

**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.

NW ENERGY COALITION AND
RENEWABLE NORTHWEST
OPENING COMMENTS

I. INTRODUCTION

NW Energy Coalition and Renewable Northwest appreciate the opportunity to submit these Opening Comments to the Oregon Public Utility Commission (“Commission”) regarding the cost cap established by House Bill 2021 (2021) (“HB 2021”). NW Energy Coalition and Renewable Northwest previously submitted an Opening Brief on the cost cap in this docket on May 23, 2024. On May 27, 2025, the Commission issued a Notice and Memorandum (“Notice and Memorandum”) that established opportunities for written comments and a workshop, provided a draft order attached as Appendix A, and provided a hypothetical scenario attached as Appendix B. On June 13, 2025, the Commission issued a Ruling modifying the comments and workshop dates and establishing August 7, 2025 as the deadline for Opening Comments.

NW Energy Coalition and Renewable Northwest now submit these Opening Comments in response to the Commission’s Notice and Memorandum and subsequent Ruling. In these Opening Comments we broadly support the Commission’s draft order, offering a single one-word change but otherwise observing that the draft order closely tracks the language and intent of HB 2021 as discussed in NW Energy Coalition and Renewable Northwest’s Opening Brief.

In addition to offering broad support for the draft order, we respond to the Commission's questions as set forth in the Notice and Memorandum. Overall, we appreciate the Commission's thoughtful deliberation on issues raised by HB 2021's cost cap as reflected in the draft order, and we look forward to further participation in the process set forth in the Notice and Memorandum and subsequent Ruling.

II. COMMENTS

A. Support for Draft Order

In briefing on HB 2021's cost cap in this phase of Docket No. UM 2273, NW Energy Coalition and Renewable Northwest made four main arguments: 1) The cost cap should apply only to costs that would not have been incurred but for the requirements of HB 2021 sections 1-15.¹ 2) Forecasted costs used to determine application of the cap should include only actual and not hypothetical or proxy costs.² 3) The Renewable Portfolio Standard cost cap and HB 2021 cost cap are completely separate.³ And 4) the cost cap applies only in individual years.⁴

Other parties took other positions. The draft order included in the Notice and Memorandum reflects an attempt to craft a workable standard that honors the parties' positions and rests on careful consideration of the text and context of HB 2021 and the parties' briefs. Specifically, the draft order adopts the following positions: 1) The cost cap should apply only to costs for which the requirements of HB 2021 sections 1-15 was a major driver.⁵ 2) A forecast cost only enters the cost cap calculus at the stage of utility commitment, not the modeling stage

¹ Opening Brief at 3.

² Opening Brief at 3.

³ Opening Brief at 3.

⁴ Opening Brief at 3.

⁵ Notice and Memorandum, Appendix A at 6.

of the planning process or shortlist stage of procurement.⁶ 3) Costs attributable to the RPS and not HB 2021 are subject to the RPS cost cap and not the HB 2021 cost cap.⁷ And 4) the cost cap applies only in individual years.⁸

In NW Energy Coalition and Renewable Northwest’s view, the draft order is broadly consistent with both the language and intent of HB 2021 and our recommended outcomes, with the main daylight coming between our proposed “but for” test and the draft order’s “major driver” test. We understand the Commission’s position that the “major driver” test bridges the gap between the statutory phrases “for the purpose of compliance” and “contributes to compliance”,⁹ and we support the Commission’s effort to retain more discretion than a pure “but for” test would encompass.

Having set forth our general agreement with the draft order, we turn now to the Commission’s questions regarding the draft order’s proposed counterfactual analysis, used to determine whether HB 2021 was a “major driver” of a cost incurred by the utility, and the hypothetical example set forth to explore application of the order’s cost cap framework.

B. Counterfactual Portfolio

The draft order outlines the use of a counterfactual portfolio using IRP modeling as a “crucial first step in the analysis to determine which costs or investments should be examined more closely” and a form of “advance warning to the Commission and stakeholders that a utility may be approaching the six percent cost cap threshold.”¹⁰ This counterfactual portfolio would rely on modeling that excludes only “the constraints and assumptions required to ensure

⁶ Notice and Memorandum, Appendix A at 11.

⁷ Notice and Memorandum, Appendix A at 13.

⁸ Notice and Memorandum, Appendix A at 14.

⁹ Notice and Memorandum, Appendix A at 6.

