BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2225

In the Matter of STAFF HB 2021 INVESTIGATION INTO CLEAN ENERGY PLANS.	APPLICATION FOR REHEARING OR RECONSIDERATION OF OREGON SOLAR AND STORAGE INDUSTRIES ASSOCIATION, COMMUNITY RENEWABLE ENERGY ASSOCIATION, AND NEWSUN ENERGY LLC

I. INTRODUCTION

Pursuant to ORS 756.561 and OAR 860-001-0720, the Oregon Solar and Storage Industries Association ("OSSIA"), the Community Renewable Energy Association ("CREA"), and NewSun Energy LLC ("NewSun") (collectively, the "Applicants") respectfully apply for rehearing or reconsideration of the Public Utility Commission of Oregon's ("Commission" or "OPUC") Order Nos. 22-390, 22-446 and 22-477.

The Requesting Parties request rehearing or reconsideration on the grounds that the Orders contain errors of law and fact that are essential to the Commission's decision, and good cause exists to reconsider the decision to ensure ratepayers receive the benefits the statute requires. As explained below, the Application challenges seven issues resolved by the Commission's decisions in these Orders. This application provides a set of recommendations and requests for reconsideration that have the potential to strengthen and improve the probability of meeting HB 2021's ambitious decarbonization mandate. The recommendations address ambiguity, resolve potential disputes that would otherwise require litigation, and put the state on track to successfully meet HB 2021s targets. A summary of those issues is outlined in the

following table:

Issue	Topic	Requested Changes
1	Binding nature of HB 2021	• Explicitly state in a written order that the Commission views HB 2021 as binding, in particular the emission reduction targets, (absent any reliability pause or cost cap issues). • Immediately launch a rulemaking docket to address compliance obligations.
2	REC Accounting	• Require that RECs be retired for renewable resources used to comply with HB 2021 or at a minimum to expeditiously resolve this issue in the near-term.
3	REC Reporting	• Revert back to Staff's recommendation to direct that utilities report on RECs sold to other entities or banked and then sold and to report on actual REC sales.
4	Emissions from all Thermal Resources	• Direct utilities to report plans for and emissions of thermal resources not being used to serve Oregon retail loads to address the issue of "leakage," and to adopt recommendations from the Energy Advocates.
5	"Technical Feasibility" for CEP Acknowledgement	• Direct that to be "technically feasible," a CEP must rely on realistic assumptions and consider the uncertainty and known risks around interconnection, transmission, permitting, and development timelines and that utilities should plan for contingencies in the event of delay or failure of any of the above criteria. • Immediately launch a rulemaking to determine what additional criteria the PUC intends to consider under ORS 469A.420(2)(f) in determining whether the clean energy plan is in the public interest and should be acknowledged.
6	Guidance vs. Requirements	• Revise its CEP "guidance" issued in its various orders to turn them into requirements. • Alternatively, to clarify the consequences of failure to meet the expectations outlined in each of the Commission's orders.
7	Continual Progress	• Explain that "continual progress" means a linear trajectory of GHG emissions reductions.

II. SUMMARY

First, the Commission erred by failing to correct statements it made indicating that there was an open question about whether HB 2021 is binding. That statute contains several mandatory compliance obligations on the utilities that cannot be interpreted as optional, there are

of course exceptions for reliability and costs, but otherwise HB 2021 is binding. To correct this mistake, the Commission should immediately clarify that it views the HB 2021 greenhouse gas emission reduction targets as mandatory and binding, and that there will be compliance obligations on the utilities. The Commission should then direct that Staff to immediately open a rulemaking and set an expedited process to determine what the remedy will be for non-compliance.

Second, the Commission erred in failing or delaying acting to require that Renewable Energy Certificates ("RECs") be retired to meet HB 2021's clean electricity targets and good cause exists to reconsider. HB 2021 requires that electricity delivered to Oregon retail consumers be emissions free, and as such those customers should receive the benefit of the REC attached to renewable energy used to meet HB 2021's targets.

Third, good cause exists to reconsider the decision and provide additional transparency into the utility plans to sell RECs. The Commission should revise its guidance on this point and direct the utilities to report RECs sold as outlined in Staff's original recommendation.

Fourth, good cause exists to reconsider the decision and provide additional transparency into the utility plans to use thermal units to serve loads outside Oregon. Fossil-based resources that sell power out of state should be reported to account for leakage. Transparency is critical on this point so that the Commission, Staff, and stakeholders can understand whether utility actions are actually calculated to reduce overall emissions.

Fifth, the Commission erred when it failed to direct that "technical feasibility" as required for utility Clean Energy Plans (CEPs) should mean that the CEP relies on realistic assumptions and considers uncertainties around interconnection, transmission, permitting processes, and

development timelines and that planning for such uncertainties should involve planning for contingencies in the event any of the above result in project delays or failures. Additionally, the Commission should immediately launch a rulemaking to determine what additional criteria the Commission intends to consider under ORS 469A.420(2)(f) in determining whether the clean energy plan is in the public interest and should be acknowledged.

Sixth, the Commission erred when it relied on a legal interpretation that it could not require a regulated utility to comply with an order from a Commission investigation. Findings and orders from a Commission investigation have the same legal force and effect as any other finding or order made by the Commission. As such good cause exists to reconsider the Commissions decisions to merely provide non-binding "guidance" to the utilities rather than setting requirements. Alternatively, the Commission should clarify one aspect regarding the consequences of failure to meet the expectations outlined in each of the Commission's orders, as detailed below.

Lastly, the Commission erred in failing to adopt a meaning of "continual progress" that results in a linear trajectory of greenhouse gas reductions from present through each of the mandatory targets. "Year-over-year" emissions reductions may result in the utilities only making minor strides towards reducing greenhouse gas ("GHG") emissions in most years and illustrating compliance just-in-time to meet the targets. As discussed further below, utilities can simply re-allocate on paper which resources serve which loads to show compliance on paper but not necessarily in reality. The year-over-year definition therefore allows thermal resources to stay online for longer periods. Rather HB 2021 explicitly requires that the Commission shall ensure that utilities are taking actions as soon as practicable that facilitate the rapid reduction of

GHGs. Therefore, as a baseline the continual progress should be a linear trajectory.

