations.

If determinations have been made regarding the binding nature of HB 2021, please explain the basis and process for those determinations, and whether associated with any public meeting after May 31, 2022. For example, is this determination based solely on Renewable Northwest’s assertions in comments as cited by Staff in the May 23, 2022 Staff Report that – notwithstanding the use of the term “compliance” over a dozen times in Sections 1 to 15 – the bill “does not include a compliance mechanism”?⁶ Based on the

⁴ Public Utility Commission of Oregon Public Meeting, at 1:00:09 (May 31, 2022) available at https://oregonpuc.granicus.com/player/clip/956?view_id=2&redirect=true&h=1fd948a67a879edf0c14baa20e261c6 (Commissioner Thompson: “*On the topic of compliance and penalties, I agree that . . . starting a big contentious docket right now or effort right now to figure out what the penalties will be for non-compliance doesn’t feel right to me, doesn’t feel constructive or needful thing to do right now. That said, I do think it’s a little bit . . . strange to be in the situation that I find myself in a little bit, which is seeing that there is maybe different points of view about how binding HB 2021’s targets are. Are they targets? Are they requirements? Are they goals? Is this statute aspirational? Or is it binding? And I guess I’m just starting to feel like wow we only have 18 years before we’re at that, you know under the bill, we’re at the level that is 100% non-emissions, so I feel like **we better figure it out really quickly if this is binding or not** because honestly, I think, you know, we talk about Oregon’s standard now . . . leading the country or tied with the leading standard in the country for decarbonization. And I think we owe it to everybody to figure out, are we really going to get there, and if we are I think we’re going to need some pretty heroic and innovative actions to get there. I get concerned when we talk about HB 2021 and it kind of has this asterisk like there’s still some components of it that are aspirational. And if that’s true, whose job is it to figure that out? It’s ours and it’s the utilities. And, I think, in the fairly near term, so all that is to say that I definitely am in favor of trying to figure out the binding nature of HB 2021, what it really means, what does non-compliance look like, and what should we do about that. And I think some of that is just some internal work that . . . we can do or have done and then there’s also some external work of engaging with people so we can understand their points of view and come to some resolution on that.”)*)

⁵ See e.g., HB 2021-1 Amendment available at <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/ProposedAmendment/18839>.

⁶ Public Utility Commission of Oregon Order No. 22-206, Appendix A at 3 available at <https://apps.puc.state.or.us/orders/2022ords/22-206.pdf>. “*The statute intentionally does not include a compliance mechanism. Instead, the statutory framework builds on the existing regulatory structure whereby a utility develops an IRP subject to Commission acknowledgement, [footnote omitted] followed by an RFP to acquire resources aligned with needs identified in the*

public record, Commissioner Thompson’s comments (and surrounding discussion with Chair Decker and Commissioner Tawney), and Order 22-205, it appears, that the Commission did not yet believe it knew the answer to this question on the date of the May 31, 2022 public meeting.

As the Commission responds to this question, please include due consideration of the specific elements and language of HB 2021, including the following among others:

- Section 2: “*be* generated” and “*be* done”;
- Section 3: “a retail electricity provider *shall* reduce”;
- Section 4: “*shall* develop a clean energy plan”, which “*must... include annual goals... [and] demonstrate continual progress...*”
- Section 4: “The commission *shall ensure* that an electric company *demonstrates continual progress and is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions...*”
- Section 5: “For the purpose of verifying... *compliance* with the clean energy targets...”
- Section 5: “In evaluating whether a plan is in the public interest, the commission *shall consider...*[t]he economic and technical feasibility of the plan...[t]he effect of the plan on the reliability and resiliency of the electric system,” among others.
- Section 9: discussion of process to “grant a temporary exemption to *compliance..*” and “the obligation to comply with the requirements of ...Sections 1 to 15 of this 2021 Act”.
- Section 10: over a half-dozen references to “compliance with section 1 to 15 of this 2021 Act”.

