

November 3, 2022  
Via Electronic Filing  
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Oregon Public Utility Commission  
201 High St. SE, Suite 100  
Salem, OR 97301-3398

Re: Comments of Energy Advocates on Staff Draft Rules of October 11, 2022

The NW Energy Coalition, Climate Solutions, Coalition of Communities of Color, Green Energy Institute at Lewis & Clark Law School, Ecumenical Ministries of Oregon, Metro Climate Action Team, Multnomah County Office of Sustainability, Oregon Citizens' Utility Board, Oregon Just Transition Alliance, Oregon Solar + Storage Industries Association, Renewable Northwest, Rogue Climate, and Sierra Club (the "Energy Advocates") appreciate the opportunity to provide the below comments on Staff's proposed Clean Energy Plan (CEP) Procedural Rules. We recognize Staff's work on this and are pleased to see that, for the most part, these rules have been developed and largely informed by the various comments that stakeholders have submitted through the CEP investigation process.

We will focus our comments on sections where we propose modified language, answer staff questions, or request additional clarity.

**Staff's Draft Section (4):** An electric company that is subject to ORS 469A.415 must file a CEP with the Commission concurrently with an IRP filing required under Section (3) of this rule and in the same docket. If filing the CEP concurrently with the IRP would create an undue burden, the electric company may file a written request to the Commission to extend the filing date for the CEP. If the Commission grants an extension for filing the CEP, it may establish an abbreviated schedule for a utility presentation and comments under Sections (6) and (7) below.

**Comments:** We believe that in order to ensure there are no inconsistencies between the CEP and the IRP, there should be a strong preference for concurrent filing. In fact, the CEP is statutorily required to be based on the IRP. In the event that the Commission grants an extension for filing the CEP, we have concerns regarding an abbreviated schedule that might limit the Advocates' ability to review and comment on the CEP. Our concerns are elaborated on in our comments below pertaining to Section 7.

**Proposed language:** The proposed language is acceptable so long as Section 7 is modified to allow extension upon stakeholder request as indicated below. We also anticipate that any extension granted by the Commission will not exceed the statutory timeline of 180 days after the IRP is filed, as set forth in ORS 469A.415(3)(a), and will consider the need for utilities to take actions that reduce greenhouse gas emissions at reasonable costs to electricity customers, as required by ORS 469A.415.

**Staff's Draft Section (5):** The CEP must be written in language that is as clear and simple as possible, so that it may be understood by non-expert members of the public. The CEP must contain the information required by ORS 469A.415 and present annual goals for actions that balance expected costs and associated risks and uncertainties for the utility and its customers, the pace of greenhouse gas emissions reductions, and community impacts and benefits.

**Comments:** We understand that ORS 469A.415 identifies the criteria required for inclusion in a CEP, but we think it crucial to highlight the importance of utilities making continual progress toward meeting the clean energy targets.

We also request that “balance” be replaced with “incorporate,” as indicated below. We note that ORS 469A.415 uses words such as “examine,” “incorporate,” “include,” and “demonstrate” in describing the actions required of utilities in developing the CEP. We think it is more appropriate to direct utilities to incorporate costs and risks, the pace of greenhouse gas emissions, and community impacts and benefits, rather than relying on the utility to balance those elements. It is the PUC’s role, under ORS 469A.415(6), to independently evaluate whether the utility’s CEP “demonstrates continual progress . . . and is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at reasonable costs to retail electricity consumers,” not rely on the utility’s conclusions about whether it has properly balanced the statutory factors it must consider.

**Proposed language:** The CEP must be written in language that is as clear and simple as possible, so that it may be understood by non-expert members of the public. The CEP must contain the information required by ORS 469A.415 and present annual goals for actions that ~~balance~~ incorporate expected costs and associated risks and uncertainties for the utility and its customers, the pace of greenhouse gas emissions reductions, including a demonstration of making continual progress toward meeting the clean energy targets, and community impacts and benefits.

**Staff's Draft Section (6):** The energy utility must present the results of its filed IRP, and, when applicable, its CEP, to the Commission at a public meeting prior to the deadline for written public comment.

**Staff Question:** Staff is interested in understanding whether joint or separate presentations of the IRP and CEP are more accessible?

**Comments:** Energy Advocates submit that while the content of an IRP and CEP should be aligned, Staff should consider requiring separate presentations on them to encourage participation by a broader audience. We propose that the IRP be presented as usual, likely in combination with the CEP, to reach a more technical audience, while the CEP be presented in the early evening so that it is accessible to the broader public. Energy Advocates also request that CEP presentations allow for and encourage stakeholder participation, comment, and questions. We also encourage utilities to co-create their CEP presentations with their Utility Community Benefits and Impacts Advisory Group or other contracted community-based/serving organizations so that the materials and mode for presenting are tailored for a wider audience. Interpretation services should also be required in order to increase accessibility and foster an equitable and inclusive CEP review process.

