

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 2273**

In the Matter of the Application of:  
  
PUBLIC UTILITY COMMISSION OF OREGON,  
  
Investigation into House Bill 2021  
Implementation Issues

OPENING BRIEF OF CLIMATE SOLUTIONS

**I. INTRODUCTION**

The Public Utility Commission of Oregon (“OPUC”) initiated this proceeding to investigate and resolve differences of opinion amongst stakeholders regarding interpretation of certain provisions of HB 2021. As noted in Order 23-059, the Clean Energy Plan (“CEP”) investigation undertaken by staff beginning in fall of 2021 surfaced important questions of statutory interpretation. OPUC Staff proposed that the Commission open an investigation into HB 2021 implementation issues. Staff's stated goals for this investigation are to identify key implementation issues that are within the Commission's authority to address, and to answer legal questions so that the Commission can address the policy and implementation issues.

Climate Solutions has a long history of involvement in HB 2021. As stakeholders in the legislative process, Climate Solutions helped negotiate the bill and champion it. We participated in the Roadmap development process through a series of workshops facilitated by OPUC staff. We have been involved in the OPUC rulemaking related to acknowledgement of CEPs. We have engaged with the IOUs on development of CEPs, and commented on the first CEPs submitted this spring. Finally, we engaged and commented in the EFSC rulemaking under HB 2021 related to the continued operation of fossil fuel generating facilities.

**II. BACKGROUND**

In Order 23-194, OPUC outlined the scope of issues to be addressed in UM 2273 and delineated several specific issues for Phase I.

The following table includes summaries of Climate Solutions’ proposals and recommendations for interpreting the provisions of HB 2021 at issue.

<b>Issue</b>	<b>Effect of the Provision(s)</b>	<b>Recommended OPUC Action</b>
Issue 1(a)(2) – Public Interest	Technical and economic feasibility is a necessary component of OPUC consideration to ensure affordable rates are maintained,	Require a balancing of technical and economic feasibility with other factors, including the following OPUC determined factors: Equity, relieving energy

	and should be balanced against the other enumerated public interest factors. Additional equity factors are necessary and should be pre-determined by OPUC per Section 5(2)(f).	burden, and local air pollution and health impacts.
Issue I(a)(3) – Policy Statements	Policy statements are critical parts of HB 2021. Under the Oregon AG’s standard for statutory interpretation, substantive provisions of law should be read in light of policy statements. Taken together, the policy statements and substantive provisions direct OPUC to implement HB 2021 in a manner that favors in-state renewables and creates genuine equity outcomes.	Recognize the inference in HB 2021 favoring in-state renewables and the myriad community benefits they bring.  Activate the requirement to minimize burden on environmental justice communities by requiring the IOUs to demonstrate in the CEP the outcomes of work with the UCBIAGs.
Issue I(a)(4) – Continual progress and annual goals	The continual progress standard is a crucial element of HB 2021. The legislature intended it to be both forward and backward looking in order to ensure a year-by-year plan for continual progress, and an assessment of continual progress in each CEP cycle.	Require both forward and backward looking analyses of continual progress, informed by demand forecasts and resource availability.

**III. ARGUMENT**

**A. [Issue I(A)(2)] The public interest factors stipulated in Section 5(2) should be balanced to produce a robust public interest outcome, and OPUC should utilize the discretion granted by the legislature to stipulate additional public interest factors under Section 5(2)(f).**

HB 2021 is at its core a public interest law. While the mandates in the bill relate to retail electricity sales of Investor Owned Utilities (IOUs) and Electricity Service Suppliers (ESS’s), the legislature clearly intended that the benefits of the ensuing energy transition flow equally to the public, and in particular to BIPOC and other historically marginalized communities. These considerations are so paramount, in fact, that the legislature included them as preambles in Section 2. These four policy statements, taken together, make up much of the public interest considerations in the bill and include:

1. Elimination of greenhouse gas emissions associated with serving Oregon retail electricity consumers.

2. *Direct* benefits to communities [as a result of producing non-emitting electricity] in the forms of creating and sustaining meaningful living wage jobs, promoting workforce equity and increasing energy security and resiliency.
3. Tribal consultation on the siting, permitting, and construction of new energy facilities.
4. Minimization of the burden on environmental justice communities.

It is implicit in the overall philosophy of HB 2021 that the IOUs in developing their Clean Energy Plans (CEPs), and OPUC in reviewing those plans, must balance the logistical and energy system changes needed to meet the targets with the public interest. This balancing necessarily requires guidance from OPUC in order that the clean energy targets are met reliably, equitably, and affordably. The legislature included economic and technical feasibility in Section 5(2)(b) because it goes directly to the issues of reliability and affordability. This is an important factor, particularly in relation to emerging technologies such as offshore wind, which will need to be evaluated for both technical and economic feasibility and potential to serve Oregon customers reliably and affordably.

