



August 12, 2025

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

Re: In the Matter of Public Utility Commission of Oregon
Investigation into HB 2021 Implementation Issues
Docket No. UM 2273

Dear Filing Center Staff,

By this letter, Oregon Solar + Storage Industries Association (“OSSIA”) submits comments on the draft order prepared by the Administrative Hearings Division (“AHD”) addressing the cost cap provisions set forth in Section 10 of House Bill 2021 (“HB 2021”), as invited by Administrative Law Judge Mike Grant’s Notice and Memorandum dated May 27, 2025. OSSIA commends the Oregon Public Utility Commission (“Commission” or “PUC”) for this procedural opportunity to comment on a draft order before it is finalized.

OSSIA is a party to this contested case docket and participated in Phase 1, but OSSIA did not participate in the Phase 2 legal briefing that informed this draft order. OSSIA appreciates the opportunity to comment on the draft order given its broad implications for cost cap implementation, clean resource procurement, and compliance certainty. These comments are not intended to relitigate previously briefed legal issues, but instead aim to provide practical insights regarding the effects of the proposed interpretation.

COMMENTS

I. Comments on Counterfactual Approach

The draft order contemplates adopting the Joint Utilities’ suggestion to use a counterfactual portfolio, developed as if HB 2021 did not exist, to compare to a utility’s Integrated Resource Plan (“IRP”)/Clean Energy Plan (“CEP”) as a first step to help the Commission determine which costs are attributable to HB 2021 compliance. OSSIA understands the conceptual value of this counterfactual method. A well-designed counterfactual could help the Commission identify which utility investments were significantly driven by HB 2021, thus warranting closer examination under the cost cap.

However, OSSIA is concerned that despite its potential, the proposed counterfactual approach could become another “black box” exercise if the Commission implements the approach without

sufficient safeguards. In other words, OSSIA is concerned that the utilities would be able to produce the counterfactual portfolio internally, justified by confidential modeling assumptions and insulated from meaningful stakeholder review. Such an outcome would undermine transparency, limit stakeholder confidence, and reduce the Commission’s ability to ensure accountability in HB 2021 implementation.

OSSIA also notes a related process concern: if the utilities develop the counterfactual and the Commission evaluates the counterfactual solely in IRP/CEP dockets, stakeholders may have less procedural tools, such as cross-examination or formal evidentiary challenges, available to review the counterfactual meaningfully. OSSIA asks the Commission to consider and clarify how and where the Commission and stakeholders will review the counterfactual to ensure the counterfactual is reviewed scrutinously.

OSSIA believes that a transparent and rigorously reviewed counterfactual would create a more accurate record of HB 2021-driven costs. When the utilities’ clearly identify incremental costs and tie those costs to specific procurement decisions, the utilities can more easily demonstrate to the Commission and stakeholders the cost-effectiveness of an investment or cost. A well-structured counterfactual framework combined with HB 2021’s enforceable procurement and planning obligations, can provide the certainty needed for developers to participate competitively, driving innovation and cost reductions that support HB 2021’s emissions reduction targets within the cost cap.

OSSIA recommends that should the Commission proceed with a counterfactual framework, the Commission should require:

- **Transparency of inputs, assumptions, and modeling results** so stakeholders and the Commission can verify the basis for the counterfactual;
- **Public availability of key data** to the maximum extent possible, with any necessary confidentiality protections narrowly tailored;
- **Procedural opportunities for review and challenge**, such as a dedicated workshop or testimony phase, so parties can test the reasonableness of the counterfactual before it informs cost cap determinations;
- **Clear Commission guidance** on the methodological parameters for developing the counterfactual to avoid utility discretion leading to “gaming” or bias; and
- **A process for the Commission to retain discretion to scrutinize utility behavior**, including whether the utility has taken reasonable steps to diversify procurement, mitigate risk, and avoid cost spikes through proactive planning, so that counterfactual results are not accepted without verifying that prudent, competitive resource acquisition has occurred.

II. Comments on Forecasted Costs Legal Conclusion

The draft order contemplates that for forecasted or anticipated costs, the Commission may only consider projects to which a utility has formally committed. OSSIA appreciates the draft order’s discussion around the complexity of this issue, and that the draft order recognizes the tension embedded into this approach. OSSIA requests further discussion and clarification on the meaning of “formally committed,” including whether this refers to executed contracts, Commission acknowledgements, or other binding actions.

Respectfully Submitted,

/s/ Alyssa Forest

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