

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2225

In the Matter of  
STAFF HB 2021 INVESTIGATION  
INTO CLEAN ENERGY PLANS

NW ENERGY COALITION RESPONSE  
TO APPLICATION FOR  
RECONSIDERATION FILED BY OSSIA,  
CREA and NEWSUN

NW Energy Coalition (NVEC) appreciates the opportunity to provide comments in response to the application for reconsideration filed by the Oregon Solar+Storage Industries Association (OSSIA), the Community Renewable Energy Association (CREA) and NewSun Energy LLC (“Applicants”).

NVEC does not support or oppose the application. However, the applicants raise several issues that deserve the Commission’s attention and direction in the ongoing docket. These comments are intended to highlight those issues and outline action that the coalition would like to see from the Commission, regardless of its determination on the application for reconsideration.

Binding Nature of HB 2021

The applicants note in their filing that “(t)he Commission made statements indicating that they did not know whether HB 2021 is binding on the utilities.” In our view, HB 2021 sets a clear, binding standard that is now set forth in statute. Section 2(1) of the bill states:

*“It is the policy of the State of Oregon: (1) That retail electricity providers rely on nonemitting electricity in accordance with the clean energy targets set forth in section 3 of this 2021 Act and eliminate greenhouse gas emissions associated with serving Oregon retail electricity consumers by 2040.”*

Section 3(1) further outlines the energy targets referred to in Section 2(1):

*“(1) A retail electricity provider **shall** [emphasis added] reduce greenhouse gas emissions, measured for an electric company as greenhouse gas emissions reported under ORS 468A.280, and measured for an electricity service supplier as greenhouse gas emissions per megawatt-hour as reported under ORS 468A.280, to the extent compliance is consistent with sections 1 to 15 of this 2021 Act, by the following targets:*

- (a) By 2030, 80 percent below baseline emissions level.*
- (b) By 2035, 90 percent below baseline emissions level.*

*(c) By 2040, and for every subsequent year, 100 percent below baseline emissions level.”*

The law clearly states that utilities “shall reduce greenhouse gas emissions” according to the named targets, and does not use the words “may,” “could be allowed,” or any other more permissive language. NWECC does not believe that the Commission understands the legislation any differently than the binding mandate it sets forth. However, given that some parties appear to have a different interpretation, we believe that a general policy statement from the Commission clarifying the binding nature of HB 2021 would put the issue to rest.

### Guidance vs Requirements

The Applicants also raise concerns about whether the Commission’s orders to date in implementing the legislation constitute “guidance” or “requirements.” NWECC believes that implementing this landmark legislation is an ongoing and iterative process.

However, we could see how this iterative process could lead to confusion about what the utilities “must” do versus what they “could” do. They certainly “must” meet the targets, but the Commission, importantly, has some discretion to use its judgment in evaluating how the utilities plan to meet those targets.

The central method for utilities to demonstrate how they plan to meet the required targets are the Clean Energy Plans (CEP). These are being tied closely to existing Integrated Resource Plan (IRP) development, for good reason. However, because IRPs tend to be “acknowledged” rather than “approved” or “ordered,” there may be some confusion as to how the Commission is thinking about CEPs.

Recognizing that the rules for CEPs are still under development, and individual CEP development is still in an iterative stage, NWECC hopes that the Commission will establish a “floor” in terms of basic expectations that utilities must meet in developing individual CEPs. For example, the Commission could adopt rules that set out a minimum requirements for resource content, process for reviewing plans, public participation requirements, and defining how utilities will report and show they are in compliance. More detail may be needed in future CEPs but at this time, it would be useful for the Commission to detail what those basic expectations are and explicitly recognize that more requirements may be added as needed, especially if the utilities are not actually meeting the required emissions targets set forth in the bill.

### Commission Review

The Commission certainly has the discretion to allow the utilities some flexibility in how they meet the required targets. However, the Commission must be able to do the rigorous analysis required to confirm whether the utilities’ CEPs can be reasonably expected to actually meet the required targets. While unanticipated events could affect whether a utility actually meets the required reduction target in a given compliance year, by reviewing and approving the CEPs, the Commission’s role is to ascertain whether the utility has a reasonable plan to meet the targets. Therefore, it is critical that Commission has the ability to evaluate a utility’s CEP and have some

assurance that it will lead to the required reductions. If the Commission is not satisfied that will happen, it must then use its discretion to require more details. But that can only happen if the Commission is able to do its own analysis independent from the utilities. The Commission should ensure it has the resources to undertake that independent analysis.

### Renewable Energy Credits

HB 2021 sets out emissions reduction targets for electric utilities. This is different from existing renewable energy standards that require a certain percentage of renewable resources in a utility's energy mix. NWEC and other Parties who negotiated HB 2021 were aware of that difference, and NWEC underscores our support for HB 2021.