Before arriving at the balancing issue, however, OPUC must assess the need for additional discretionary factors specifically allowed for under Section 5(2)(f). Because equity is a core pillar of HB 2021, it is well within OPUC's purview and remit in implementing the law to include equity factors. We recommend that the following equity factors be considered under Section 5(2)(f):

1. **Equity** – HB 2021 is an equity driven statutory framework, and therefore it is appropriate to balance equity against the other stipulated factors. The CBIs are a concrete metric for determining equity and should be used as part of this public interest factor.
2. **Relieving energy burden** – While 'costs and risks to customers' is stipulated as a factor, this does not get to the more granular issue of energy burden – the percent of total household income spent on energy costs. This should be another public interest factor.
3. **Local air pollution and health impacts** – As discussed at some length in the roadmap workshops, thermal facilities (e.g. gas powered generating stations) may continue to operate in Oregon and serve loads outside Oregon or outside HB 2021's purview. These facilities could lead to health impacts for marginalized communities in Oregon. This is an important equity issue and should be identified as another public interest factor.

Balancing these types of factors is not new. IOUs have performed a balancing analysis in IRPs for a long time. OPUC Order 07-047 requires that IOUs balance cost and risk. This led to the least cost, least risk standard. When the Oregon legislature established the Renewable Portfolio Standard in 2007, IOUs were then required to add another balancing factor of serving a portion of load with renewable energy. While Section 5(2) of HB 2021 increases the number and complexity of factors that must be balanced, the model for this balancing process has been in place for a long time, and the IOUs are capable of adding factors to the overall balancing. The addition of the above referenced factors is crucial to ensuring full implementation of the equity considerations in HB 2021.

**B. [Issue I(A)(3)] The policy statements in Section 2 are meaningful, illuminate the substantive provisions of the law, and require analysis to determine their effect on OPUC implementation.**

The Oregon Attorney General ("AG") has commented on the relevance of the statutory policy statements found in the Public Meetings Law, which, while unrelated substantively to HB 2021, provides some

guidance for evaluating statutory policy statements. The legislature included the following policy statement in the Public Meetings Law: “It is the intent of [the Public Meetings Law] that decisions of governing bodies be arrived at openly.”<sup>1</sup> The AG determined that “all substantive provisions of the Public Meetings Law should be read in light of this policy statement. When applying the law to particular circumstances, that policy ordinarily will require an interpretation favoring openness.”

The Oregon Department of Justice serves as legal counsel for Oregon state agencies, and thus the AG’s opinion carries some weight here. Applying the standard referenced above to HB 2021, we should read the substantive provisions of the law in light of the policy statements, and in a manner that favors meeting the goals of those policy statements.

- i. **The legislature specifically acknowledged the importance of in-state renewable energy projects in Section 2(2) and in several substantive provisions, which requires some form of guidance from OPUC.**

Several provisions of HB 2021 relate directly to the development of renewable energy projects in Oregon.

- The legislature inserted robust labor standards into Section 26(2) of HB 2021 for utility scale renewable energy projects constructed in Oregon. The benefits of these labor standards are meant to flow to Oregon residents.
- Section 18 of HB 2021 directs the Oregon Department of Energy (“ODOE”) to study opportunities for the development of small scale and community-based renewable energy projects *in this state* which would benefit *this state*.
- Section 37 of HB 2021 requires that 10% of electricity delivered by the IOUs to Oregon residential customers be procured from small scale renewables. Given the above referenced benefits to Oregon from small scale renewables clearly articulated in Section 18, a reasonable inference can be drawn that the legislature intended for at least some of that 10% portion to be built in-state.

Taken together, these three provisions create *a strong inference* that the legislature foresaw a significant build out of both utility scale and small scale renewable energy infrastructure *in Oregon*. Applying the AG’s standard of policy statement interpretation, we must read these substantive provisions in light of the policy statement in Section 2(2), and we must read them in a way that favors community benefits. This will logically lead to ‘preference’ or ‘favoring’ of in-state renewable energy resources as they bring a host of economic benefits to the state, including jobs, tax revenue, and revenue for local businesses. Indeed, one would be hard pressed to find significant community benefits in Oregon *from out-of-state renewable energy resources*.

- ii. **The legislature specifically acknowledged the importance of minimizing burdens on Environmental Justice communities in Section 2(4), which, taken together with substantive provisions related to equity, requires implementation through the Clean Energy Plans.**

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<sup>1</sup> [II. Public Meetings - Oregon Department of Justice \(state.or.us\)](https://www.oregon.gov/DOJ/Pages/II-Public-Meetings.aspx)

Equity is one of the main pillars of HB 2021, a law that has been called ‘100% Clean Energy for All’. In constructing the verbiage in Section 2(4), the legislature did not simply acknowledge the importance of minimizing harm to environmental justice communities, but stated that Sections 1-15, the operative provisions of the law relating to the IOU clean energy transition, be *implemented* so as to minimize that harm. As the primary implementing agency, this provision squarely provides a mandate to OPUC.

