

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 2273**

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON

Investigation Into House Bill 2021  
Implementation Issues

**REPLY COMMENTS OF PORTLAND  
GENERAL ELECTRIC COMPANY  
REGARDING INITIAL SCOPING  
QUESTIONS**

Portland General Electric Company (PGE) respectfully submits these reply comments for the Commission’s consideration regarding the scoping of UM 2273. PGE very much appreciated the open and collaborative discussion during the scoping workshop held on April 18, 2023, and seeks to reflect the spirit of that discussion within these comments.

**A. Linking renewable resources as “used for compliance” with HB 2021 is a misreading of the legislation.**

PGE understands from written and oral comments that issues regarding renewable energy certificates (REC) accounting and resolution of those issues with regard to HB 2021 are important to a number of entities who have provided comments in this docket; however, interest in resolving questions regarding REC accounting is misplaced in this instance – raising an issue that is outside of HB 2021 implementation.

PGE believes that the legislature provided direct and clear guidance on the issue of renewable attributes for purposes of HB 2021 implementation,<sup>1</sup> and therefore PGE continues to recommend that discussions regarding the regional and program specific use of RECs be held within investigations into those topics, when and if they occur, and not within the investigation into HB 2021 implementation.<sup>2</sup> However, if the Commission seeks additional information from parties for resolution of whether questions about REC accounting are properly scoped within this docket as an implementation issue, PGE believes that an efficient path forward would be to allow, at most, two rounds of written briefs in furtherance of a Commission determination regarding whether REC accounting should or should not be properly included for consideration in this docket based on the

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<sup>1</sup> ORS 469A.410 (2) and 469A.430.

<sup>2</sup> PGE is not convinced that should the Commission find one way or another regarding whether RECs are needed for compliance with HB 2021 to avoid double counting, that this determination would provide finality on these issues. It is likely that questions of REC accounting will continue to be raised as a topic in other proceedings as the various states in the West continue to wrestle with GHG accounting and reduction efforts.

requirements of HB 2021. On that, we agree with CRS and 3Degrees that this issue should be among the first addressed, so as to not unduly delay resolution of more pertinent matters.

CRS, 3Degrees and, to a lesser extent, the Environmental Advocates, all suggest that renewable generation is “used for compliance” with ORS 468A.280<sup>3</sup> and, thus we must focus on the issue of REC accounting to avoid double counting renewable attributes or to avoid other problems.<sup>4</sup> This position displays a fundamental misreading of the law because there is no net increase to emissions due to the renewable energy generation used to maintain system reliability.<sup>5</sup> As PGE stated during the scoping workshop, ORS 469A.410 provides that compliance is determined based on the greenhouse gas (GHG) emissions reported to the Oregon Department of Environmental Quality (DEQ) pursuant to ORS 468A.280. HB 2021 does not require the tracking of electricity to end use retail customers<sup>6</sup> and requires calculation of the emissions associated with the generation resources used to produce electricity.<sup>7</sup> In that sense, the qualifying renewable generation facilities that, pursuant to ORS 469A.020 generate RECs, assist in serving customers with safe, reliable, affordable electricity in the same manner as does legacy renewable generation, energy efficiency, demand response or storage facilities, all of which do not generate RECs. Different regulatory systems require different means of compliance.

RECs have not been required as part of the DEQ greenhouse gas reporting rules since inception and retail electricity providers do not submit RECs to the DEQ when reporting emissions pursuant to ORS 469A.410. RECs are not needed for and do not affect renewable generation or production claims where generation attributes are directly measured and there is no double counting between production and consumption claims.<sup>8</sup> This direct measurement is consistent with the requirements of HB 2021.

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<sup>3</sup> And by extension, the emission limits imposed by ORS 469A.410 (1).

<sup>4</sup> Among those mentioned are legal challenges to power contracts, eligibility and market limitations for Oregon RECs, voluntary programs, integrity issues for Oregon’s other programs including the renewable portfolio standard and Clean Fuels Program and inconsistent treatment of REC accounting in the region.

<sup>5</sup> Those renewable generation resources may make it easier, however, for a retail electricity provider to meet the load demand of its customers within the constraint of the GHG emissions limitations.

<sup>6</sup> ORS 469A.410 (2): “Nothing in ORS 469A.400 to 469A.475 may be construed as establishing a standard that requires a retail electricity provider to track electricity to end use retail customers.”

<sup>7</sup> ORS 468A.280 (2) requires rules adopted by the Environmental Quality Commission to require reporting of information necessary to determine greenhouse gas emissions from generating facilities used to produce the electricity and ORS 468A.280 (4) requires, in part, the reporting of “greenhouse gas emissions emitted from generating facilities owned or operated by the electric company” and the “number of megawatt-hours of electricity purchased . . . including information, if known, on . . . the original generating facility fuel type or types.”

