



**Portland General Electric**  
121 SW Salmon Street • Portland, OR 97204  
portlandgeneral.com

February 17, 2023

***Via Electronic Filing***

Public Utility Commission of Oregon  
Attention: Filing Center  
P.O. Box 1088  
Salem, OR 97308-1088

**Re: Dockets UM 2273 and UM 2225 – Joint Utility Comments Regarding Staff’s Proposed HB 2021 Investigation and Implementation Issues**

Portland General Electric Company (PGE) and PacifiCorp d/b/a Pacific Power (PacifiCorp) (collectively the Joint Utilities) respectfully submit these comments in response to the Public Utility Commission of Oregon (OPUC or Commission) Staff’s proposed House Bill (HB) 2021 Investigation in Docket UM 2273, and motion for waiver of certain Commission regulations in Docket UM 2225.

**I. UM 2273 Comments**

The Joint Utilities continue to appreciate and support the Commission and Commission Staff’s diligent efforts with HB 2021-related issues and offer limited procedural and substantive comments for the Commission’s consideration.

The Joint Utilities support Staff’s recommendation for a thorough scoping process. This will help ensure that important questions are appropriately considered before moving forward with the issues in this docket. For example:

- The scoping phase should discuss the appropriate procedural mechanisms to address each issue. Many of the issues are pure questions of law that are best resolved through declaratory rulings, others are policy questions better addressed through investigations, while others point towards rules of general applicability that can only be resolved through rulemakings. Still others may not be ripe for resolution at this time, and not require any further Commission action. At this point, it does not appear that the issues included in Staff’s memorandum involve contested facts that would typically be the subject of a contested case proceeding.
- The scoping phase should consider whether there are other issues that the Commission should investigate. For example, when is the timing appropriate to consider opportunities to streamline IRP and CEP regulations or competitive solicitations.
- Ex Parte concerns. Staff introduced a concept where it would not be a party to the contested case but instead serve in an advisory role to the Commission. If the issues identified by Staff are handled in a contested case proceeding as suggested, ex parte prohibitions may

apply for both Commissioners and Staff. This prohibition would prevent robust discussion on important policy questions. At least during initial scoping or investigative processes, it might make sense to avoid ex parte prohibitions on stakeholder discussions. Additionally, we would want to ensure that any ex parte prohibitions do not cross over into Staff's work on the Joint Utilities' IRPs and CEPs. The Joint Utilities seek clarification on this issue.

- This investigation should only apply prospectively, and not retroactively affect, or imperil acknowledgement of, upcoming Joint Utility IRP/CEPs. The Joint Utilities have invested significant time and resources into the IRP/CEPs that are due this quarter. As the Joint Utilities are currently focused on the upcoming IRPs and CEPs, this docket should be scoped and scheduled to accommodate those filings and with a recognition of the space needed for stakeholders to engage in these important dockets.

From the Joint Utility perspective, these questions and issues support a phased process: (1) initiate a scoping process to explore these issues; (2) receive subsequent Commission order with direction on which issues should be within the scope of this proceeding; and (3) initiate the proper proceeding based on the respective issue (declaratory ruling, investigation, rulemaking, or contested case). This ensures that there are clear expectations and minimizes litigation risk on likely contested issues.

Substantively, we want to make one point in closing. As became clear during UM 2225, a small group of vocal stakeholders want to administratively impose outcomes from HB 2021 that were intentional choices of the legislature not to provide. The Commission should decline these requests: renewable energy certificates have no place in HB 2021 compliance; emissions accounting is assigned exclusively to the Oregon Department of Environmental Quality; and states lack the power to create in-state resource preferences. To avoid spending a great deal of time on these issues, the Commission should explicitly exclude these issues from the proposed scoping process. Now is the time to implement the plain language of HB 2021, and not spend limited time and resources on what some would prefer the law require. Should the Commission wish to explore policy implications involving RECs in areas not related to HB 2021 compliance, this should be done through a separate investigation that is not directed at HB 2021 implementation or interpretation.

## **II. UM 2225 Comments**

Generally, the Joint Utilities support Commission Staff's Report in UM 2225 that would waive IRP guideline 1.C from OAR 860-027-0400(2). This ensures that CEPs do not conflict with IRPs for HB 2021 compliance purposes. However, the Staff Report proceeds to request the Commission to "direct both companies to follow Staff's revised planning guidance for the IRP associated with the first CEP."<sup>1</sup>

The Joint Utilities request the Commission either clarify or deny this request. If the request merely seeks to waive the IRP guideline 1.C, and allow utilities to consider the guidance from UM 2225,

---

<sup>1</sup> UM 2225 Staff Report, at 7 (Feb. 14, 2023).

the Joint Utilities request the Commission clarify Staff's proposed Commission motion to reflect this more limited, acceptable, and reasonable request.

Instead, if the proposed motion seeks to require the Joint Utilities to adhere to Staff's proposed planning guidance, the Commission must deny the motion. This a rule of general applicability that can only implemented through Oregon's rulemaking procedures.<sup>2</sup> More importantly, this request is broader than what was considered in UM 2225. In that proceeding, the issue was whether to waive IRP guideline 1.C to consider additional issues in their respective CEPs and avoid potential conflict with the IRP guidelines.

The Commission should not adopt a rule of general applicability without opportunity for public comment on the amending language and should instead waive the IRP regulations. This is especially so when IRPs will be filed so soon, and amending the Commission's IRP regulations could introduce new and unnecessary uncertainty into IRP processes.

### **III. Conclusion**

The Joint Utilities continue to appreciate the Commission and Commission Staff's diligent efforts with HB 2021-related issues, and respectfully request the Commission consider the comments provided above.

Sincerely,

/s/ Kristen Sheeran  
Kristen Sheeran  
Director, Resource Planning and Sustainability  
Portland General Electric

/s/ Matthew McVee  
Matthew McVee  
Vice President, Regulatory Process and Operations  
PacifiCorp

---

<sup>2</sup> ORS §§ 183.310(9), 183.335, 355(3), .400(4).