II. STANDARD OF REVIEW

The Commission may grant rehearing or reconsideration of any order "if sufficient reason therefor is made to appear."[1] The Commission's administrative rules provide that the Commission may grant an application for rehearing or reconsideration if the applicant shows that there is, inter alia, "[a]n error of law or fact in the order that is essential to the decision" or "[g]ood cause for further examination of an issue essential to the decision."[2] The administrative rules further provide that the application must identify: (a) the portion of the challenged order that the applicant contends is erroneous or incomplete; (b) the portion of the record, laws, rules, or policy relied upon to support the application; (c) the change in the order that the Commission is requested to make; (d) how the applicant's requested change in the order will alter the outcome; and (e) one or more of the grounds for rehearing or reconsideration in the administrative rules.[3]

III. ARGUMENT

HB 2021 creates binding obligations on Oregon utilities to reduce GHGs from their electricity mix used to serve customer load in Oregon. The Commission shall ensure that those utilities demonstrate continual progress and take actions as soon as practicable to facilitate the rapid reduction of those GHGs. It further directs that utility plans also be technically feasible and demonstrate continual progress. It also encourages greater community participation and transparency. The next IRP and first CEP filed by each of the utilities will be the most

1 ORS 756.561(1).
2 OAR 860-001-0720(3).
3 OAR 860-001-0720(2).

consequential and important filings in laying out the roadmap to the first 2030 compliance target. This is so because various factors including processing timelines for Commission administrative processes (IRPs, CEPs, RFPs, etc.) to the time needed to actually develop, permit, interconnect (etc.) projects and procure (or build) necessary transmission may mean that the subsequent IRP and second CEP filings may be too late to ensure all of these processes can occur before 2030. For these reasons and as further articulated below, the Commission should reconsider various decisions it has made in its recent three Orders in this important HB 2021 implementation docket (Orders 22-390, 22-446, and 22-477).

A. The Commission Erred by Failing to Correct on The Record Statements Made Indicating that HB 2021 May Not be Binding.

The Commission made statements indicating that they did not know whether HB 2021 is binding on the utilities. Had the Commission meaningfully addressed this issue, as opposed to delaying a determination, the final CEP requirements would likely have looked entirely different. Additionally, before CEPs are released, the issue should be corrected to provide clarity and certainty for all stakeholders.

The issue of whether HB 2021 is binding on the utilities was clearly raised by parties early on in this docket before many of the workstreams in this docket were resolved. Accordingly, the Commission should clarify that it views the HB 2021 greenhouse gas emission reductions targets as mandatory and binding, and that there will be compliance obligations on the utilities.

From the outset of this docket OSSIA and other stakeholders have argued in written and oral comments that HB 2021 is mandatory and binding. During the planning framework workstream, OSSIA joined the Energy Advocates comments, and argued that the CEP is a

binding guidance document for compliance with HB 2021.[4] At the subsequent Public Meeting, OSSIA argued for compliance obligations, penalties, and that HB 2021 was binding on utilities. During the meeting, Commissioners discussed whether HB 2021 was binding or purely aspirational. Commissioner Thompson stated,

> That said, I do think it's a little bit . . . strange to be in the situation that I find myself in a little bit, which is seeing that there is maybe different points of view about how binding HB 2021's targets are. Are they targets? Are they requirements? Are they goals? Is this statute aspirational? Or is it binding? And I guess I'm just starting to feel like wow we only have 18 years before we're at that, you know under the bill, we're at the level that is 100% non-emissions, so I feel like we better figure it out really quickly if this is binding or not…[5]

In the Commission Order from the planning framework workstream, the Commission adopted Staff's recommendations taking no action on compliance penalties but committing to discuss the suggestion to make the CEP and annual goals for utility actions binding in some form.[6]

In the Roadmap Acknowledgement workstream in this docket, OSSIA responded to the questionnaire with written responses that HB 2021 is binding on the utilities and that the Commission should establish a compliance mechanism, such as penalties.[7] Following the release of the straw proposal, OSSIA submitted written comments once again urging that HB 2021 be

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4 See Joint Advocate Comments on Planning Framework Questionnaire from the NW Energy Coalition, Climate Solutions, Sierra Club, Oregon Solar + Storage Industries Association, Multnomah County Office of Sustainability, Rouge Climate, Coalition of Communities of Color, Verde, and Renewable Northwest, Docket No. UM 2225, at 1-3 (May 10, 2022).

5 Oregon Public Utility Commission, Public Meeting, at 1:00:09 (May 31, 2022) available at https://oregonpuc.granicus.com/player/clip/956?view_id=2&redirect=true&h=1fd948a67a879edfe0c14baa20e261c6

6 Order No. 22-206, Appendix A at 15 (June 3, 2022).

7 See Comments of the Oregon Solar + Storage Industries Association, Docket No. UM 2225, at 3 (June 10, 2022).

treated as mandatory and binding on the utilities.[8] Then on the day of the Special Public Meeting on the roadmap acknowledgement workstream, Representative Ken Helm submitted a letter to the Commission which noted that, "the law directs that the electricity provider "shall" reduce greenhouse gas emissions and establishes numerous compliance obligations."[9] The letter also discusses an amended version of the bill that was not passed that would have made the language aspirational, but that is not the language the legislature choose to pass. At the subsequent Special Public Meeting, OSSIA continued to advocate that HB 2021 was binding and that the Commission should impose compliance obligations on the utilities. At the Special Public Meeting, the Commission adopted Staff's recommendations with additional direction on some aspects.[10] Importantly, the Staff report makes no recommendations on Topic #4, Greenhouse Gas Reporting, Verification, and Compliance in Planning, and Topic #7, Non-acknowledgement, Partial Acknowledgement, and Conditional Acknowledgement and Interdependence with IRP Acknowledgement, there is no near-term guidance, and these areas will be resolved in future dockets.

