

**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.

REPLY BRIEF OF PINE GATE
RENEWABLES, LLC

I. INTRODUCTION

A. Background

Pursuant to Administrative Law Judge (“ALJ”) Mapes’s June 8, 2023 Memorandum, and the Public Utility Commission of Oregon’s (“PUC” or “Commission”) Order No. 23-227, Pine Gate Renewables, LLC (“PGR”) respectfully submits its Reply Brief in the above-captioned proceeding.¹ Pine Gate Renewables is a leading U.S. solar and storage developer based in Asheville, North Carolina. PGR has developed projects around the U.S. and is actively developing in over 30 states across the county. PGR has a focus in Oregon as the company has developed many solar facilities to operation in the state. PGR has several planned projects in development at a much larger scale than its current operating portfolio and has an interest in the outcome of any proceeding related to the implementation of HB 2021. In this Reply Brief, PGR presents policy arguments on two of the questions the Commission listed in Phase I(a) from its Scoping Decision: whether the Commission should require the retirement of renewable energy certificates (“REC”) to demonstrate compliance with HB 2021, and the extent to which the

¹ *In re Public Utility Comm. Of Oregon Investigation Into House Bill 2021 Implementation Issues*, Docket No. UM 2273, Order No. 23-194 (Jun. 5, 2023).

Commission should use the policy statements in HB 2021 as a lens through which to implement the law. PGR responds to parties who favor not requiring the retirement of RECs and argues alongside other parties that REC retirement is crucial to the integrity of the implementation of HB 2021 and the greenhouse gas emissions reduction of the state. PGR also responds to the Joint Utilities on the need for entities submitting CEPs and RFPs to the commission to justify their resource planning and selections as it relates to how those decisions benefit Oregon communities per the policy statements in HB 2021.

II. REPLY ARGUMENT

B. REC Retirement

In our opening brief, PGR made clear its position that the Commission requiring REC retirement to certify compliance with section 3 of HB 2021 was crucial to implementing the law as intended and avoiding double-counting scenarios posed by not requiring REC retirement.² After reviewing similar sentiments from several commenters in their opening briefs and comments³, PGR wants to specifically highlight the comments of the Green Energy Institute at Lewis & Clark Law School (GEI) and the U.S. Environmental Protection Agency (EPA). GEI's comments provide helpful background to the basis of RECs as a commonly accepted form of emission/renewable attribute accounting along with the federal laws and regulations guiding when entities can make claims based on their ownership of those attributes.⁴ EPA's comments highlight how ubiquitous the REC framework is nationally and internationally and imply how Oregon would be out of step with that framework, resulting in potentially unforeseen

² Opening Brief of Pine Gate Renewables, LLC at 2-3

³ Opening Brief of the Green Energy Institute at Lewis & Clark Law School at 2; Interested Party Comment from the U.S. Environmental Protection Agency at 4-5; Opening Brief of the Oregon Solar + Storage Industries Association at 2-4

⁴ Opening Brief of the Green Energy Institute at Lewis & Clark Law School at 6-8

consequences such as creating confusion in the regional and national REC markets for customers, hampering future international trade for Oregon businesses, and even failing to meet the requirements of EPA's own Green Power Partnership program.⁵

That being said, the Joint Utilities have maintained that HB 2021 and the DEQ emissions reporting standards do not tie greenhouse gas emissions reductions to RECs.⁶ While this brief submits policy arguments and doesn't argue over the more technical legal interpretations of HB 2021, do we see this interpretation by the Joint Utilities as leading to a problematic outcome. GEI convincingly argues that if the Commission does not require the retirement of RECs, there is the potential for several consequences that would harm Oregon utilities and ratepayers.⁷ PGR is concerned with the potential of double-counting leading to the violation of federal laws and guidelines from the Federal Trade Commission (FTC), especially through the concept of unintentional consumption of RECs.

HB 2021 clearly states to Oregon ratepayers and consumers that it is the policy of the state: "That retail electricity providers rely on nonemitting electricity in accordance with the clean energy targets set forth in section 3 of this 2021 Act and eliminate greenhouse gas emissions associated with serving Oregon retail electricity consumers by 2040."⁸ PacifiCorp states on their website that: "PacifiCorp is committed to an open, transparent, and accessible process to ensure that the transition to renewable and non-carbon-emitting electricity milestones in Oregon are achieved equitably among its Oregon customers and communities."⁹

⁵ Interested Party Comment from the U.S. Environmental Protection Agency at 4-5

⁶ Opening Brief of the Joint Utilities at 1-2

⁷ Opening Brief of the Green Energy Institute at Lewis 7 Clark Law School at 18-21

⁸ ORS 469A.405

⁹ PacifiCorp. (2023). Oregon Clean Energy Plan. PacifiCorp. <https://www.pacificorp.com/energy/oregon-clean-energy-plan.html>