Turning to the substantive equity provisions, we find an important direct mandate. In Section 6, utilities are required to form Utility Community Benefits and Impacts Advisory Groups (“CBIAGs”). Applying the AG’s standard of interpreting policy statements, we first examine the UCBIAGs. The UCBIAGs must be implemented. As the primary implementing agency for HB 2021, OPUC is responsible for ensuring that these groups are a vehicle for minimizing the burden on environmental justice communities.

In order to fulfill the policy stated in Section 2(4), which is activated by Section 6, OPUC must actively and diligently work to see that the UCBIAGs are able to fulfill the full scope of their role. The UCBIAG is the mechanism for meeting the requirements of Section 2(4). This requires OPUC to maintain strong oversight over the UCBIAG process, and to assess a few key metrics of success in the CEPs:

1. Is the UCBIAG membership diverse? Does it represent a broad swath geographically of Oregon communities? Does it represent BIPOC communities proportionally, including Black, Latinx, Asian, Tribal communities and others? Are the open seats filled, and if not has the IOU made sufficient attempts to fill the seats, including robust multimodal outreach?
2. How is the IOU engaging with the UCBIAG in order to both educate the group and also solicit the group’s knowledge and lived experience?
3. How is the information broadly gathered from the UCBIAG presented in the CEP? Has the IOU demonstrated regular and substantive engagement with the group? Has the IOU allowed the group to surface and drive the issues most important to group members?
4. How do the issues taken up in the UCBIAGs connect to the CBIs identified in the Roadmap?
5. Has the IOU indicated how information, guidance, and statements of need from the UCBIAG meetings will affect the CEP, including in resource procurement?

In conclusion, Section (2)(4) clearly indicates that OPUC, as the primary implementing agency for HB 2021, should take an *active* rather than *passive* role in the formation and continued progress of the UCBIAGs. The CEP is the mechanism for this assessment.

**C. [Issue I(a)(4)] To be meaningful, the continual progress standard must be both forward and backward looking, and generally demonstrate a linear reduction in GHG emissions.**

The continual progress standard has two parts: (1) The IOU must demonstrate it is making continual progress toward meeting the clean energy targets within the planning period (Section 4(4)(e)), and (2) The IOU must identify actions to make the continual progress toward meeting the clean energy targets (Section 5(3)(c)(A)). This language strongly implies that the continual progress standard is both forward and backward looking. OPUC acknowledgement of a CEP is contingent on both the forward looking and backward looking standards being met. Additionally, both demand side and resource side dynamics will affect continual progress. These issues must also be addressed.

The recently promulgated rules relating to CEP acknowledgement rightly recognize the importance of the continual progress standard, and make OPUC acknowledgement of CEP contingent on a

demonstration of continual progress toward meeting the clean energy targets. See 860-027-0400(5). However, the rules do not include both a forward and backward looking assessment, which is mandated by the legislature in the language of HB 2021 referenced above.

A forward and backward looking continual progress standard is necessary to meet this mandate, and to ensure accountability. Therefore, additional OPUC direction to the IOUs in the form of a Commission order is required by order to illuminate the standard. The order should include the following elements:

1. A forward looking analysis, including an action plan for continual progress during the IRP/CEP period.
2. A backward looking analysis, including an assessment of progress.
3. Both (1) and (2) above should be informed by demand forecasts on continual progress toward the clean energy targets. Both PGE and PacifiCorp have forecasted *significant* industrial load growth, including continued and exponential growth in data center loads. Meeting these increased demands puts continual progress at risk. Therefore, demand increases are an essential component to a continual progress analysis.
4. Both (1) and (2) above should also be informed by resource availability in order to 'true up' the action plans, including the following:
  - a. Utility scale renewables
  - b. Small scale renewables, including both utility and community owned microgrids and CBREs
  - c. Energy efficiency measures
  - d. Emerging technologies, including green electrolytic hydrogen, pump storage, and offshore wind

#### **IV. Conclusion**

This Investigation into House Bill 2021 Implementation Issues has surfaced important questions of statutory interpretation related to the law's policy statements, public interest provisions, and continual progress standard. These are important considerations and involve elements of the bill that are *meaningful*. We look forward to a robust, inclusive, and comprehensive process to elucidate their effect on OPUC's continued implementation of House Bill 2021.

Dated: July 24<sup>th</sup>, 2023

Respectfully submitted,

*/s/ Joshua Basofin*  
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