Each utility must be expected to reach their greenhouse gas emission reduction targets on each of the years listed in the statute and make continual progress towards those targets. While HB 2021 contains provisions that exempt utilities from compliance in the circumstances of a reliability pause and a cost cap, there should be no doubt that the law is binding and mandatory.[11] In fact, the final sentence of Section 9, reliability pause, specifically states, "[n]othing in this

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8 See Comments of the Oregon Solar + Storage Industries Association, Docket No. UM 2225, at 3-6 (September 6, 2022).

9 See Representative Ken Helm Comments, Docket No. UM 2225, at 3 (October 4, 2022).

10 Order No. 22-390, at 1 (October 25, 2022).

11 ORS 469A.440 & ORS 469.445 (2021).

section is intended to permanently relieve an electric company or electricity service supplier of the obligation to comply with the requirements of ORS 469A.052 or 469A.065 or sections 1 to 15 of this 2021 Act."[12] Similarly, Section 10, the cost cap for electric companies, contains a provision that an exemption must be, " [n]arrowly tailored to otherwise give full force and effect to the requirements of sections 1 to 15 of this 2021 Act that can be complied with without regard to the cumulative rate impact."[13] The language surrounding the exemptions suggests that the legislature intended this statute to create a binding obligation on PacifiCorp and Portland General Electric Company ("PGE"), unless they meet the criteria for an exemption.

Therefore, despite the Commission acknowledging the significance of this issue and the evidence in the record, the Commission moved forward with guidance for clean energy plans without stating that HB 2021 creates a binding obligation on the utilities. This mistake creates ambiguity that the statute did not intend and rehearing, or reconsideration is necessary to move forward in line with the statute.

The Commission's Orders do not address this key issue; thus, the Order is incomplete for this failure and good cause exists to reconsider. As just discussed, the record is filled with statements and evidence that HB 2021 presents a binding obligation on the utilities. And the law makes it clear that the utilities "shall" comply. To correct the error in the Orders, the Commission should immediately make a statement in writing that it views the HB 2021 emissions reduction targets as binding on electric utilities, that there will be compliance obligations on the utilities unless they have exemptions under the reliability pause or the cost

[12] ORS 469A.440 (10) (2021).
[13] ORS 469A.445(4)(a) (2021).

cap, and that there will be consequences for failure to those targets. At a minimum, the Commission should clarify that HB 2021 is not purely aspirational and that it will implement the requirements of the law as compulsory.

The applicants requested change would alter the outcome by sending a clear signal to utilities that they must comply with the targets in HB 2021, unless they are in a reliability pause or are narrowly exempt from a cost cap. Ultimately, once the issue of whether HB 2021 is binding is resolved, the applicants believe that the lens the Commission uses to review the CEPs will become much clearer.

Finally, as a subset of this issue, the applicants recommend that the Commission immediately launch a rulemaking to address the consequences for non-compliance (i.e., penalties) and to resolve that expeditiously. Staff has pushed a number of issues into a future compliance rulemaking, the timing of which is yet uncertain. The full suite of issues pushed to a future compliance docket, as understood by the applicants, is detailed in the below table. The applicants do not agree that each of these actually concern "compliance" per se but provide the below table as a helpful reference for the Commission to understand what issues the applicants seek to have resolved in response to this application and what issues should be resolved in an expedited rulemaking. To the extent, the Commission does not adopt the recommendations in this application, those issues should also be resolved expeditiously in Staff's proposed "compliance" docket or otherwise separate docket.

Issue	**Current Status**	**Recommendation**
Penalties	Order 22-206 – No action on compliance penalties at this time	Resolve in rulemaking
GHG Reporting, Verification and Compliance	Order 22-390 – No additional recommendation…flags this issue for	Adopt recommendations in this application

	further discussion in broader HB 2021 implementation process	
REC Reporting	Order 22-446 – no reporting of REC sales to other entities or banked and then sold	Adopt recommendations in this application
REC Retirement	Not addressed in the Orders	Require retirement of RECs associated with HB 2021 emission reduction compliance.
GHG Reporting for thermal units	Order 22-446 - Staff has not included additional analytical rigor in its final recommendation.	Adopt recommendations in this application
Continual Progress	Order 22-390 – "year-over-year" emissions reductions as a minimum expectation. "We will wait to approve any interim guidance until after Staff brings it forward in a formal waiver request." Order 22-477 - adding "continual progress" reporting to the annual update introduces compliance issues and Staff has not included that language in the proposed draft rules	Adopt recommendations in this application; should be proportional to straight-line progress, and account for contingencies and known timeline risks while still achieving major milestones.

B. The Commission Erred in Failing or Delaying to Act to Require that RECs be Retired to Meet HB 2021's Clean Electricity Targets and Good Cause Exists to Reconsider

HB 2021 requires that electricity delivered to Oregon retail consumers be emissions free. The law directs that "retail electricity providers rely on nonemitting electricity in accordance with the clean energy targets set forth in ORS 469A.410 and eliminate greenhouse gas emissions associated with serving Oregon retail electricity consumers by 2040."[14] The emissions targets direct retail electricity providers to reduce emissions by specified percentages below a baseline emissions level associated with "electricity sold to retail electricity consumers."[15] Further, clean energy plans must be "in the public interest and consistent with the clean energy targets set forth

[14] ORS 469A.405
[15] ORS 469A.400(1).