If concluding that “compliance” with state statutes does not create a binding obligation, please explain the detailed legal basis for that conclusion. Similarly, if the agency does not believe it has an obligation to see specific parts, or any, of the statute implemented by the retail electricity providers, please provide a detailed explanation and legal basis for the conclusion, as well as the Commission’s position on which state agency should oversee, regulate, and ensure effective implementation for entities that the Commission would otherwise oversee and regulate.

2. OVERSIGHT AND RULEMAKING

- a. **Please describe the Commission’s view on its responsibility to implement the provisions of HB 2021, including whether the responsibility is mandatory or permissive and whether applicable to all or only portions of the bill.**

To the extent that the Commission believes it only has a responsibility to implement certain portions of HB 2021, please enumerate which portions of the bill (Sections 1 to 15) that it does and does not believe it has an obligation to implement. Please pay

IRP subject to Commission acknowledgement, [footnote omitted] all of which ultimately informs a rate case whereby the Commission determines what expenses undertaken by a utility are recoverable in rates.”

particular attention to the Commission’s role as the regulator of applicable retail electricity providers, as related to the implementation of Section 3. To the extent the Commission believes another agency shall bear responsibility for regulation and implementation of Section 3 and imposing any consequences for retail electricity providers for failures to achieve those standards, please explain in detail.

b. What is the Commission’s plan or process for determining which issues related to HB 2021 will have formal rulemakings for implementation, and when will those rulemakings occur?

Please address how the Commission plans to prioritize and decide which rules it should consider adopting and when to engage in such processes relative to the emissions reduction objectives of HB 2021. Should these be prioritized by likelihood to facilitate and contribute to state policy and statutory requirements, or some other standard? In what order does the Commission foresee its implementation actions occurring as relates to its existing processes for IRPs, CEPs, RFPs, and rate cases? Specifically, it would be helpful to understand the general timeline the Commission foresees from now until 2030 regarding each of the steps necessary to reach the 2030 target, including for example, the time to conduct rulemakings, when IRP, CEPs, and RFPs will likely be conducted and concluded, and when the resulting projects from those processes will ultimately be constructed and in service.

c. When does the Commission expect to issue new final rules governing CEP requirements?

I understand that the first CEPs are expected as early as March 2023,⁷ and that Commission Staff has proposed interim guidance for these first CEPs, but not for prospective CEPs.⁸ Based on the Commission’s estimation in testimony on HB 2021,⁹ I had anticipated that the rulemaking would be completed within 9-12 months of the bill’s enactment. Given the substantial planning, stakeholder involvement, and other requirements necessary for the CEPs, in addition to procedural rulemaking requirements, please comment on the Commission’s plans to ensure relevant processes are completed within the remaining 6-month window before the first CEP plans must be complete and filed.

3. COMPLIANCE CONSIDERATIONS

As I understand it, the Commission declined to take action on compliance penalties at the May UM 2225 Public Meeting earlier this year.¹⁰ As backdrop for the questions below, I note

⁷ Public Utility Commission of Oregon Order No. 22-206, Appendix A at 3 available at <https://apps.puc.state.or.us/orders/2022ords/22-206.pdf>.

⁸ UM 2225 Staff Report (Sept. 28, 2022) available at <https://edocs.puc.state.or.us/efdocs/HAU/um2225hau15478.pdf>

⁹ See Public Utility Commission of Oregon, Comments to House Committee on Energy and Environment, HB 2021-1 Implementation at page 2 (March 26, 2021) available at <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/CommitteeMeetingDocument/236918>

¹⁰ Public Utility Commission of Oregon Order No. 22-206, Appendix A at 1 available at <https://apps.puc.state.or.us/orders/2022ords/22-206.pdf>.

the major challenges discussed above (among others) and Commissioner Thompson’s comments about the “pretty heroic and innovative actions” needed.