However, as we work to implement the legislation, there are policy issues and potential conflicts that must be resolved. One of the most important issues that requires a resolution in the near-term is how the emissions reduction standards in HB 2021 interact with the creation and uses of Renewable Energy Certificates (RECs).

Compliance with the emissions targets set forth in HB 2021 depends on emissions reporting submitted by the utilities to the Oregon Department of Environmental Quality (DEQ).

A REC represents the environmental attribute of a resource. Without a REC, a resource is considered "brown" energy. A REC can be "bundled" with the sale of energy, and that energy can then be considered "renewable" or "green" energy. However, a REC can be "unbundled" from that energy and sold separately. Utilities can use that REC to comply with part of renewable energy standards or to support voluntary programs. Many advocates have worked for decades to ensure that a REC is rigorously tracked and accounted for so that the REC system has integrity, both for the utilities or other entities that use them for compliance or to make a claim in the development of renewable energy resources, as well as for the end consumers who purchase them as part of the effort to clean up a utility's energy use.

NWEC supports the language in HB 2021's Section 7, which states that, "(f)or the purposes of determining compliance with sections 1 to 15 of this 2021 Act, electricity shall have the emission attributes of the underlying generating resource." However, this language does not answer the question about whether that resource is permitted to generate a REC and, if it is, what can be done with that REC.

For example, If the underlying resource, such as wind, solar, or some other non-emitting resource, is recognized as having the emissions attributes of that resource, is there a need for a REC if it's solely being used to comply with HB 2021? If the resource can generate a REC and that REC is allowed to be sold separately from the underlying energy of that resource, what are the associated nonpower attributes of the electricity that are being claimed towards HB2021, and what are the associated nonpower attributes that are conveyed in the REC? Is the REC being double-counted if the resource is used to comply with HB2021 and an RPS, whether in Oregon or in another state?

These are key policy questions that deserve deep and detailed consideration. Entities and companies that track and manage RECs have expressed confusion over these interactions, and the Commission should ensure that the policy treatment in this area is clear and that any potential impacts of a policy decision are understood before that decision is made. The resolution to this question has critical implications for renewable resource development in Oregon, and potentially in the Northwest more broadly.

The Commission stated its intention at its November 1, 2022 public meeting, while adopting some preliminary guidance on information transparency on RECs, to undertake this issue more fully. It would be helpful to parties for the Commission to outline its plans on how it intends to pursue this discussion.

### Continual Progress

In their application for reconsideration, the applicants call for a definition of “continual progress” in emissions reduction to mean “a linear trajectory of GHG emissions reductions.”

NWEC is unclear what the intent of “linear trajectory” is. If it means a straight line between the existing emissions level down to the target levels outlined in the bill, we believe that is unreasonable. Emissions reductions will likely be very “bumpy,” that is, significant reductions in one year and perhaps smaller reductions in another year. The important point is whether the utilities will meet the required targets in the compliance years outlined in the bill. Of course, that means “continual progress”, but that progress may not be “linear” in nature. It would be helpful for the Commission to provide understanding to all the parties on what it believes constitutes “continual progress.”

This does underscore the discussion we outlined earlier in these comments regarding the evaluation capabilities of the Commission. The Commission should be able to determine whether a utility’s Clean Energy Plan will achieve emissions reductions at a trajectory for them to achieve the required emission reduction targets or not. The Commission should not be in a position where they are reacting to a utility’s failure to achieve the required targets but should be able to proactively provide additional requirements to a utility to help ensure that targets are actually met, whether the progress toward those targets are “linear” or “bumpy.” This proactive posture is different than, for example, the issue of whether a utility can recover costs on investments it already made. While the nature of the Commission’s work is often reactive or responsive, NWEC believes HB 2021 requires the Commission to be more proactive in ensuring the utilities will meet their requirements under this statute.

### Conclusion

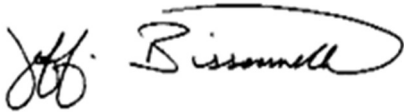
HB 2021 is a complex bill. Although the Commission, Staff, and parties have accomplished a tremendous amount of work over the last year in bringing HB 2021 to life, much work remains.

Despite the orders at issue in the application for reconsideration, NWECA does not believe they constitute endpoints in the process, but rather markers outlining where the process is at certain stages.

It may be helpful for the Commission to provide an opportunity for Commissioners, Staff, and parties to re-examine the timeline Staff set out at the start of this process, update it, and provide clarity on the work that remains and any new timelines that may be required.

Again, we appreciate the opportunity to provide comments, and we look forward to continued work in this docket.

Submitted by,

A handwritten signature in black ink that reads "Jeff Bissonnette". The signature is written in a cursive style with a large, sweeping loop at the end of the name.

Jeff Bissonnette  
for the NW Energy Coalition