



April 21, 2023

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

**Re: Docket UM 2273—PacifiCorp Response Comments Regarding HB 2021  
Implementation Scoping Memo**

PacifiCorp d/b/a Pacific Power (PacifiCorp) continues to appreciate and support the Public Utility Commission of Oregon's (Commission) diligent efforts implementing House Bill (HB) 2021, and respectfully submits these response comments for the Commission's consideration. PacifiCorp reiterates that the Commission should prioritize review of the first round of Clean Energy Plans (CEPs). However, after reviewing stakeholder comments and participating in the Commission's April 18 Workshop, PacifiCorp understands the benefit of resolving several discrete, near-term issues in anticipation of the next CEP cycle. In particular, PacifiCorp agrees with Portland General Electric (PGE) that the Commission should consider investigating the cost cap, reliability pause, and early compliance incentives in docket UM 2273, and potentially open a rulemaking docket to codify these issues if necessary. Additionally, there could benefit to clarify the scope of the Commission's authority under HB 2021 that could focus discussions and stakeholder resources going forward.

While there are several important issues that could require additional investigation in subsequent proceedings (CBRE procurement concerns, for example), these and other implementation issues should be deferred because their consideration would benefit from Commission and stakeholder review of this year's CEP filings.

**I. The Commission could clarify the scope of its authority under HB 2021 regarding Renewable Energy Credits (RECs), Emissions Accounting, and In-State Resource Preferences**

The Energy Advocates, NewSun, 3Degrees, and CRS ask the Commission to provide clarity on the attributes of HB 2021 resources (whether RECs or emissions), and the Energy Advocates and NewSun request the Commission consider whether ORS § 469A.405(2) creates the potential for in-state resource preferences.

As PacifiCorp noted in previous comments, the Commission should decline these requests to re-legislate HB 2021. HB 2021 is an emissions standard and assigns exclusive jurisdiction over emissions accounting (distinguished from reporting or disclosure) to the Oregon Department of Environmental Quality (DEQ).<sup>1</sup> RECs have no place regarding utility compliance with HB

---

<sup>1</sup> ORS § 469A.420.

2021's clean energy targets.<sup>2</sup> And the policy statements in ORS § 469A.405(2) do not establish an in-state requirement for generation resources, nor should it as that raises issues related to interstate commerce and the Federal Power Act.<sup>3</sup> PacifiCorp agrees with PGE that these issues are legally unambiguous.

Accordingly, the Commission could simply exercise its discretion and exclude these issues from further consideration.

That said, PacifiCorp acknowledges there is value in resolving these questions early regarding the scope of the Commission's authority under HB 2021. Otherwise, stakeholders may raise these issues in individual CEP proceedings, risking potential implementation delays if Commission decisions result in litigation.

If the Commission wanted finality it should request briefing on these three discrete questions of law in this docket, or direct interested parties to petition for declaratory rulings. For declaratory rulings, on "petition of any interested person," the Commission can declare how the Commission's statutes or rules apply to "any person, property, or state of facts."<sup>4</sup> These rulings are binding between the Commission and the petitioner on the alleged facts, and can be modified by the Commission or on judicial review.<sup>5</sup> The party seeking declaratory relief typically bears the burden of proof (including production and persuasion) to establish that the question of law should be resolved in their favor.<sup>6</sup>

Either a final order in this proceeding, or declaratory rulings brought by interested parties in subsequent proceedings, would provide adequate certainty and opportunities for judicial review if parties disagreed with the Commission's conclusions.

## **II. The Commission should address cost caps, reliability issues and early compliance incentives to inform subsequent CEP cycles.**

PacifiCorp supports early determinations on cost caps, reliability issues and early compliance incentives to discuss policy options that can be incorporated into rules of general applicability.

---

<sup>2</sup> ORS § 469A.410 (creating an emissions compliance regime, and not mentioning RECs); ORS § 469A.430 (same); ORS § 469A.410(2) (explicitly stating that HB 2021 cannot be construed as "establishing a standard that requires a retail electricity provider to track electricity to end use retail customers.").