**Proposed language:** Proposed language is probably sufficient, although Staff might consider adopting accompanying guidance requiring utilities to consider the suggestions made above to make the CEP presentations as accessible as possible.

**Staff's Draft Section (7):** Commission staff and parties must file their IRP, and when applicable, their CEP, comments and recommendations generally within six months of IRP filing.

**Comments:** The suggested regulation is phrased in a confusing way. We propose alternative phrasing below. Additionally, we request that stakeholders be permitted to request additional time to review and comment on a CEP if a utility has not submitted its CEP with its IRP, but is instead operating on an "abbreviated schedule" pursuant to Draft Section (4) above. If a utility files its CEP on an "abbreviated schedule," stakeholders will have less time to comment. Nevertheless, we do not want to confine Staff's discretion to demand utilities expedite their CEP filings, nor do we want to slow the process that will result in rapid reductions in greenhouse gas emissions. Accordingly, we have proposed text that we believe supports public participation in this process.

**Proposed language:** Commission staff and parties must generally file comments and recommendations on the IRP, and when applicable the CEP, within six months of the filing. If a CEP is not filed concurrently with the IRP, comments and recommendations

must be filed as required by Section 4, unless stakeholders that represent the interests of customers or affected entities within the utility's service territory<sup>1</sup> request additional time.

**Draft Section (8):** The Commission must consider comments and recommendations on an energy utility's IRP, and, when applicable, CEP, at a public meeting before issuing an order on acknowledgement. Except as provided in section (9), the Commission may provide the energy utility an opportunity to revise the IRP before issuing an acknowledgement order.

**Comments:** The combination of Draft Sections (8) and (9) are confusing with respect to the timing for the IRP, the CEP, and any revisions to either of them, in the context of public participation on all the utility submissions. In particular, it is unclear whether stakeholders will have an opportunity to comment on any revisions to either the IRP or CEP prior to a decision on acknowledgement. We want to underscore that, as a practical matter, the CEP must be based on or included in an IRP, pursuant to statute, so any delay in the IRP will also likely delay the CEP. (See our comments below recommending revision of Section (3) to recognize this reality.) Additionally, stakeholders should have the right to comment on subsequent revisions to the IRP or CEP ordered by the Commission. We would appreciate further clarification on how Staff and utilities anticipate these processes will play out, and what opportunities exist for the public to engage in them.

**Draft Section (9):** For an electric company that is subject to ORS 469A.415, the Commission will issue a single order memorializing its decision on acknowledgment for the IRP and CEP, unless an alternative schedule for CEP review is set by the Commission. The Commission may provide the electric company an opportunity to revise the IRP or CEP or both before issuing an acknowledgment order. The Commission may, at its discretion, take one of the following actions for the CEP portion of the acknowledgement order:

- (a) Acknowledge a CEP as filed;
- (b) Acknowledge a CEP with conditions; or
- (c) Not acknowledge the CEP and require that the utility revise and resubmit all or certain elements of the CEP within 60 days of the acknowledgement order.

**Staff Questions:** Staff is interested in stakeholder thoughts on acknowledging a CEP with conditions, and on requiring resubmission within 60 days.

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<sup>1</sup> We're open to a variation of this description of "stakeholders." We used language already existing in ORS 469A.425.

**Comments:** We think it is important for the IRP and CEP to be acknowledged together, even when a CEP is filed at a later date. As we indicated above, the combination of Draft Sections (8) and (9) do not clearly articulate whether stakeholders may comment on any revised CEP. We are also concerned that bifurcating the acknowledgement orders for the IRP and CEP will create hardships for stakeholders in developing comprehensive comments and participating in proceedings at the Commission. We do not have any comment to offer on acknowledging a CEP with conditions, or on the timeline reflected in the draft rule (other than if a CEP is not acknowledged and is resubmitted, there would not be an “*acknowledgement* order” from which to begin measuring the time). Our proposed language corrects only the need for the IRP and CEP to be acknowledged together. We ask Staff to give some consideration, from the stakeholders’ perspective, about how the comment process is expected to proceed.

**Proposed language:** For an electric company that is subject to ORS 469A.415, the Commission will issue a single order memorializing its decision on acknowledgment for the IRP and CEP. ~~unless an alternative schedule for CEP review is set by the Commission.~~ The Commission may provide the electric company an opportunity to revise the IRP or CEP or both before issuing an acknowledgment order. The Commission may, at its discretion, take one of the following actions for the CEP portion of the acknowledgement order:

- (a) Acknowledge a CEP as filed;
- (b) Acknowledge a CEP with conditions; or
- (c) Not acknowledge the CEP and require that the utility revise and resubmit all or certain elements of the CEP within 60 days of the **acknowledgement** order.