I highlight my concern about adequacy of enforcement mechanisms and approaches to compliance, as the Commission appears poised to shoehorn the CEP into the same process it uses for integrated resource plans (“IRPs”),¹¹ a process that the Commission has recently argued in court is not binding on the utility and unreviewable by a court until some future rate case or unknown future order.¹²

- a. How does the Commission plan to enforce the 2030, 2035 and 2040 emissions reductions mandates and other bill elements, and when does the Commission plan to have final rules in place governing the enforcement mechanism and remedies for non-compliance?**
- b. Does the Commission believe it is prevented from imposing financial or other penalties for a utility’s failure to comply under HB 2021?**
- c. Will there be consequences, risks, or financial penalties for electric companies for failing to meet emission standards in Section 3 of HB 2021 and, if so, what is the timeline for identification of those elements?**

Is it a correct interpretation of the Commission’s position, per Order 22-205 and the May 31 Public Meeting, that there will not be any penalties or other consequences for electric companies for failure to meet the emission standards in Section 3 of HB 2021? If so, I am concerned that could significantly undermine compliance with the law and the success of state action on climate. What is the Commission’s view on how a lack of consequences could affect the likelihood of compliance by regulated entities as well as realizing the emissions reduction target in Section 3 of HB 2021?

If a compliance or penalties structure is still under consideration, what is the Commission’s view on when an electric company needs to understand the scale, nature, and mechanisms for such penalties?

Should Oregon wait until 2030 to communicate this, for example, after a compliance failure? If not, what timing is necessary to beneficially influence compliance and successful outcomes? Please bear in mind and comment on project development and procurement timelines, including as related the Commission’s own current and proposed processes.

¹¹ UM 2225 Staff Report at 3, 6 (Sept. 28, 2022) available at <https://edocs.puc.state.or.us/efdocs/HAU/um2225hau15478.pdf>.

¹² In re the Petition of NewSun Energy LLC, v. Or. Pub. Util. Comm’n, Marion Co. Cir. Court Case No. 22CV05442, Oregon Court of Appeals Case No. A178808, Transcript of Proceedings Volume III of III at 58; *see also* pages 55-56 (analogizing the Commission’s regulatory scheme to a professor’s assignment of a term paper and stating that IRPs, RFPs and the like are akin to a professor “critique [of] a draft or outline” of the paper mid term. “[It] is not what is graded at the end of the semester . . . [but] is merely a check-in and a utility as described by ALJ Moser may ignore the recommendations and preferences of the PUC in such an order.”)

4. CONTINUAL PROGRESS

- a. **Please explain how the Commission plans to implement or is implementing the requirement for continual progress and, if so, when the Commission plans to have rules in place enforcing this continual progress requirement.**

Section 4(4)(e) requires that the electricity provider in its CEP demonstrate that it is making continual progress towards the 2030, 2035, and 2040 compliance deadlines. Section 4(6) also requires that the Commission “shall ensure that an electric company demonstrates continual progress . . . and is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions.”

The Commission Staff recommendation proposes that utilities show continual progress by demonstrating year-over-year emissions reductions on an expected basis in the CEP,¹³ but without saying what level of emissions reductions is expected such as a linear emissions reduction constraint. However, it is the Commission’s obligation to ensure that continual progress is demonstrated.

As such, please explain how the Commission plans to implement and/or is implementing the requirement for continual progress and if/when the Commission plans to have rules in place enforcing this continual progress requirement. In addressing this question, please discuss the Commission role related to this legal compliance standard in facilitating successful decarbonization and how it might be a tool for the measurement of adequacy of efforts by a retail electricity provider in achieving compliance with necessary emissions reductions, as well as potential utilization in consideration of any penalties that might should apply.

5. DIRECT BENEFITS

- a. **Please explain how the Commission plans to implement Section 2 of HB 2021 and if/when the Commission plans to have rules in place governing that section.**

Section 2 of HB 2021, among other things, declares that it is the policy of the State that non-emitting electricity used to comply with the law be generated, to the maximum extent practicable, in a manner that provides direct benefits to communities in the state in the form of meaningful living wage jobs, promoting workforce equity, and increasing energy security and resiliency.