¹⁰ Notice and Memorandum, Appendix A at 6.

compliance with” sections 1-15 of HB 2021, consistent with the statute’s language.¹¹ Finally, the counterfactual portfolio would be “highly persuasive” but not “dispositive” in a future cost cap analysis.¹² For the purpose of these Opening Comments, the Notice and Memorandum provides that, with respect to this counterfactual portfolio proposal, “all parties should discuss potential pitfalls in the approach described in the draft order” and “describe potential solutions or other opportunities for improvement.”¹³

Before discussing potential pitfalls, however, NW Energy Coalition and Renewable Northwest provide general support for the approach outlined in the draft order. A counterfactual proposal is a reasonable way to put parties on notice that a utility may be approaching or expected to exceed the cost cap. The proposal appropriately limits the counterfactual proposal to exclude only the requirements of HB 2021 sections 1-15, not other sections of the law such as the small-scale renewable target that are not captured by the explicit statutory language that establishes the cost cap.¹⁴ The analysis is not dispositive, which is appropriate given that modeling relies on assumptions that may or may not be borne out in the real world.

That last point, however, brings us to potential pitfalls of the counterfactual portfolio proposal. IRP analyses are useful directional tools, but they rarely provide an indication as to what resources a utility will actually procure, and even that directionality can swiftly yield to real-world circumstances and utility decisions. Both Portland General Electric and PacifiCorp have made actual procurement decisions that diverge wildly from their recent IRPs. For

¹¹ Notice and Memorandum, Appendix A at 6; HB 2021 section 10(1), codified at ORS 469A.445(1).

¹² Notice and Memorandum, Appendix A at 6.

¹³ Notice and Memorandum at 2.

¹⁴ HB 2021 section 10(1), codified at ORS 469A.445(1).

example, PGE’s 2023 RFP resulted in what Commission Staff have described as an “energy resource shortfall” – specifically, PGE’s Final Shortlist “only include[d] 85 MWa of the 753 MWa of non-emitting resources the Company was aiming for between 2025-2028 to stay on its anticipated glidepath to meet HB 2021 2030 emission reduction goals” based on IRP modeling.¹⁵ And PacifiCorp canceled its 2022 RFP that, based on IRP modeling, had sought “approximately 1,345 megawatts (MW) of new generating resources and 600 MW of energy storage resources[.]”¹⁶ Given this wide divergence between IRP-based procurement strategies and actual procurement decisions, NW Energy Coalition and Renewable Northwest suggest, as a very narrow modification to the draft order, the removal of the word “highly” from the phrase “highly persuasive” as follows: “As a result, inclusion of an action in the counterfactual portfolio, while highly persuasive, would not be dispositive evidence that the action should not count toward the HB 2021 cost cap.” This modification would also align with the Commission’s treatment of IRPs in the normal course, where IRPs are acknowledged if “reasonable” and are treated as “evidence” – not “highly persuasive evidence” – of prudence in a later rate case.¹⁷

As for improvements, NW Energy Coalition and Renewable Northwest recommend that the Commission consider clarifying that any counterfactual portfolio analysis should also account for risks. For example, if an HB 2021-compliant portfolio cost \$1 billion and a non-compliant portfolio that replaced some solar and storage investment with a new gas plant cost

¹⁵ *In re PGE 2023 All-Source Request for Proposals, Request for Partial Waiver of Competitive Bidding Rules*, Docket No. UM 2274, Order No. 24-425, Appendix A at 3, 14, 16 (Nov. 25, 2024).

¹⁶ *In re PacifiCorp Application for Approval of 2022 All-Source Request for Proposals*, Docket No. UM 2193, PacifiCorp Application for Approval of 2022 All-Source Request for Proposals at 1 (Sept. 2, 2021).

¹⁷ *In re Commission Investigation into Integrated Resource Planning*, Docket No. UM 1056, Order Nos. 07-002 (Jan. 8, 2007) and 07-047 (Feb. 9, 2007).

\$995 million, the supply and price volatility risks associated with the gas plant may counsel in favor of the compliant portfolio even under traditional considerations of cost and risk. In that case, HB 2021 could not reasonably be said to be a “major driver” of the decision to pursue the compliant portfolio at a nominal cost premium of \$5 million, and that \$5 million should not count toward the cap.

