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November 3, 2022

Via Electronic Filing

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

Re: UM 2225 Investigation into Clean Energy Plans; Joint Utilities' Response to the OPUC's Clean Energy Plan Draft Procedural Rule Language

Dear Filing Center:

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 Clean Energy Plan (CEP) procedural rule language.¹

The Joint Utilities support Staff's efforts to incorporate procedural expectations for CEPs into Oregon Administrative Rules (OARs) before the first CEP filings anticipated in 2023. Generally, Staff's draft procedural rule language appropriately seeks to retain flexibility for initial and subsequent CEPs. In these comments, the Joint Utilities have identified a limited number of concerns with Staff's draft, while more generally suggesting a broader scope of rules revisions that can promote clarity, flexibility needed to collaborate with communities for the initial CEP, and continued relevance within this section of OAR.

The Joint Utilities continue to thank Stakeholders, Staff, and the Commission for the collaborative and productive process to date, and recommend the modest revisions discussed below. Through our suggestions, we seek to continue this collaborative process leading up to filing the initial CEPs, as well as establish rules that provide flexibility to incorporate learnings and findings from these initial CEPs.

I. Comments

The Joint Utilities offer comments on seven topic areas addressed by Staff's proposed language.

¹ *In re OPUC's HB 2021 and CEP Investigation*, Dkt. UM 2225, Draft Procedural Rule Language (Oct. 11, 2022).

A. Definition

While CEPs are not defined in statute, the goals and requirements for CEPs are helpfully spelled out in HB 2021. For example, ORS 469A.415 includes various substantive and procedural provisions: requiring CEPs to be developed concurrently with IRPs (469A.415(1)); requiring CEPs to be filed with OPUC and DEQ (469A.415(2)); requiring CEPs to be based on or filed with IRPs (469A.415(3)); including specific targets, goals, and analyses (469A.415(4)); requiring demonstration of continual progress (469A.415(6)).

New section (2)(b) of the proposed regulation mentions ORS 469A.415, yet only to reference what entities to which the statute applies (electric companies). The Joint Utilities propose inclusion of the following language to tie the definition of CEPs to the broader CEP goals and requirements in ORS 469A.415:

(2)(b) As used in this rule, “Clean Energy Plan” or “CEP” means the electric company’s written plan that satisfies the requirements of ORS 469A.415.

This language helpfully captures all the requirements of ORS 469A.415, and also the relevant CEP statutory cross-references within ORS 469A.415 (ORS 469A.410 and 757.054). It also aligns with the current IRP definition in section 2.

B. Align IRP and CEP purposes

HB 2021 is transformative state policy. Among other things, it includes specific decarbonization targets, expands utility system analyses to assess resiliency and community-based renewable energy opportunities, and broadens community and stakeholder engagement to address community impacts and benefits.

However, the Commission’s statutory directive remains unchanged: ensure fair, just, and reasonable rates and practices.² As Staff has recognized, new analyses and objectives promoted by HB 2021 must be balanced with other important and fundamental utility planning principles: determining reliable, affordable, prudent, and reasonable resource selections over a long-term planning horizon, based on least-cost, least-risk principles. Those principles have been developed over several decades, and are reflected in Commission Order Nos. 07-002, 07-047, and 08-339, among others, and are codified in OAR 860-027-0700(2).

Rather than distinct purpose descriptions for IRPs, located in current section (2), and CEPs, located in new section (5), the Joint Utilities recommend that the Commission strike new section (5), strike

² ORS 456.040(1).

the language in current section (2) that discusses the purposes of IRPs, and create a new section that establishes a joint purpose for IRPs and CEPs:

IRPs and CEPs must detail an energy company’s determination of future long-term resource needs; its analysis of the expected costs and associated benefits, risks, and, for CEPs, community impacts and benefits of the alternatives to meet those needs; and its action plan to select the best portfolio of resources to meet those needs.

This accomplishes several things. The proposed language in new section (5), that CEPs “must contain the information required by ORS 469A.415” is unnecessary if the broader definition of CEPs is adopted as discussed above.³ Similarly the language that CEPs must “present annual goals for actions that balance expected costs and associated risks and uncertainties for the utility and its customers” unnecessarily duplicates the same or similar language that is already required in the IRP purpose language.⁴

Under the Joint Utility proposal, IRPs and CEPs are required to detail “future long-term resource needs” and “analysis of expected costs and associated benefits, risks and community impacts of the alternatives to meet those needs.” As a result, IRPs and CEPs will necessarily address HB 2021 requirements—alongside the financial, operational, legal, and policy requirements and objectives that utilities already incorporate in their robust IRP processes.

