

April 21, 2023

Via Electronic Filing
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Oregon Public Utility Commission
John Mellgren, Administrative Law Judge
Attn: Filing Center
PO Box 1088
Salem, OR 97038-1088

RE: UM 2273 Final Written Comments on Scoping

Dear Judge Mellgren and members of the Commission:

The Green Energy Institute at Lewis & Clark Law School, Metro Climate Action Team Steering Committee, Sierra Club, and Oregon Solar + Storage Industries Association submit these comments in follow up to the special public meeting of April 18, 2023.

We reiterate all of the points raised by the Energy Advocates in their initial submission on April 11, 2023 in this docket,¹ as well the points raised by various parties in response to the Motion for Reconsideration filed in the UM 2225 docket including those identified in the response to the Motion filed by Sierra Club and GEI.² We continue to believe the questions identified in those filings raise important issues that require Commission resolution to implement what could be a remarkable and transformative law. We hope the Commission will allow stakeholders to learn from each other in exploring the questions presented thus far.

During the special public meeting, the Commission discussed RECs in several contexts: (1) the treatment of RECs under HB 2021 and (2) the future impact of market expansion and participation, including on RECs. These two issues are separate and distinct. A discussion about future market participation does not devalue or make less timely a discussion about the treatment of RECs under HB 2021, which the Energy Advocates raised as an important issue in their scoping comments. Rather, a proper load-based accounting framework that addresses RECs will be important to future market participation. We recommend that the Commission address the first issue as our scoping comments contemplate and address the second issue separately and with less priority.

¹ Energy Advocates' Comments on Scoping Questions, Docket UM 2273 (April 11, 2023), available at <https://edocs.puc.state.or.us/efdocs/HAC/um2273hac151150.pdf>.

² Joint Environmental Parties' Response to Application for Rehearing or Reconsideration, Docket UM 2225 (Jan. 11, 2023), available at <https://edocs.puc.state.or.us/efdocs/HAC/um2225hac152921.pdf>.

We also write to raise concerns with the suggestion that a declaratory ruling may be the optimal process to use for resolving some of the more discrete legal questions. First, the statute authorizing a petition for a declaratory ruling provides that the result is “binding between the commission and the petitioner on the state of facts alleged[.]”³ If stakeholders are interested in resolving a legal question using this procedure, it appears it would not be binding on the utilities. For example, in a fairly recent Order, the Commission interpreted this provision strictly, finding that a declaratory ruling “would have no real effect” for a variety of reasons, including that the “declaratory ruling statute does not authorize the Commission to issue a declaratory ruling that binds a non-petitioning entity[.]” referring to the utilities.⁴ We have concerns about the value of the declaratory ruling process given this limitation, especially because we would expect that the outcome of any proceeding resolving the questions we have raised would be binding on the utilities.

Second, the implementing regulations may not be a good fit for any interested organization seeking a declaratory ruling, in that the petition must contain “[t]he rule or statute that may apply to the person, property or facts[.]”⁵ It might be difficult for stakeholders who have been faithfully participating in this lengthy implementation process to meet that test. This is especially true where some of the questions are more policy-oriented.

Finally, the Commission has complete discretion to accept or deny the petition and has the option of refusing to give a declaratory ruling.⁶ While we hope the Commission would not deny a petition for declaratory ruling after suggesting such a process, and after we have raised the same questions in the UM 2225 docket that we hope you will resolve in UM 2273, the possibility of refusal is yet one more reason why we hope the Commission will carefully consider how best to resolve the questions we and other stakeholders have raised.

On a related, but somewhat sensitive note, staff and the Commission has guided stakeholders through the UM 2225 process thus far in a truly admirable way. We recognize that the burden on staff and the Commission is heavy. You must guide utilities toward filing first-of-their kind clean energy plans on the one hand, while on the other hand educating stakeholders about traditional IRPs and how they have changed. The Commission now needs a third hand to work through the various provisions of HB 2021 and the arguments stakeholders are making about the best interpretation of its provisions. We understand this process asks much of the Commission.

³ ORS 756.450.

⁴ *In re Renewable Energy Coalition, Community Renewable Energy Assoc., and Oregon Solar + Storage Indust. Assoc.*, Order No. 21-455 at 5, Docket DR 57 (Dec. 2, 2021), <https://apps.puc.state.or.us/orders/2021ords/21-455.pdf>,

⁵ OAR 860-001-0430(1).

⁶ *In re Renewable Energy Coalition*, Order No. 21-455 at 5, citing *In re Oregon Energy Co., LLC*, Order No. 96-137 (Docket No. DR 14).

However, the question about whether a declaratory ruling is the appropriate mechanism provides a good opportunity to underscore, again, the importance of keeping implementation of HB 2021 as open and accessible for stakeholders as possible. We are concerned that a process like the declaratory ruling raises barriers that stakeholders won't know about until a lawyer reviews the statute, administrative rules, and related orders. **We suggest that any process you propose moving forward continues to be consistent with the reason a broad coalition supported HB 2021 and continues to support it through implementation.**⁷ We encourage you to consider whether any process you select welcomes different voices and alerts them to any limitations or potential barriers like those that appear to exist for the declaratory ruling process.

Finally, we support NewSun's suggestion that as the questions are finalized, prioritized, and scheduled for resolution, the Commission consider assigning dockets to severable questions. Some stakeholders will wish to engage more deeply in some dockets than others. The Commission's new webpage devoted to HB 2021 implementation will be a handy way to guide stakeholders to the issues they may be most interested in, as would the newsletter. Additionally, while we hope the Commission will entertain all of the questions raised by stakeholders, especially given that the utilities appeared to agree there would be value in addressing them, please indicate in any final order those issues the Commission declines to address.

Thank you for the opportunity to engage in this docket.

Sincerely,

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Metro Climate Action Team Steering
Committee: Brett Baylor, Rick Brown,
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⁷ Oregon Clean Energy Campaign, Press Release: Oregon Passes Groundbreaking Legislation Requiring 100% Clean Electricity by 2040 (June 26, 2021), available at <https://cleanenergyoregon.org/en/news/oregon-100-percent-clean-energy-for-all-passes> (describing how the bill is "grounded in justice for communities who have been historically harmed the most by our energy systems" and "[w]e hustled side by side with Oregonians from all across the state and made sure their voices were heard").