in ORS 469A.410."[16] The "public interest" includes GHG emissions reductions "and any related environmental or health benefits," and "any other relevant factors as determined by the commission."[17] Finally, the statute specifically gives the Commission authority to "adopt rules as necessary to implement [the law]."[18] Therefore, the underlying intent of HB 2021 and reading that most closely hews to the language of the statute is one that conveys the benefits of emissions free electricity, including all of its environmental and health benefits to Oregon retail electricity consumers. This underlying intent of HB 2021 shows that the statutory scheme of the law is to provide the benefits of carbon emission free electricity to Oregonians, despite the language in ORS 469.430.[19] As such, it is Oregon retail electricity consumers who should benefit from the REC and not some other entity in state or out of state that the utility might sell the REC to for some other purpose.[20]

The reason delivery to the end consumer is so important in REC accounting was well-articulated in the record here:

> RECs were created to prevent renewable energy from being delivered or sold to multiple consumers. They represent the property rights to the fully aggregated non-power generation attributes of renewable generation, e.g. GHG emissions. Each REC represents the generation attributes of one MWh of renewable electricity that has been added to the grid. They are the essential accounting and tracking instrument for allocating renewable generation to load and demonstrating use and

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16 ORS 469A.420(2).

17 *Id.*

18 ORS 469A.465.

19 The targets are tied to "emissions reported under ORS 468A.280" and ORS 468A.280 provides that DEQ may include the following in utility emissions reports: "(iii) Electricity purchases for which a renewable energy certificate under ORS 469A.130 has been issued but subsequently transferred or sold to a person other than the electric company[.]" and ORS 469A.430.

20 Indeed, Oregon retail electricity consumers are also the ones who will pay for the renewable energy assets and electricity used to comply with HB 2021.

delivery of renewable energy and its environmental benefits both in Oregon and across the country.[21]

Both in written and oral comments before the Commission, numerous stakeholders cautioned that failing to appropriately account for the renewable generation acquired and delivered to customers to meet HB 2021's requirements risked "double counting" that renewable energy. This issue came up in the comments and discussion leading up to both Order 22-390, and Order 22-446, yet the Commission failed to address the issue or direct that the issue be resolved immediately in the near term in either of those orders. This double counting can occur if the Commission does not clarify the use of RECs, because RECs generated by the renewable generating facilities used to serve Oregon retail customers in compliance with HB 2021 could be sold out of state, in the voluntary market, or within Oregon and counted both for compliance with HB 2021 and for another purpose. Specifically, as numerous advocates noted:

- "Where electric companies report that they are selling or supplying Oregon customers with zero emissions electricity from renewable sources without the REC, the REC may be sold and used to verify delivery of the same generation to different customers and potentially a different state, as zero emissions generation, renewable generation, or both. Double counting can occur in any other state where RECs can be used, in the voluntary market for renewable energy, or within Oregon wherever RECs are used to report delivered renewable energy to customers, e.g. the Renewable Portfolio Standard (RPS) program."[22]

- "For existing REC contracts in Oregon, if the associated generation from these projects is counted in the "baseline" of what is being delivered to Oregon customers or in the annual progress towards compliance, this could represent a double claim on the renewable electricity. This would mean that the RECs sold no longer meet the contractual terms of the agreement, which typically require no explicit or implicit double-claim or double-counting of environmental attributes. For new contracts, there will be hesitancy to procure RECs from facilities delivering to

[21] Center for Resource Solutions Comments of Center for Resource Solutions on OPUC Staff's Straw Proposals on Analytical Improvements at 4 (Sept. 30, 2022).

[22] Center for Resource Solutions Responses to Clean Energy Plan Investigation Roadmap Acknowledgement Questionnaire at 2 (June 10, 2022).

> Oregon utilities because it is not clear if the renewable energy is double-counted. Double-counted RECs will have no value in the voluntary market or in neighboring state RPS policies."[23]

- "[T]he PUC should not permit electricity providers to use their delivery of zero emissions power to customers in Oregon to comply with HB 2021, while they sell RECs representing the same generation to a buyer in another state. This type of double counting allows the REC buyers to continue using fossil-fueled electricity."[24]

- This issue was also raised at both the public meetings on October 4, 2022, and November 1, 2022.

It was an error of fact to delay action on this issue and ignore the record evidence offered by these experts. This is especially true given the comments that there is significant uncertainty in the market and contractual risk.[25]

> 3Degrees estimates that in 2023, as many as 25 million megawatt-hours owned or procured by Oregon utilities will be above and beyond what is required for RPS compliance. As it stands, market participants are putting themselves at risk by procuring these RECs for use in markets outside of Oregon compliance. As noted in our June 2022 comments, existing REC contracts in Oregon may also be at risk as the RECs sold no longer meet the contractual terms of the agreement, which typically require no explicit or implicit double-claim or double-counting of environmental attributes.[26]

Further, despite arguing to this Commission that HB 2021 is not a REC-based standard, PGE's website clearly represents that a primary goal of meeting HB 2021's emissions reductions

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23 3 Degrees Group, Inc.'s Comments in Response to The Clean Energy Plan Investigation Roadmap Acknowledgement Questionnaire at 3 (June 10, 2022).

24 Green Energy Institute at Lewis & Clark Law School, Climate Solutions, and Metro Climate Action Team Comments on HB 2021 Straw Proposal on Roadmap Acknowledgement: GHG Accounting and Reporting at 2 (Sept. 6, 2022); Green Energy Institute at Lewis & Clark Law School, Sierra Club, Metro Climate Action Team, and Kathy Moyd Comments on HB 2021 Straw Proposal on Analytical Improvements: treatment of RECs at 2 (Oct. 5, 2022).

25 3Degrees Group, Inc.'s Comments in Docket UM 2225 in Response to Staff Report: Near-term guidance on Analytical Improvements in the first Clean Energy Plans and associated Integrated Resource Plans at 3 (Oct. 31, 2022).

