



September 29, 2025

Oregon Public Utility Commission
Attention: Filing Center
P.O. Box 1088
Salem, OR 97308-1088

RE: UM 2273, Investigation in House Bill 2021 Implementation Issues
Response to Sept. 2, 2025, Memorandum

Thank you for considering comments by the Green Energy Institute (GEI) at Lewis & Clark Law School. GEI observed the workshop on August 28, 2025, and felt compelled to offer support for several of the comments made during that proceeding. We also hope that the following thoughts on the questions posed by Administrative Law Judge Katharine Mapes will be helpful.

1. Does ORS 469A.445 call for the Commission to issue an exemption that prevents a utility’s projected obligatory compliance costs from reaching 6% of its projected revenue requirement for a year, or that relieves the utility from further compliance obligations once its projected compliance costs have reached or exceeded 6% of its projected revenue requirement for that year?

The “actual or anticipated cumulative rate impact” clause in ORS 469A.445(4) should be interpreted to impose the highest bar supported by the language. A section 10 proceeding, after all, could result in relieving a utility of its legal obligation to reduce GHG emissions, undermining the entire purpose of HB 2021 and all of the State of Oregon policies set out in Section 2 of the Act.¹

Indeed, the text and context of HB 2021 supports an interpretation that an exemption be granted if costs have exceeded 6% of the projected revenue requirement for that year.² Consider Section 9’s “pause” allowance: in a situation when utility service “results” in “other than fair and reasonable rates”—suggesting an historical look-back—a pause may be warranted.³ Further, only the utility or the Commission may open an investigation to evaluate the necessity of a temporary exemption under Section 9.⁴ In comparison, Section 10 allows ratepayer advocates to initiate an

ORS 469A.405.

¹ Note ORS 469A.445(4) uses the word “exceeds” to warrant an exemption from compliance.

¹ ORS 469A.440(2)(d).

¹ Id.¹ ORS 469A.405.

² Note ORS 469A.445(4) uses the word “exceeds” to warrant an exemption from compliance.

³ ORS 469A.440(2)(d).

⁴ Id.

inquiry into costs—this suggests costs have reached a level of concern beyond the “fair and reasonable rates” called out in Section 9. Additionally, Section 10 allows for an investigation to “provide *accounting* for investments made, costs incurred or forecasted costs,” indicating the best possible information (beyond a projection) must be provided to warrant an investigation.⁵

At the end of the day, the onus is on the utility to proactively plan acquisition of resources in order to demonstrate continual progress with HB 2021 GHG emissions reduction mandates. How the utilities do that will affect whether they exceed the 6% cost cap. Accordingly, the cost cap should be read in a way that is consistent with the continual progress obligation, suggesting a high bar is necessary to prevent or relieve the utility from procuring compliance costs.

2. Recognizing that no forecast is perfect and that any increase in the level of detail required to support a section 10 determination comes at the expense of more lengthy proceedings, what evidence would be appropriate in a section 10 proceeding with respect to (a) costs that have already been incurred and (b) new expenditures?

The process of determining whether to exempt a regulated entity from a legal obligation should not be easy. For example, the statute makes it clear that parties to the proceeding have all of the procedural rights of a contested case, including developing the record, conducting discovery, introducing evidence, and conducting cross-examination, briefing, and argument.⁶ Accordingly, the PUC should make it equally clear that a high level of detail about the “investments or costs” is required from an electric company or ratepayer advocate seeking an accounting under Section 10 to demonstrate that the costs have exceeded the 6% threshold. Obligations to comply with other laws, such as the RPS, coal-to-clean, or any other reliability mandates, should be expressly excluded from consideration.

3. How should the Commission address power costs, which often represent roughly 50% of the annual revenue requirement, in developing projected annual revenue requirements for use as the denominator of the cost cap calculation?

We defer to the comments offered by the Northwest Energy Coalition (NVEC) and Renewable Northwest (RNW).

4. In light of the opportunity for significant complexity when determining the numerator and denominator, should the Commission adopt simplifying 2 assumptions to make timely section 10 determinations more feasible? Which elements of the calculation could benefit from simplifying assumptions while allowing the Commission to effectively achieve the balance between climate goals and affordability articulated in the legislation?

We defer to the comments offered by NVEC and RNW. We do note that the statute appears to anticipate a two-phased approach: (1) determine whether an investment or cost contributes to compliance, and then (2) determine the actual or anticipated rate impact.⁷ As we indicated above,

⁵ ORS 469.445(1) (emphasis added).

⁶ ORS 469A.445(2)(a).

⁷ ORS 469A.445(3) (“Upon determining that an investment or cost . . . contributes to compliance” . . . “the commission shall determine the actual or anticipated rate impact”

the Commission could and should eliminate whole categories of investments that are utility obligations separate and apart from HB 2021.

5. Parties have proposed starting section 10 proceedings at various points in the planning and procurement process. Please provide an illustrative timeline for how an IRP/CEP, RFP, and section 10 proceeding would best align.

We agree with other commenters that the IRP/CEP and early stages of the RFP do not provide sufficiently accurate cost predictions to be workable in a Section 10 proceeding.

Sincerely,
/s/ Carra Sahler
Carra Sahler
Director and Staff Attorney
Green Energy Institute at Lewis & Clark Law School