As I understand it, the Commission declined to enforce Section 2 of the bill in a utility request for proposal (“RFP”) even where the Commission, in the same docket, allowed for or left open the possibility of the utility acquiring more resources in the name of

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UM 2225 Staff Report at 15, 17 (Sept. 28, 2022) available at <https://edocs.puc.state.or.us/efdocs/HAU/um2225hau15478.pdf>.

meeting HB 2021’s non-emitting requirements.¹⁴ In that RFP docket, the Commission noted:

“We declined to require any language preferring in-state projects. We noted that we will continue to consider this provision as we work through HB 2021 implementation, and there will be discussion beginning in multiple other forums of capturing community benefits from HB 2021 implementation. At this early stage, however, we found there is no clear basis in the operative provisions of the law to require PGE to adjust RFP scoring to explicitly create an in-state preference, nor has there been discussion of the potential policy and legal downsides of doing so.¹⁵”

Now, in the Commission Staff recommendation for UM 2225, there is no mention of how Section 2 will be implemented. As such, I am hoping to better understand the Commission’s role, obligations, and implementation plans within this context, including the items detailed below.

- Please explain how the Commission plans to implement Section 2 of HB 2021 and if/when the Commission plans to have rules in place governing that section.
- When should “discussion of potential policy and legal downsides” for complying with HB 2021 occur, if not before procurement processes that are subject to, and intended to comply with, HB 2021?
- Given the Commission’s role in oversight of electric company procurements (RFPs, in particular), which agency (or other authority) does the Commission believe is responsible for implementing the state policies, as relates to the provisions in HB 2021, Section 2, paragraph 2?
- Please comment on the Commission’s view of what “the maximum extent practicable” would be for the share of “electricity generated that produces zero greenhouse gas emissions” being located in Oregon and thereby providing “additional direct benefits to communities in this state in the forms of creating and sustaining meaningful living wage jobs, promoting workforce equity, and increasing energy security and resiliency.”
- Please comment on how Oregon will achieve its state policy of “the maximum extent practicable” if significant procurement of renewables is finalized, contracted, and (likely) approved by the Commission before the Commission develops standards related to the same.
- Given the tight timelines for achieving 2030’s 80% emission reduction requirements, please comment on whether delay in Commission action related to “direct benefits” under Section 2 poses risks to our ability to achieve those benefits as a state.

¹⁴ Portland General Electric Company, 2021 All-Source Request for Proposals, Public Utility Commission of Oregon Order No. 21-460 at 9-10 (Dec. 10, 2021) available at <https://apps.puc.state.or.us/orders/2021ords/21-460.pdf>; Portland General Electric Company, 2021 All-Source Request for Proposals, Public Utility Commission of Oregon Order No. 22-315 at 6 (Aug. 31, 2022) available at <https://apps.puc.state.or.us/orders/2022ords/22-315.pdf>.

¹⁵ Order No. 21-460 at 9-10.

6. OTHER ISSUES

- a. What other creative actions is the Commission considering to facilitate Oregon's success in achieving HB 2021's requirements and targets, both in terms of emission standards in Section 3 of HB 2021 and other state policies?**

In addressing this question, please include discussion of potential changes and use of the Commission's authority in areas such as:

- PURPA and QF-related contracting and interconnection policies;
- Implementation and improvements of standard contracting, feed-in-tariff policies, and other actions to ease and accelerate decarbonization;
- Changes to project size and on-system requirements, and other artificial limitations for community solar programs;
- Changes to the RFP cycles and frequency;
- Modifications to RFP bidding criteria and PPA terms and conditions, to diversify and expand bidder options and pricing structures;
- Additional contingency procurement levels to account for failures;
- Expansion of direct access programs;
- Encouragement of IOU funding of BPA transmission studies;
- Policies to facilitate resiliency improvements and investments around Oregon, including in procurement criteria (for example in RFP bid criteria or PURPA contracting policies); and
- Limitations on utility ownership of generation to reduce ownership bias burdens on the procurement processes.

Thank you for this opportunity to engage, and for your consideration of these important topics. To the extent that the Commission's answers to the questions in this letter involve technical materials or legal analyses, I would like to understand those bases for relevant conclusions. As noted above, a timely response that will help inform my work and development of legislation for the 2023 Legislative Session will be greatly appreciated. Please contact my office at any time if there are questions.

Sincerely,



Representative Ken Helm
House District 34
Oregon State Legislature