26 *Id.*

targets is to serve the desire of its retail electricity customers for nonemitting and renewable power.[27] PGE states:

> Clean electricity is at the center of an emissions-free future, and we know our *customers* — families, individuals, businesses large and small, and the communities where we live — expect us to reduce our emissions. And we will. We were excited to be part of a broad coalition supporting the passage of a new Oregon state law (HB 2021) establishing an electric sector decarbonization framework in line with our goals and are looking forward to bringing it to life.
> . . .
> We know our *customers and communities* want to use clean energy, which is why we're committed to reducing greenhouse gas emissions from the power we supply to customers by at least 80% by 2030. Ending operations at coal plants, like the one we closed in Boardman, Oregon – adding more renewable generating facilities through wind and solar, as well as battery storage, like our new Wheatridge facility, will help us get there.[28]

PGE cannot have it both ways. It cannot claim that it is delivering clean, renewable, nonemitting power in compliance with HB 2021 to its customers, while also stripping the renewable attributes associated with that generation (i.e., the REC, as explained above) and using or selling it elsewhere.

Finally, good cause exists for the Commission to reconsider this issue because successful decarbonization hinges on how quickly and efficiently the Commission can encourage the phase-out of fossil-fueled electricity to ensure Oregon *customers* receive nonemitting generation and the related environmental benefits, as the law intended. Choosing not to clarify the treatment of renewable energy under HB 2021 or require that RECs be retired will jeopardize the achievement of the region's renewable energy and GHG reductions policy objectives.

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[27] See Attachment. Available at https://portlandgeneral.com/about/who-we-are/climate-goals.

[28] *Id.* (emphasis added).

As such, the Commission should reconsider its decision in Order 22-390 to offer "no near-term guidance" on "the treatment of RECs associated with clean energy delivered to Oregon customers"[29] and its decision in Order 22-446 to not "run major compliance and regional REC accounting questions to ground in this planning investigation," but to launch a broader investigation into compliance issues at some unstated future time "for HB 2021 target years."[30] As articulated above the treatment of RECs associated with energy delivered to Oregon customers in compliance with HB 2021, is a major issue in need of immediate near term clarity. The Commission should therefore reconsider and require that RECs be retired for generating resources used to meet HB 2021 compliance standards, or at a minimum to direct that Staff launch a new process to immediately resolve this question in the near-term (rather than at some unspecified future date, perhaps not until 2030 or just before) and provide greater clarity.

C. Good Cause Exists to Reconsider the Decision and Provide Additional Transparency into the Utility Plans to Sell and Actual Sales of RECs

In Order 22-446, the Commission revised the Staff Recommendation in the following ways:

> On the third to fourth page of the attachment, in the paragraph related to RECs, we eliminate the last three bullets and replace them with the following:
> - Utilities must report the approximate number of MWhs not associated with RECs reported in the referenced table that are generated from renewable energy technologies.[31]

However, as Staff articulated, there are important questions about how the utilities intend to manage and account for renewable assets used for HB 2021 compliance including because those assets are "paid for by ratepayers and fundamentally impacted by the HB 2021 emissions

[29] Order No. 22-390 at Appendix A at 14.
[30] Order No. 22-446 at Appendix A at 24.
[31] Order No. 22-446 1.

accounting framework," and because "the treatment of these assets may have implications for the economics of new resource acquisitions and the implementation of other sections of HB 2021, such as the customer supported renewables and other CBRE opportunities."[32] It is therefore reasonable for the utilities to share their plans for how they intend to use RECs associated with generation that will be reported as nonemitting electricity sold to Oregon customers and good cause exists to revert the guidance back to Staff's initial recommendation. With this recommendation, the Commission, Staff, and stakeholders will be provided with greater clarity regarding the plans for selling RECs to other entities within or outside of this state.

D. Good Cause Exists to Reconsider the Decision and Provide Additional Transparency into the Utility Plans and Use of Thermal Units to Serve Loads Outside Oregon

In Orders 22-390 and 22-446, the Commission failed to address the stakeholder concern that thermal units currently serving Oregon load may continue to operate as the utilities move towards meeting HB 2021's requirements and those units will simply serve loads outside the state.[33] "Staff's suggestion that 'retirement' might mean the removal of a resource from portfolio and rates, indicating that Staff might consider a plant retired even though it remains in operation."[34] This giant hole in HB 2021 compliance makes for a major loophole which could result in virtually no overall reduction in greenhouse gas emissions, or at least a much smaller reduction than that which may otherwise be possible. As raised in comments:

> (1) continued operation of gas powered generating facilities in Oregon is likely, and therefore tracking and reporting the resultant GHGs is in the spirit of disclosure embodied in HB 2021; (2) stakeholders should know if utilities are 'offloading' GHG emissions through delivery of fossil fuel generated electricity to other states

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32 *Id*. at Appendix A at 24.

33 Green Energy Institute at Lewis & Clark Law School, Climate Solutions, and Metro Climate Action Team Comments on HB 2021 Straw Proposal on Roadmap Acknowledgement: GHG Accounting and Reporting at 2 (Sept. 6, 2022).

34 Energy Advocates Comments on HB 2021 Straw Proposal on Analytical Improvements at 6 (Oct. 5, 2022).

> or users outside of HB 2021's purview; and (3) our communities in Oregon living near fossil fueled power plants have a right to know how and when those facilities are operating and who is benefitting.[35]
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> Emissions from power plants present serious equity concerns for nearby communities who are disproportionately impacted by emissions from these facilities.7 As a result, it is critical that the approach delineated by the PUC in this HB 2021 implementation process encourages, to the fullest extent of the law, retirement or significant thermal plant operational changes resulting in emissions reductions in impacted communities.[36]

This issue is otherwise known as "leakage," because it allows emissions to leak outside of Oregon since HB 2021 is focused entirely on serving Oregon retail customers with nonemitting electricity.