<sup>8</sup> See, *Corporate and Voluntary Renewable Energy in State Greenhouse Gas Policy*, §§ 4.1 to 4.3, Table 2, Center for Resource Strategies, T. Jones and N. Bucon, 10/17/2017. Obtainable here: <https://resource-solutions.org/document/101717/>

**B. PGE continues to recommend resolving the understanding key topics that require resolution in order for utilities to properly move forward towards achieving the goals set by HB 2021: Cost cap, reliability pause and early compliance incentives.**

As stated in our opening scoping comments and during the workshop, the cost cap creates a novel process, significantly different than the RPS cost cap. At any time, a party could ask for an investigation under ORS 469A.445 regarding investments in resources or costs made or to be made (including those identified in PGE’s 2021 Request for Procurement (RFP)) by utilities for purposes of compliance. Certainly, resources considered in the next planning cycle as a result of the recently filed 2023 Clean Energy Plan (CEP) and Integrated Resource Plan (IRP) could be the subject of such a request. All parties should have an understanding of how the cost cap will work and what it means for investments and costs to be “incurred . . . for the purpose of compliance.” PGE recommends a rulemaking on this issue to avoid ad hoc determinations that might otherwise result from implementation of the cost cap.<sup>9</sup>

Similarly, PGE urges resolution of implementation of ORS 469A.440 before the next CEP/IRP cycle. Because the reliability pause provisions in ORS 469A.440 implicate matters which in other contexts have taken years to conduct,<sup>10</sup> prudence suggests that a discussion of how the reliability pause would operate and any legal issues needing resolution within its terms should occur sooner, rather than later.

Finally, several parties indicated interest in UM 2273 addressing the performance incentive provisions of ORS 469A.455. PGE continues to support such an investigation as part of UM 2273 which will allow for appropriate timing before the next CEP/IRP cycle.

**C. Revisiting of planning and procurement policies and practices should follow the current CEP/IRP review cycle**

In initial scoping comments, PGE noted the need to consider refinements to planning guidance and procurement rules to promote clear and efficient processes. The Commission’s approval of PGE-requested waivers of certain provisions of the Competitive Bidding Rules establishes that PGE’s 2023 RFP can move forward without a more comprehensive streamlining effort.<sup>11</sup> As noted by Commissioners, PGE’s procurement process will involve discussion of procurement process needs and potential long-term changes to Commission procedures that may be considered in this docket following the conclusion of the current CEP/IRP review cycle.

Initial scoping comments submitted by Energy Advocates, CUB and NewSun, each suggested further Commission investigation of “in the public interest” expectations, which are listed in

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<sup>9</sup> In AR 622, e.g., the OPUC adopted rules relating to the small-scale renewable requirement in part to avoid ad hoc determinations on how to interpret ORS 469A.210 and the “prudently incurred costs associated with complying” with that statute.

<sup>10</sup> See, e.g., UM 2143, Investigation into Resource Adequacy in Oregon.

<sup>11</sup> See UM 2274, Staff Report for the April 18, 2023 Public Meeting.

ORS 469A.420 (2) and incorporated in CEP expectations by Order No. 22-390. In asking the Commission for additional clarity on the interpretation of this part of statute, parties risk complicating the current CEP/IRP review and building an overly prescriptive analytical framework in advance of critical implementation experience that will arise through the first CEP cycle. PGE recommends taking a phased approach to this topic which is connected to the broader planning guidance review. PGE also notes that in regard to the phrase “in the public interest,” that statute provides for guidance on how to interpret the phrase.<sup>12</sup> In addition, the Commission has interpreted the same phrase throughout a number of past orders as it occurs in more than a dozen statutes administered by the Commission,<sup>13</sup> perhaps leading to the conclusion that combined with the guidance in statute, a question of its interpretation has been “asked and answered” and further investigation in this docket would be unnecessary.

**D. PGE urges restraint and asks that the docket be kept as streamlined as possible**

While PGE’s initial scoping comments suggested a number of topics that could be considered within the docket, we also recognize the capacity issues raised during the workshop, in that many of the same staff people at the utilities, advocacy groups and the Commission that will be involved in this docket are the same ones reviewing and considering the CEP/IRPs. We agree that we need to be mindful of the demands being placed on parties, the need to prioritize resolution of the CEP/IRPs and the interest in keeping this docket efficient by not getting bogged down in addressing time-consuming, discovery-intensive factual issues or far-ranging policy questions. Further, PGE did not hear support for continuation of this docket as a contested case and supports the Commission’s declining to exercise its discretion in that regard. Open conversations, collaborative workshops with opportunities to comment, Commission roundtables and other informal investigative processes, and rulemakings seem best suited to resolving the implementation questions presented.

PGE looks forward to the next steps in this scoping process and engaging with parties to resolve these important matters. Please direct questions or comments to Sam Newman at (503) 464-2112.

Sincerely,

*/s/ Shay LaBray*

Shay LaBray  
Senior Director, Regulatory Affairs & Strategy

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<sup>12</sup> ORS 469A.420 (2)(a)-(f).

<sup>13</sup> See, e.g., Commission Order Nos. 88-767, 01-776 and 14-347.