NW Energy Coalition and Renewable Northwest also recommend that the Commission consider incorporating the social cost of greenhouse gas emissions (“SCGHG”) into the counterfactual analysis. The Washington Utilities and Transportation Commission (“UTC”) has required by rule that the social cost of greenhouse gas emissions must be included in Washington utilities’ assessment of the incremental cost of compliance with the Clean Energy Transformation Act (“CETA”), which is the analytical foundation for CETA’s cost-based offramp.¹⁸ As Renewable Northwest explained in comments to the UTC, “the Commission included the SCGHG in the incremental cost calculation for a reason: while it may not show up on customers’ electricity bills, SCGHG – the social *cost* of greenhouse gas emissions – is a real cost that will likely show up on untold other bills paid by PacifiCorp customers, not to mention costs that go beyond bills such as drought, extreme heat, severe weather, and displacement due to wildfires.”¹⁹ Incorporating the SCGHG in the counterfactual portfolio in some form, even as a post-model-run adder to quantify additional socialized costs associated with a non-compliant counterfactual portfolio, could provide a more comprehensive look at the economic impacts of a utility’s planning efforts.

¹⁸ WAC 480-100-605; *In re PacifiCorp 2021 Clean Energy Implementation Plan*, UTC Docket No. UE-210829, Order 01 at 2 (Dec. 13, 2021).

¹⁹ UTC Docket No. UE-210829, Comments of Renewable Northwest at 2 (Dec. 6, 2021).

C. Hypothetical Example

NW Energy Coalition and Renewable Northwest appreciate the Commission’s efforts to explore the practical ramifications of the draft order through engagement with a hypothetical scenario. The Commission asks that stakeholders explore several enumerated issues. NW Energy Coalition and Renewable Northwest have no broader comments to offer regarding the Commission’s hypothetical example, but we respond below to the Commission’s enumerated issues.

“At what stage in the procurement process would the utilities generally have information sufficient to ... provid[e] advance warning to the Commission and stakeholders that a utility may be approaching the cost cap?”²⁰ As discussed above, resource planning is too early a stage because actual procurement can and typically does diverge significantly from plans. Even the final shortlist stage of an RFP is too early to establish whether the cost cap will actually be triggered, because utilities typically do not execute contracts with all resources identified on a final shortlist. However, the final shortlist stage may be the appropriate point in the process for a “non-binding, rough-estimate ... advance warning”,²¹ as the resulting process (if any) may indicate an appropriate approach to contracting with shortlisted resources.

“At what stage in the procurement process would (a) the utilities or (b) stakeholders ... have sufficient information ... to support a Section 10 filing[?]”²² Utilities and stakeholders with filing rights would only have sufficient information to support a filing once at least one contract with a shortlisted resource has been executed and the utility has initiated the cost-recovery process. Execution of one contract could theoretically provide a basis for triggering the cost cap

²⁰ Notice and Memorandum at 3.

²¹ Notice and Memorandum at 3.

²² Notice and Memorandum at 3.

and precluding execution of additional contracts. However, before any contract has been executed any resource decisions are too speculative to support a Section 10 filing.

“Is the utility net present value revenue requirement (NPVRR) methodology sufficient for estimating annual revenue requirement for future years?”²³ NW Energy Coalition and Renewable Northwest are not aware of a better value than a calculated NPVRR for determining the “denominator in a Section 10 determination”.²⁴ We are open to alternatives and look forward to reviewing other parties’ filings on this topic.

“What events are likely to warrant updates ... with respect to years for which an exemption has not been granted?”²⁵ Any significant costs incurred or investments entered into by the utility could warrant changes to the numerator or denominator of the Section 10 calculation.

“Are there factors the Commission would need to consider for which information is not provided in the hypothetical scenario?”²⁶ NW Energy Coalition and Renewable Northwest have no additional factors to recommend at this time but look forward to reviewing other parties’ filings on this topic.

III. CONCLUSION

NW Energy Coalition and Renewable Northwest appreciate the Commission’s consideration of these Opening Comments. We reiterate our broad support for the Commission’s draft order and look forward to the additional process set forth in the Notice and Memorandum as modified by the subsequent Ruling.

²³ Notice and Memorandum at 4.

²⁴ Notice and Memorandum at 4.

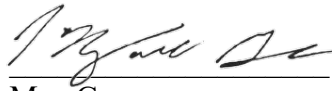
²⁵ Notice and Memorandum at 4.

²⁶ Notice and Memorandum at 4.

Dated this 12th day of August 2025.

Respectfully submitted,

Sanger Greene, PC

A handwritten signature in black ink, appearing to read "Max Greene", written over a horizontal line.

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