For PacifiCorp, this could look like PacifiCorp simply "allocating" on paper all its thermal resources to loads in Wyoming or Utah and all its renewable resources to Oregon. For either utility, a similar "swap" is possible by simply selling the output from owned or contracted thermal resources to entities outside the state, while simultaneously purchasing nonemitting electricity in the market. For example, hypothetically if PGE's Port Westward plant is currently running 25% of the time to serve Oregon customers, the emissions associated with those megawatt hours will be reported under HB 2021. However, if Port Westward in the future only rules 5% of the time to serve Oregon customers, it will show an emissions reduction under HB 2021, but PGE could continue running Port Westward the other 20% of the time and sell that output to another entity. Ultimately, such a swap will result in no reduction of GHG emissions and a failure of Oregon's climate goals.

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[35] Green Energy Institute at Lewis & Clark Law School, Climate Solutions, and Metro Climate Action Team Comments on HB 2021 Straw Proposal on Roadmap Acknowledgement: GHG Accounting and Reporting at 2.

[36] Energy Advocates Comments on HB 2021 Straw Proposal on Analytical Improvements at 6 (Oct. 5, 2022).

This is particularly concerning given that such thermal resources were paid for by Oregon ratepayers and may need to be available to ratepayers in the event of a necessary reliability pause type event. If the utility is engaging in one of these "big swaps" and its thermal resource is generating flat out to serve loads outside Oregon, then Oregon ratepayers may experience reliability disruptions.

It was an error of law to fail to require additional reporting on thermal units. HB 2021 requires utilities to "demonstrate[] continual progress" toward meeting the clean energy targets, and "tak[e] actions as soon as practicable that facilitate rapid reduction" of GHG emissions at reasonable costs.[37] Allowing thermal units to continue operating at the same rates simply does not facilitate the rapid reduction of GHG emissions.

Therefore, the Commission should reconsider its decision to not address this issue and should direct that the utilities report both (1) prospectively on the emissions associated with their plans to sell the output of thermal resources to other entities or serve loads in other states, and (2) to report actual emissions from these resources. In addition, as pertains to #1, the Commission should adopt the recommendations from the Energy Advocates October 5 comments:

- Staff should require utilities to model retirements of thermal plants in the first IRP/CEP.
- Recognize that the removal of a resource from the portfolio and rates does not eliminate it from assessment as the utility's operations must satisfy the public interest criteria for purposes of CEP acknowledgement.

[37] ORS 469A.415(6).

- In addition to providing the rationale for conversions, Staff should require utilities to reflect the reason for considering or not considering retirements of fossil fuel power plants.
- Conversions of power plants from fossil gas to alternative fuels must include an analysis of cost, availability, leakage risks, and emissions.
- Conversions of power plants must consider not just costs but also stranded asset risk. Proposed conversions must be compared with replacing the resource with a zero-emissions alternative.

Creating this additional transparency around fossil resources will alter the outcome of this docket by bringing into the light utility actions that may not actually facilitate the rapid reduction of GHG emissions as required under HB 2021. It sends a clear signal to the utilities that their actions with be scrutinized in a public forum where all staekeholders have access to the relvant data.

E. The Commission Erred When It Failed to Direct That "Technical Feasibility" Means That the CEP Relies on Realistic Assumptions and Account for Uncertainties

HB 2021 requires the Commission to determine whether a CEP is in the public's interest through an evaluation of six factors laid out in the statute. One of the factors laid out to determine if a plan is in the public interest is, "[t]he economic and technical feasibility of the plan."[38] Instead of addressing technical feasibility, Order 22-390 states,

> Technical feasibility is not directly addressed within the IRP Guidelines, but such consideration is consistent with current practice in the IRP and was discussed in Order No. 07-002 (page 4):
>
> We do not want utilities to limit their consideration to currently available resources, but rather to include all those that are expected to become available.

[38] ORS 469A.420(2)(b) (2021).

> We prefer the IRP be inclusive of all such resources and allow the parties to debate in the planning process whether it is reasonable to rely on a new technology.[39]

The Order makes no recommendation on modifications to the IRP Guidelines to reflect technical feasibility. Additionally, Order No. 22-446 puts forward some key planning questions that contain some aspects of technical feasibility,

> Staff recommends that PAC and PGE include narrative, supported by quantitative analysis where possible, answers to the following long-term decarbonization questions within the first CEP:
> 1. What low regrets near term actions does the utility expect to perform relatively well regardless of future uncertainties in technology, demand, and regional developments?
> 2. What near term actions that the utility considered might have large negative long-term consequences (in terms of cost, risk, GHG emissions, or community impacts or benefits) under one or more future technology, demand, or regional development scenarios?
> 3. What are the critical junctures at which the utility's plan would materially change and what indicators will the utility use to identify whether those junctures are approaching?
> 4. What are the critical dependencies for the utility to successfully execute its long-term plan? What are the critical dependencies for the utility's plan to achieve the desired outcomes in terms of cost, risk, GHG emissions, and community impacts or benefits? What might be the implications of one or more of those critical dependencies failing?
> 5. What critical barriers need to be addressed to implement the utility's long-term plan? Which of these barriers can be addressed by the utility or the Commission and which of these barriers are out of the utility's or the Commission's control? Which of these barriers would need to be addressed in the next 5-10 years? The utility should include a plan for addressing those barriers identified in the 5-10 year time frame, including direct actions that can be taken by the utility and opportunities to coordinate with other involved entities.[40]

While these questions direct the utilities to address critical barriers to the plans, they do not directly consider uncertainties and known risks around interconnection, transmission, permitting

[39] Order No. 22-390 Appendix A at 52.
[40] Order No. 22-446 Appendix A at 16.

processes, and development timelines and that planning for such uncertainties should involve planning for contingencies in the event any of the above result in project delays or failures.