In the case where the Commission agrees with the Joint Utilities and declines to require REC retirement or have the ability constrain the use of RECs by regulated entities (as previously stated was the commission's opinion¹⁰), a real issue of double-counting becomes apparent. When the utilities of the state exceed their RPS requirements in pursuit of being compliant with HB 2021 they will be contracting renewable energy resources beyond their RPS REC retirement compliance needs. If that is the case, where do the RECs from a contracted renewable generator go? Whether it is the utility or the renewable energy facility owner, it is possible that there could be a sale of those RECs generated from that facility to a third party within the state that is not a customer of a retail supplier in the state (this also applies to out of state parties in the region). That customer could purchase those RECs, even if they were physically consuming fossil-based generation to power their load and claim that they were purchasing renewable energy. At the same time, the utility that procured the power from the facility may be deemed compliant with HB 2021 by the Commission without having a physical double-counting of RECs and claim so to the public. While the Joint Utilities argue these are technically two separate things¹¹, within the REC construct as agreed upon by much of the national and international community and the emissions tracking and compliance claims with HB 2021, *they are accounting for the same emissions*. What's worse, if this type of double-counting is allowed due to Commission inaction, Oregon might not have even achieved any greenhouse gas reductions given the emissions caused by the buyer of the REC. Greenhouse gas emission are a global issue and simply because resources claimed for HB 2021 compliance are non-emitting doesn't necessarily mean that the resource reduced emissions overall *if the RECs associated aren't properly retired*.

¹⁰ *In re Public Utility Comm. Of Oregon Investigation Into House Bill 2021 Implementation Issues*, Docket No. UM 2273, Order No. 23-194 (Jun. 5, 2023).

¹¹ Opening Brief of the Joint Utilities at 3

Beyond the physical emissions issue of double-counting, when a regulated entity such as PacifiCorp claims on its website it is compliant with HB 2021 and working to “ensure that the transition to renewable and non-carbon-emitting electricity milestones in Oregon”¹² it is inadvertently consuming the REC it might have already sold to another entity. This introduces the legal concern raised by GEI and as policy, the Commission should generally attempt to prevent regulated entities from breaking federal guidelines and laws.

Even if a regulated entity did not make public claims about the environmental attributes of the electricity delivered to customers, their claims of being compliant with HB 2021 and the Commission’s public certification of those claims would lead to general confusion. Would the Commission really want to explain to the public how Oregon retail customers can’t claim they are powered by 100% renewable energy because even though their monopoly utility provider is compliant with HB 2021, the provider has sold away their claims of renewable attributes to another entity potentially still consuming fossil-based power? This issue strikes at the heart of the HB 2021 and its goals and if not properly implemented by the Commission, there is a risk to the integrity of this policy and Oregon’s greenhouse gas reduction claims as a result. PGR is unconvinced of the Joint Utilities’ position as their interpretation of HB 2021 would lead to issues of double-counting and urges the Commission to require the retirement of the emissions attributes claimed for the determination of HB 2021 compliance by a regulated entity.

The Commission and other parties have raised concerns about the Commission’s ability or need to require REC retirement as a part of HB 2021 compliance.¹³ As it relates to the Commission’s role in ensuring compliance with section 3 of HB 2021, the Joint Utilities offered a

¹² PacifiCorp. (2023). Oregon Clean Energy Plan. PacifiCorp. <https://www.pacificorp.com/energy/oregon-clean-energy-plan.html>

¹³ *In re Public Utility Comm. Of Oregon Investigation Into House Bill 2021 Implementation Issues*, Docket No. UM 2273, Order No. 23-194 (Jun. 5, 2023); Opening Brief of the Joint Utilities at 2
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patently false statement in their opening brief, stating: “HB 2021 cleanly divides the law’s responsibilities: the Commission investigates how utilities will plan and invest in their electricity systems to meet HB 2021’s targets, while the DEQ verifies the resulting emissions to determine if utilities have complied.”¹⁴ This statement is in direct opposition to the wording of HB 2021 under Section 5 part 4(b): “The Public Utility Commission shall use the greenhouse gas emissions reported to the department under paragraph (a) of this subsection and provided to the commission to determine whether or not the retail electricity provider has met the clean energy targets set forth in section 3 of this 2021 Act.”¹⁵ PGR believes a reasonable interpretation of this language clearly leaves a large amount of discretion to the Commission in determining whether a retail electricity provider has met the targets. Despite this, in the scoping order for this docket, the Commission stated it was their initial interpretation that Section 7 of: “the statute is implicitly directing us not to insert into our compliance determination an inquiry into the status of the REC that the underlying generating resource produced.”¹⁶ PGR does not agree with this interpretation, especially in light of our double-counting concerns and the clear wide discretion the Commission has in determining compliance. The language in Section 7 says: “For the purposes of determining compliance with sections 1 to 15 of this 2021 Act, electricity shall have the emission attributes of the underlying generating resource.”¹⁷ PGR does not interpret this as negating the need for emission attribute retirement, rather it simply states that the attributes must originate from the underlying resource. PGR recognizes GEI’s arguments about generation vs. load based

¹⁴ Opening Brief of the Joint Utilities at 2

¹⁵ ORS 469A.420(4)(b)