**Draft Section 11(d):** Includes an update on the annual actions implementing the annual goals in the CEP filed with the most recently acknowledged IRP. The update will include an assessment of what has changed since the acknowledgment order that affects the utility’s progress toward the clean energy targets in ORS 469A.410, reporting of measured impacts across the metrics that were presented in the most recently acknowledged CEP, and the electric company’s two most recent annual emissions reports filed with the Oregon Department of Environmental Quality under ORS 469A.420(4)(a).

**Staff Questions:** Staff inquired about the timing of filing the DEQ emissions reports, as well as whether the reporting is meaningful if separated from the IRP.

**Comments:** We support the regulation as drafted, with the addition of the word “continual” when describing the requirement that the utility report on its progress. Additionally, we suggest that Staff consider requiring a summary or explanation of

emissions data to accompany the emissions reports, to make the information as accessible to stakeholders and the broader public as possible.

**Proposed language:** Includes an update on the annual actions implementing the annual goals in the CEP filed with the most recently acknowledged IRP. The update will include an assessment of what has changed since the acknowledgment order that affects the utility's **continual** progress toward the clean energy targets in ORS 469A.410 **and ORS 469A.415**, reporting of measured impacts across the metrics that were presented in the most recently acknowledged CEP, and the electric company's two most recent annual emissions reports filed with the Oregon Department of Environmental Quality under ORS 469A.420(4)(a).

**Draft Section (13):** If the energy utility requests Commission acknowledgment of its proposed changes to the action plan contained in its acknowledged IRP or, where applicable, its CEP:

**Staff Question:** Staff is interested in understanding if this reporting would be meaningful separately from the IRP.

**Comments/Response:** Yes, Energy Advocates support the separate filing of CEP changes.

**Proposed language:** None

In addition to the amendments to the rules proposed by Staff, we recommend that OAR 860-027-0400(3) be revised to recognize that utilities may seek to delay their IRPs, not just their CEPs, in this new planning context.

**Existing Section (3):** An energy utility must file an IRP within two years of its previous IRP acknowledgement order or as otherwise directed by the Commission. If the energy utility does not intend to take any significant resource action for at least two years after its next IRP is due, the energy utility may request an extension of its filing date from the Commission.

**Comments:** We are concerned that utilities may delay filing their IRPs because of the additional criteria they must consider to comply with HB 2021. The IRP and CEP are intertwined; in fact, a CEP must be "based on or included in an" IRP. ORS 469A.415(3)(a). If a utility finds itself seeking to delay its CEP, it may also need to delay its IRP. We recognize that a short delay may be appropriate, but we recommend that Staff consider evaluating whether OAR 860-027-0400(3) should be amended to ensure the

utility demonstrates continual progress in meeting its clean energy targets, and is taking actions “as soon as practicable to facilitate rapid reduction of greenhouse gas emissions at reasonable costs to retail electricity consumers” consistent with the statute, in granting any extension to the IRP filing date. ORS 469A.415(6).

**Proposed language:** An energy utility must file an IRP within two years of its previous IRP acknowledgement order or as otherwise directed by the Commission. If the energy utility does not intend to take any significant resource action for at least two years after its next IRP is due, the energy utility may request an extension of its filing date from the Commission. **If an electric company subject to ORS 469A.415 requests an extension to file its IRP for any reason, it must demonstrate its compliance with ORS 469A.415(6).**

Please also consider whether OAR 860-027-0400(2) must reference the Commission Order 22-390 in which IRP Guideline 1(c) was updated in the interim. Even if not legally required, to help stakeholders understand which requirements the utilities must follow for the first CEP, the Commission should include a footnote or some other signal to stakeholders to review Order No. 22-390 and the interim IRP Guideline 1(c).

Finally, we note that the current OAR 860-027-0400(1), which sets out the scope and applicability of the rules related to filing, review, and updates of the IRP and CEP, appears to be quite broad. Specifically, the utility may apply to the Commission to be relieved of any obligations under the rule and need only show “good cause.” Given the specificity of the rules that follow subsection (1), especially with respect to the timelines and the content of the utilities’ submissions, all critical to the proper implementation of HB 2021, we encourage narrowing the scope of the Commission’s discretion consistent with the goals and language of HB 2021 when faced with a electric company’s request that is subject to ORS 469A.415.

Energy Advocates thank Staff for their thorough and careful crafting of rules for this important process. We look forward to additional opportunities to support Staff’s efforts on this.

Respectfully submitted this 3rd day of November 2022,

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