This is an error of law as HB 2021 clearly requires the Commission to consider the technical feasibility of the utilities CEPs. The Commission should reconsider the effect that technical feasibility will have on utility plans, and require that the utilities address realistic interconnection, transmission, and permitting process timelines. While Order No 22-390 assess the ability of IRP Guidelines to assess different technologies, the Guidelines do not include language that the plans should consider uncertainties around interconnection, transmission, permitting processes, and development timelines that are necessary to make a CEP technically feasible. Additionally, the questions posed to utilities in Order No. 22-446 ask the utilities to identify critical junctures and barriers to the utility plans. However, they do not require the utilities to address contingencies. Instead, the utilities will be able to highlight these junctures without finding and implementing real world solutions. Without the contingencies, the utilities plans will not be technically feasible and will run counter to the public interest.

Additionally, good cause exists to reconsider the Commission's decision to not require additional guidance on technical feasibility. With only eight years until the first emission reduction targets must be met, there will not be time for multiple IRP and procurement cycles to bring additional resources on time to meet the targets. That means that the first CEP is essential to meeting the 2030 target, the wait and see where improvements can be made to the CEP process will block the state from meeting these aggressive goals. The scale of resources necessary to comply with HB 2021 is colossal. The 2021 Northwest Power Plan estimated 3,500 MW by 2027 and 14,000 MW by 2040 *without accounting for the effect of Oregon HB 2021*, and

a separate study by Evolve Energy Research found that deeply decarbonizing all sectors in the Northwest would require 100,000 MW of new resources by 2050.[41] Accordingly, the Commission should clearly state that the plans must be technically feasible with realistic considerations of the uncertainties around interconnection, transmission, permitting processes, and development timelines and that planning for such uncertainties should involve planning for contingencies in the event any of the above result in project delays or failures

Finally, the Commission should direct Staff to immediately launch a rulemaking to determine what additional criteria the PUC intends to consider under ORS 469A.420(2)(f) in determining whether the clean energy plan is in the public interest and should be acknowledged.

F. The Commission Erred When It Relied on a Mistaken Legal Interpretation of the Effect of Commission Orders in an Investigation.

The next major issue in Commission Order No. 22-390 and 22-446 is that it treats the Orders as guidance rather than with the full legal effect of a similar order. This problem stems from statements made by PacifiCorp during a Public Meeting and is reflected in the Orders as they only direct utilities to consider the guidance from the Orders. Notably, PacifiCorp stated that:

> It's important to note that investigative dockets are attempting to resolve uncontested fact disputes, but rulemakings and contested case issues can resolve factual disputes that affect the rights of parties. So, in this investigation we should be focusing on uncontested issues, should be trying to narrow the scope of issues that are presented to the Commission for appropriate approval, and so that type of

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41 Jason Eisdorfer, NIPPC Policy Brief: The Role of Competition in the Pacific Northwest Clean Energy Transition at 15 (July 2022) available at https://nippc.org/wp-content/uploads/2022/07/NIPPC-Brief-Competition-in-NW-Clean-Energy-Transition-July-2022.pdf (Citing The 2021 Northwest Power Plan, pages 71-76, available at 2021powerplan_2022-3.pdf (nwcouncil.org) and Evolved Energy Research, Northwest Deep Decarbonization Pathways Study at 73-74 (May 2019), available at Clean Energy Transition Institution (cleanenergytransition.org)).

> procedural framing, and the two decades of time we have to comply with HB 2021, I think, should give the Commissioners kind of two levers to push or pull on. You know, either pump the breaks on a specific proposal, or you go full gas on the proposal, depending, if you feel a specific issue is contested, or if it's not contested. If it is contested, I should strongly consider off ramping that issue into a subsequent rulemaking proceeding like staff has recommended for roadmap topic number 7, or it should be off-ramped to be dealt with the specific utility, a CEP process or a CEP update. So, you could pump the brakes, or you can, you know, go full gas, depending on whether issues are contested.
>
> And most importantly, what I heard today is that an investigative process results in permissive language. It does not result in the requirements for the First CEP.
>
> I think that's very important, because as we heard today there's some pretty strong disagreements about what this current process is requiring of utilities or not. I think that needs to be front center, not just in this work session, but in subsequent UM 2225 work sessions. [42]

This is contrary to ORS 756.515(4) which states that "[t]he commission may, after making an investigation on the commission's motion, but without notice or hearing, make such findings and orders as the commission deems justified or required by the results of such investigation. Except as provided in subsections (5) and (6) of this section such findings and orders have the same legal force and effect as any other finding or order of the commission." Subsections (5) and (6) then govern a process where the party aggrieved by an order may request that the Commission hold a hearing on whether the order should continue in effect.

Therefore, to the extent the Commission relied on the legal interpretation that its orders in an investigative docket do not have the same legal force and effect as any other finding or order of the Commission, that reliance was in error. The Commission should reconsider that error and

[42] Oregon Public Utility Commission, Special Public Meeting, at 1:00:55 (Oct. 4, 2022) available at https://oregonpuc.granicus.com/player/clip/1023?view_id=2&redirect=true&h=4d450e68f2008634d6836fb978b822e7.

direct that its guidance offered in each of the orders be transformed into explicit directives to PacifiCorp and PGE.

Further, good cause exists to reconsider the Commission's decision to offer guidance. PacifiCorp's statement above makes clear that it does not intend to comply with all the guidance as it noted "strong disagreements" about the issues presented to the Commission and suggested that the Commission off-ramp issues to rulemakings or contested cases to resolve issues that the Commission thinks would be contested. However, this is no reason to opt for a light touch. If a utility intends not to comply with the guidance, then what purpose does the guidance serve? The utility will simply not comply with the guidance and the Commission, Staff and stakeholders will simply not have the information necessary for this first CEP. That issue will then need to be resolved then in a future proceeding anyway. So, what is the harm in making a firm statement now about what the Commission expects to be included in this first CEP?