C. Filing language

If IRP and CEP processes are aligned, there is no need at this stage to create a specific filing regulation for CEPs as proposed in new section 4. Instead, the Commission should amend the IRP filing language in OAR 860-027-0400(3) to include CEP provisions:

(3) An energy utility must file an IRP within two years of its previous IRP acknowledgement order, or as otherwise directed by the Commission. An energy utility must file a CEP concurrently with its IRP or no later than 180 days after the IRP is filed. If the energy utility does not intend to take any significant resource action for at least two years after its next IRP or CEP are due, the energy utility may request an extension of its filing date from the Commission. The Commission can extend the deadline to file an IRP or CEP for good cause.

³ Proposed CEP definition (2)(b) “As used in this rule, “Clean Energy Plan” or “CEP” means the energy utility’s written plan that satisfies the requirements of ORS 469A.415.”

⁴ (2) (IRPs must detail “future long-term resource needs, its analysis of the expected costs and associated risks of the alternatives to meet those needs, and its action plan to select the best portfolio of resources to meet those needs.”).

This aligns with ORS 469A.415(3)(a) and retains the flexibility permitted by the statutory language. Though the Commission directed utilities to file the first CEPs with the IRPs in Order No. 22-206, it is premature to establish rules with such a requirement.

The Joint Utilities' proposed language also allows for extensions to file IRPs and CEPs for good cause. While this differs from the guidance in Order No. 22-206 that discussed an undue burden standard applicable to the first CEPs, the Commission should retain broad discretion to determine whether to extend deadlines for IRPs and CEPs. There are many hypothetical situations that would justify extending the deadline to file either an IRP or CEP for good cause, that may not justify an extension under an undue burden standard. Utilities should be permitted to request, and the Commission to consider, reasonable extensions of time to incorporate additional analyses on novel technologies that were recently completed; contract negotiations on specific generation, transmission, or distribution resources were just finalized, for example.

While this suggestion does not address filing of an initial CEP (it only discusses filing an IRP and CEP within two years of a *previous* IRP and CEP acknowledgement order), both PGE and PacifiCorp are working to file an initial CEP in 2023, and it is unnecessary to create a regulation that will only be operative for one filing our inaugural filing cycle.

The language suggested by the Joint Utilities above does not include the provision in Staff's proposed Section 4 for an abbreviated schedule. This language is discussed in revised public participation processes discussed below.

D. Public participation processes

The Joint Utilities agree with the proposed edits to the IRP public participation provisions, and recommend the Commission also take the opportunity to combine current sections OAR 860-027-0400(4) through (6):

To ensure robust public participation, electric utilities must present IRPs and CEPs to the Commission at a public meeting prior to the deadline for written public comment on the documents; Commission staff and parties must file IRP and CEP comments and recommendations ~~generally~~ within six months of the filing date; and the Commission must consider IRP and CEP comments and recommendations at a public meeting before issuing an acknowledgment order. The Commission can establish an abbreviated schedule for utility presentation and comments as necessary.

The Joint Utilities recommend removing the word "generally" from the updated rules and recommend keeping the requirement to file comments and recommendations within six months of the filing date. Staff or parties may seek a waiver of this rule to extend the schedule, but this will maintain the current timeframe for review.

This language also incorporates the abbreviated schedule language from Staff's proposed section 4, if the Commission adopts the Joint Utilities' proposed filing language discussed above.

An alternative pathway is for the Commission to strike sections OAR 860-027-0400(4) through (6) because they are redundant, as the Commission will establish a procedural schedule for any IRP or CEP docket that can address these and other public participation processes. Additionally, Staff's proposed regulations may not reflect the stakeholder processes that result from Utility Community Benefits and Impacts Advisory Group (UCBIAG) processes.

E. Acknowledgement standard of decision

The Joint Utilities suggest Staff's proposed new section (9) be amended to remove the requirement to refile the CEP within 60 days. This timeframe is overly prescriptive for the regulation; the Commission can determine whether to establish a timeframe for any such requirements specific to each utility's filing.

(9) For an electric company that is subject to ORS 469A.415, the Commission will issue an single order memorializing its decision on acknowledgment for the IRP and CEP, which may be combined with the IRP acknowledgment order. 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.~~

The Joint Utilities do not believe it is necessary to include at this time the 60-day date certain by which a utility should be required to revise and resubmit a CEP in Commission regulations. To the extent the timeline language is included, the Joint Utilities prefer Staff's alternative language suggested in Comment MC6 which simply directs resubmission "on an accelerated schedule."

Regarding whether to issue one or two acknowledgment orders, the Commission should retain the flexibility given the facts and circumstances of a given utility IRP and CEP. The Commission can of course issue a single order under the Joint Utilities' proposed language if the circumstances justify that approach.

F. Annual update

The Commission should streamline IRP and CEP annual updates. The current IRP annual update process has been developed over several decades, and effectively balances competing interests to provide transparent and continuous information to the Commission and stakeholders, against the time and resource consuming processes required to create a new long term resource plan.