<sup>3</sup> *Oregon Waste Systems, Inc. v. Oregon DEQ*, 511 U.S. 93 (1994) ("As we use the term here, 'discrimination' simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. If a restriction on commerce is discriminatory, it is virtually *per se* invalid.") (original emphasis); *Columbia Pacific Building Trades Council v. City of Portland*, 289 Or.App. 739, 412 P.3d 258, 263 (2018) (same); 16 U.S.C. § 824(b).

<sup>4</sup> ORS § 756.450.

<sup>5</sup> *Id.*

<sup>6</sup> *See ZRZ Realty Co. v. Beneficial Fire and Cas. Ins. Co.*, 349 Or. 117, 241 P.3d 710, 721 (2010) ("In the first category of declaratory judgment actions, the party that ordinarily would have the burden of proof on a claim or defense brings a declaratory judgment action to establish its claim or defense. In that situation, the authorities are unanimous that the plaintiff in the declaratory judgment action has the same burden of production and persuasion that it ordinarily would have.") (interpreting similar declaratory judgment statute under Oregon's Insurance Code).

The Company is concerned that compliance with HB 2021's 2035 and 2040 goals will both require significant investments and could threaten reliability to Oregon customers and potentially the broader system if new generation resource technologies are not developed. These cost cap and reliability issues should be prioritized to provide guidance to utilities, as all stakeholders would benefit from an increased understanding of the system reliability issues that will drive up costs without proper planning. Recognizing the risk and establishing procedures to conduct the analyses identified in ORS §§ 469A.440 and 469A.445 would help avoid ad hoc analysis only after a utility identifies affordability or reliability risks. Relatedly, the Commission should explore early compliance incentives under ORS § 469A.455 so there are still opportunities for utilities to take advantage of the any incentives well in advance of HB 2021's 2030, 2035, and 2040 targets.

**III. The Commission should decline to address the remaining stakeholder concerns until after review of the initial utility CEPs.**

The Commission should defer addressing additional HB 2021 implementation issues because each will benefit from the Commission's review of current CEPs, or may be impacted by developing facts and circumstances over time.

Any discussion of penalties or compliance requirements, for example, should only be considered after the Commission determines a process for cost caps and the implementation of a reliability pause. Otherwise, the utilities would be in a position where compliance and penalties are driving HB 2021 implementation decisions, not reliability of the system and affordability.

Additionally, the California Independent System Operator has just begun standing up the Western Resource Adequacy Program and Energy Day Ahead Market. These transformative wholesale market developments could have material implications regarding not only how Section 15 of HB 2021 provides opportunities to meet Oregon's energy policy at lower cost, but also further complicate the role of RECs when individual utilities no longer dispatch generators to serve load.

Similarly, the Company does not believe it is urgent to provide additional clarity on the public interest factors under ORS § 469A.420(2). HB 2021 is already more specific and detailed than the Commission's other public interest statutes. For example, HB 2021 includes five public interest factors that the Commission can consider when reviewing CEPs, and also provides the Commission broad discretion to consider any "other relevant factors."<sup>7</sup> This is contrasted with all additional Commission public interest statutes that neither provide specific public interest factors nor additional broad discretionary factors.<sup>8</sup> Accordingly, the Commission does not, at this time, need for further define the public interest factors and potentially limit its discretion when there are so many unknowns regarding the paths to implementing the state's energy policy.

---

<sup>7</sup> ORS § 469A.420(2).

<sup>8</sup> Compare ORS § 469A.420(2)(a)-(f), with ORS §§ 757.105(3), 757.140(2)(a), 757.245(2), 757.269(2)(f), 757.269(3)(c), 757.273, 757.285, 757.386(2)(b)(D), 757.412, 757.415(1)(e), 757.415(2)(b), 757.415(4)(a), 757.490(3), 757.495(3), 757.500, 757.511(3)(i), 757.511(4)(a)-(b), 757.516(6), or 757.607(2).

This staggered resolution of HB 2021 issues (CEPs and pressing issues first; additional policies later) ensures that learnings from individual CEPs can strategically inform the Commission's important work with further HB 2021 implementation.

#### **IV. Conclusion**

PacifiCorp continues to appreciate the Commission and Commission Staff's diligent efforts with HB 2021-related issues, and respectfully request the Commission consider the response comments provided above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew McVee', written in a cursive style.

Matthew McVee  
Vice President, Regulatory Process and Operations  
PacifiCorp