If the Commission states firmly that its expectations for this first CEP are requirements, then the utilities can comply or make explicit which of the requirements they do not intend to comply with by invoking the PUC's normal process to request a hearing on those directives (and such a hearing must occur within 60 days of the hearing request). At least in this process, the PUC can resolve an important issue *before* the filing of the first CEP. This first CEP is the most important to ensure successful decarbonization. The first GHG reduction target of 80% by 2030 is only 8 years away. Given the timing of integrated resource plan filings, requests for proposals, contracting and procurement, any acquisitions resulting from a second CEP may come too late to be constructed in time to meet that 2030 target. This is not to mention other timeline constraints including the need for new transmission to get these resources to load that may have 10–15-year

time horizons. As such, clarity on what will be in these first CEPs is critical to ensure the intent of HB 2021 is met, and there is good cause to reconsider the decision to only offer "guidance" to the utilities instead of firm requirements.

In the alternative, applicants request that the Commission clarify that the statement bolded below made in Order No. 22-390 applies to all guidance offered to the utilities in this UM 2225 (and is not limited to the Community Benefits Indicators and the Community Lens Study):

> With respect to the new analyses and studies described in these expectations, particularly the Community Benefits Indicators and the Community Lens Study, we anticipate that the Commission, stakeholders, and utilities will learn about the feasibility of these expectations after this first CEP filing. **In the event that a utility is unable to meet any of those expectations encompassed by this order, we expect a full explanation of why doing so was infeasible or impractical. Such an explanation is likely to be helpful in the Commission's determination of whether to acknowledge a CEP that may have fallen short of these expectations**.[43]

This language is subject to two competing interpretations. First, it can be read to mean that the utility is required to explain why failure to meet *any* one of the Commissions CEP expectations/guidelines was infeasible or impractical. A second reading looks to the word "those" in the first bolded sentence above as referencing *only* the Community Benefits Indicators and the Community Lens Study expectations, but not the remainder of the Commission's guidance. If the Commission decides not to reconsider its decision to issue its CEP expectations as "guidance," then there is good cause to clarify that failure to adhere to any one of the expectations should be explained as noted in the above paragraph.

G. The Commission Erred in Failing to Adopt a Meaning of "Continual Progress" That Results in a Linear Trajectory of Greenhouse Gas Reductions.

[43] Order 22-390 at 1 (emphasis added).

Under HB 2021, "the Commission shall ensure that an electric company demonstrates continual progress" "within the CEP planning period towards meeting the clean energy targets. . . including demonstrating a projected reduction of annual [GHGs]," and that the electric company is "taking actions as soon as practicable that facilitate rapid reduction of [GHGs] at reasonable costs to retail electricity customers."[44] In Order 22-390, the Commission expressed general support for Staff's "year-over-year" continual progress framework, but ultimately chose to "wait to approve any interim guidance until after Staff brings it forward in a formal waiver request with respect to IRP guidelines, with refinements to the interim guidelines reflecting the discussion during the Special Public Meeting."[45] Further, Order 22-477 adopts the Staff recommendation without incorporating the redlines proposed by the Energy Advocates to Staff's draft sections (5) and (11)(d) incorporating the continual progress requirement into the CEP and CEP updates. To date, it does not appear that Staff has yet brought the waiver request as contemplated by Order 22-390.

Good cause exists to reconsider these decisions because HB 2021 requires a greater degree of continual progress and clarity is imminently needed on this topic before the first CEPs are filed. "Year-over-year" emissions reductions may result in the utilities only making minor strides towards reducing GHG emissions in most years and illustrating compliance just-in-time to meet the targets. As previously discussed, utilities can simply re-allocate on paper which resources serve which loads or "swap" power in the market (selling electricity from thermal resources out of state and purchasing other renewables) to show compliance on paper but not

44 ORS 469A.415(4)(e) & (6).
45 Order No. 22-390 at 1.

necessarily result in an actual reduction in GHG emissions. However, "continual progress" requires more. It requires that the Commission shall ensure that utilities are taking actions *as soon as practicable* that facilitate the *rapid* reduction of GHGs. Therefore, as a baseline, continual progress should be a linear trajectory. This linear trajectory should represent a yardstick by which future compliance is measured. This linear trajectory should represent a yardstick by which future compliance is measured, and penalties imposed if compliance does not occur. The scale of expected progress must be commensurate with "getting the job done, on time", including contingencies and known timeline risk. Of course, procurements are always going to be "lumpy" with large projects procured in some years but not others, but utilities should be incentivized to take all the other smaller actions on a continual basis in every year to reduce GHGs such as energy efficiency, demand response, procuring electricity from distributed energy resources, qualifying facilities, community solar, small scale or community-based renewables, and through direct access or other programs. Further, utilities can always argue in a later rate case why their actions were prudent.

As such, good cause exists for the Commission to reconsider its decisions and instead direct that "continual progress" be demonstrated by projecting a linear emissions reduction path from present through each of the target dates. This change more closely hews to the intent and direction in the statute and will provide greater clarity to the utilities and stakeholders in these first CEP filings.

IV. CONCLUSION

For the reasons articulated herein, the Commission grant rehearing or reconsideration of Orders No. 22-390, 22-446, and 22-477.

Respectfully submitted on this 23rd day of December 2022.

/s/ Jack R. Watson
Jack R. Watson
Director of Policy and Regulatory Affairs
Oregon Solar + Storage Industries Association
PO Box 14927
Portland, OR 97293
(775) 813-9519
jack@oseia.org

Counsel for Oregon Solar + Storage Industries Association

/s/ *Mike McArthur*
Mike McArthur
Executive Director
Community Renewable Energy Association
93350 Foss Ln.
Wasco, OR 97065
(541) 980-2089
mwm@community-renewables.org

Executive Director of Community Renewable Energy Association

/s/ Marie P. Barlow
Marie P. Barlow
In-House Counsel, Policy & Regulatory Affairs
NewSun Energy, LLC
550 NW Franklin Ave. Ste. 408
Bend, OR 97703
(503) 420-7734
mbarlow@newsunenergy.net

Counsel for NewSun Energy LLC

ATTACHMENT NO. 1

PGE CLIMATE GOALS WEBPAGE