

**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.

MEMORANDUM

In this memorandum, we review the manner in which the Commission intends to decide upon a scope of House Bill (HB) 2021 issues to be addressed and the process by which individual issues will be resolved. This memorandum describes the contested case process we will utilize to address scoping questions, explains the role of Staff in this proceeding, and then outlines the specific events and dates in the scoping process. A separate memorandum issued concurrently with this memorandum describes accessibility and participation in this docket.

Background

Through decisions in docket UM 2225, including Order No. 22-206, Order No. 22-390, and Order No. 22-446, the Commission has taken actions to implement HB 2021 and indicated that subsequent dockets will address a series of open questions and issues as part of that implementation. Additionally, the Commission opened docket AR 655, a rulemaking to address some procedural aspect of Clean Energy Plan development and review.

Through Order No. 23-059, the Commission approved a Staff recommendation to “open an investigation under ORS 756.515 into HB 2021 implementation issues and direct the Administrative Hearings Division (AHD) to initiate a scoping process.”¹ Staff summarized the implementation issues that have been raised to date in its memorandum, and there was discussion amongst Staff and Commissioners at the public meeting emphasizing why it would be important to conduct a brief process to make sure Commissioners have a full sense for the key implementation issues and associated processes parties would find most important to focus on.

¹ Order No. 23-059, Appendix A at 1.

Contested Case

We anticipate the need to address legal issues in this docket and have determined that some of these legal questions may be best handled through the contested case process. Accordingly, this case will commence as a contested case, and I designate this case as a contested case as of the issuance of this memorandum. The Notice of Contested Case Rights and Procedures are attached. That noted, as described below, the Commission will continue to assess how individual issues should be addressed and is open to addressing issues including legal issues through other processes, such as through the declaratory ruling process.

Despite the fact that this case has been designated as contested, we will endeavor to make participation in this docket as accessible as possible. A separate memorandum issued this same day provides guidance and information about participating in this docket without an attorney and provides detailed information regarding accessing intervenor funding.

Staff's Role

At this time, Staff does not plan to participate in this docket as a party. Instead, the Commissioners determined that Staff resources were better allocated in this instance in an advisory capacity to the Commissioners and the Administrative Hearings Division. Consistent with our Internal Operating Guidelines, this will not prevent parties or participants in this case from interacting with Staff.²

Events in the Scoping Phase

We seek to address the following questions in the scoping phase of this docket. Importantly, we seek input on what issues and open questions need to be addressed by the Commission, and we are also open to input regarding how issues should be addressed, meaning if a specific issue should be addressed in this contested case or a future one, a rulemaking proceeding, an other than contested investigation or through a petition for declaratory ruling. After the scoping process is complete, we will issue a scoping memorandum or ruling that will determine the manner and sequence of the issues to be addressed.

Our initial scoping questions are as follows:

1. What open questions or issues need to be addressed or resolved by the Commission?
2. What should be the sequence of issues to be addressed?

² The Commission's Internal Operating Guidelines were most recently approved by the Commission in Order No. 20-286 and can be found at this location: <https://apps.puc.state.or.us/orders/2020ords/20-386.pdf>. Staff's dual role in contested cases is discussed on page 18 of the guidelines. In this matter, Staff will not provide the "expert testimony" role discussed in this section of the guidelines.

3. What process or processes should be used to address issues?

Please note, we request that you limit your written comments, of which you will have two opportunities, to seven (7) pages maximum. Please submit all written materials to the filing center by 3:00 pm on the applicable due date.

EVENT	DESCRIPTION	DATE
Written Comments on Scoping Questions	Opportunity to submit written comments on the above questions.	March 28, 2023
Commissioner Scoping Workshop	Workshop to discuss participant perspectives on issues, forums, and sequence.	April 6, 2023 1:30 p.m.
Final Written Comment	Final comments before Commission issues scoping decision.	April 12, 2023
Scoping Memo/Order Issued	Decision on issues to be addressed, sequence, and forum.	April 28, 2023 (Target)

Dated this 16th day of March 2023, at Salem, Oregon.



Nolan Moser
Chief Administrative Law Judge

Attachment: Notice of Contested Case Rights and Procedures

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at <https://www.oregon.gov/puc/Pages/default.aspx>. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

Notice to Active Duty Servicemembers: Active Duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

Administrative Law Judge: The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Notice of Contested Case Rights and Procedures continued

Record: The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.