The Joint Utilities agree with Staff’s proposed language in rule (11) that aligns with existing IRP requirements: that a CEP annual update should provide helpful status updates on relevant actions that a utility has pursued since the previous CEP acknowledgement order (similar to existing 8(a)); an assessment of what has changed since the CEP acknowledgment order (similar to existing 8(b)); and justify any deviations (as reflected in revised 11(c)).

However, the proposed rule (11)(d) language that contemplates reporting measured impacts and metrics is problematic. In a perfect world, utilities would provide relevant information for Commission and party review, and any issues could be addressed and further investigated in subsequent IRPs and CEPs. However, given the recent tenor from stakeholders regarding potential utility penalties for noncompliance, and strong advocacy for strict annual performance targets and metrics, the Joint Utilities are strongly concerned that these reports of measured impacts and metrics could transform into some sort of HB 2021 compliance filing, potentially resulting in Commission contested case proceedings.

The Joint Utilities urge the Commission to avoid this path. Utility compliance with HB 2021 will unfold over the next two decades. CEPs must include “annual goals set by the electric company for actions that make progress towards meeting the clean energy targets” in HB 2021,⁵ and utilities must demonstrate “continual progress within the planning period . . . including demonstrating a projected reduction of annual greenhouse gas emissions.”⁶ 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 at reasonable costs to retail electricity consumers.”⁷ However, emissions verification and compliance falls to the ODEQ.⁸

This bifurcated compliance structure ensures—reasonably and appropriately—that both agencies have oversight over their specific areas. Utilities provide, and the OPUC reviews and determines whether to acknowledge or not, long-term resource procurement plans to comply with HB 2021. ODEQ then verifies and determines compliance with actual emissions reductions, consistent with that agency’s long-standing reporting and verification processes.

⁵ HB 2021 § 4(4)(b).

⁶ HB 2021 § 4(4)(e).

⁷ HB 2021 § 4(6).

⁸ HB 2021 § 5.

CEPs must include utility-determined annual goals (specific emissions reductions or other), and the Commission can make acknowledgment determinations. But the annual update on those annual goals should only provide notice of whether a utility is on the right track or not—if not, the Commission and stakeholders should tackle the issue in the subsequent IRP and CEP. Otherwise, as the language in proposed section 11(d) appear to allow, the annual update could transform into annual and contested IRP and CEP proceedings.

To avoid this unintended potential consequence, the CEP update should be folded in with existing IRP updates. That could be accomplished by removing new proposed section 11(d), and incorporating those elements within existing section 8(a)-(c):

Each energy utility must submit an annual update on its most recently acknowledged IRP and CEP. The update is due on or before the service date of the respective IRP or CEP acknowledgment order anniversary date. The energy utility must summarize the annual update at a Commission public meeting. The energy utility may request acknowledgment of changes, identified in its update, to the IRP or CEP action plans. The annual updates are an informational filings that:

- (a) Describes what actions the energy utility has taken to implement the action plan and annual goals to select best portfolio of resources contained in its acknowledged IRP and CEP;
- (b) Provides an assessment of what has changed since the acknowledgment order that affects the action plan to select best portfolio of resources and the utility's progress toward the clean energy targets in ORS 469A.410, including changes in such factors as load, expiration of resource contracts, supply-side and demand-side resource acquisitions, resource costs, and transmission availability; and
- (c) Justifies any deviations from the action plan contained in its acknowledged IRP and CEP.

G. “Clear and Simple” and Non-expert language

The Joint Utilities appreciate the intent behind the language in new proposed section (5) that requires CEPs to be drafted “as clear and simple as possible so that it may be understood by non-expert members of the public.” HB 2021 advances important public policy goals, and how and whether public utilities are achieving those goals for compliance purposes are necessary issues that the Commission will have to address.

However, the Joint Utilities do not believe it is appropriate to codify this requirement in Commission regulations. CEPs are fact-specific, technical documents, that combine multiple subject areas (engineering, finance, economics, policy, and law). Analyses from these subjects are then forecasted over multiple decades to inform long-term resource procurement strategies.

Commission acknowledgment of these plans then informs future utility rate-recovery proceedings. CEPs will—and should—necessarily reflect the complexity of the given topic. Additionally, this proposed requirement that the CEPs are “clear and simple” and “understood by non-expert members of the public” is too vague to include in rules. Such ambiguous requirements could create problems with enforcement.

Consistent with all previous IRPs, the Joint Utilities will strive to ensure that future IRPs and CEPs are accessible, transparent, and readable. The Joint Utilities will work with its UCBIAG stakeholders to inform these processes.

II. Conclusion

The Joint Utilities appreciate Staff’s diligent efforts with the CEP investigation generally, and this proposed procedural rulemaking specifically, and respectfully request the Commission consider the comments provided above.

Sincerely,

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