¹⁶ *In re Public Utility Comm. Of Oregon Investigation Into House Bill 2021 Implementation Issues*, Docket No. UM 2273, Order No. 23-194 (Jun. 5, 2023)

¹⁷ ORS 469A.430

accounting systems¹⁸ as well as the Commission's interpretation of Section 7¹⁹, but in our view the difference between these two categorizations misses the point: it should be the policy of the Commission, using its discretion granted under Section 5 of HB 2021, to determine compliance with HB 2021 only if the Commission can assure that double-counting has not occurred as it relates to the emission attributes. Fairly or unfairly, the Commission and Oregon do not exist in a bubble and cannot ignore the larger impact of not properly retiring RECs within their emission reduction law implementation. Given the possibilities for wrongdoing or the misleading of the public, PGR asserts that the Commission is compelled to utilize its authority under HB 2021 to require regulated entities to retire RECs in order to be determined compliant with the law.

If the Commission does decide to move forward with allowing non-retirement and sale of unbundled RECs by the regulated entities, there needs to be appropriate tracking by the Commission and transparency for the benefit of Oregon ratepayers and the broader REC marketplace. PGR agrees with GEI's position that the Commission must track and provide oversight of REC sales, especially with an eye towards ensuring that REC sales benefit ratepayers (who are paying for the resources) rather than shareholders.²⁰ Other states and entities may recognize the double-counting risk in this scenario, so transparency to them on these REC sales and how to treat RECs sold by regulated entities in Oregon should be a part of the Commission's responsibility in maintaining the integrity of the REC market and meeting the GHG reduction goals of both HB 2021 and Executive Order 20-04.²¹

¹⁸ Opening Brief of the Green Energy Institute at Lewis & Clark Law School at 5,9-15

¹⁹ *In re Public Utility Comm. Of Oregon Investigation Into House Bill 2021 Implementation Issues*, Docket No. UM 2273, Order No. 23-194 (Jun. 5, 2023)

²⁰ Opening Brief of the Green Energy Institute at Lewis & Clark Law School at 17

²¹ EO 20-04 at paragraph 3(A)

C. HB 2021 Policy Statements

PGR stated in its Opening Brief that the policy statements of HB 2021 should both be a part of the public interest factors as well as the lens through which the Commission reviews the Clean Energy Plans and future procurements to meet those plans.²² In reply to the arguments made by the Joint Utilities, PGR disagrees that the policy statements “do not require Commission action at this time and are better suited for investigation in other proceedings.”²³ The policy statements are a crucial part of the statute as well as legislative intent and delay or denial of the implementation of this section should not be accepted by the Commission.

While PGR is not arguing on a legal basis, from a policy perspective the Commission should at a basic level ask regulated entities in the review of their plans and procurements to justify how their actions will meet the policy statements of HB 2021. This is not an “in-state preference”²⁴ but rather an acknowledgement that the government of the ratepayers of the state has made it a priority to see the benefits of its policies accrue to communities in Oregon. Out of state generators might deliver cost savings to Oregonians and have programs to benefit Oregon communities and therefore could be seen as compliant. In-state generators would have to show how they are delivering for Oregon communities on the promises of HB 2021.

One way that a CEP or procurement might fail to comply with the policy statements is if there is no commitment to retire RECs along with the nonemitting generation procured for customers. It is the policy of the state of Oregon that retail electric providers: “...eliminate greenhouse gas emissions associated with serving Oregon retail electricity consumers by

²² Opening Brief of Pine Gate Renewables, LLC at 3-4

²³ Opening Brief of the Joint Utilities at 9

²⁴ *Id.*

2040.”²⁵ If retail electric providers sell RECs to third-parties who continue to cause greenhouse gas emissions despite claiming their generation is clean (allowable under the current accepted REC system if the RECs are not retired), are they really eliminating the emissions associated with serving Oregon consumers? PGR believes the answer is “No” and asks that the Commission prevent this predictable failure of the top policy goal of HB 2021 by ensuring that REC retirement is part of compliance with this statute.

III. CONCLUSION

Pine Gate Renewables is invested in the long-term climate and energy future of the state of Oregon and raises these concerns with the implementation of HB 2021 as an entity trying to be part of an ambitious greenhouse gas reduction goal. While some unfairly narrow interpretations of the language of HB 2021 might lead you to believe that the Commission’s hands are tied, PGR believes the law gives the Commission quite a bit of discretion to ensure the goals of the statute are achieved. It is clear to PGR that the Commission can and should prevent double-counting scenarios that would potentially negate the greenhouse gas emissions reductions they are trying to guarantee, and REC retirement by retail electricity providers is the clearest way to do that. It is also clear to PGR that in determining regulated entity compliance with HB 2021, the Commission can and should incorporate the stated policy goals of the statute as part of the public interest.

²⁵ ORS 469A.405

Thank you for your attention to these comments.

Dated this 21st day of August 2023.

Respectfully submitted,

Dugan Marieb

Dugan Marieb

Pine Gate Renewables, LLC

duganmarieb@pgrenewables.com