

ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
AHD REPORT
PUBLIC MEETING DATE: May 16, 2023

REGULAR ___ CONSENT ___ RULEMAKING X EFFECTIVE DATE N/A

DATE: May 11, 2023

TO: Public Utility Commission

FROM: John Mellgren

THROUGH: Nolan Moser **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. AR 655) Adopt Rules for Chapter 860, Division 27 regarding filing, review, and update of Clean Energy Plans.

AHD RECOMMENDATION:

Adopt the proposed permanent rules as attached in Attachment 1.

DISCUSSION:

Issue

Whether the Public Utility Commission of Oregon (Commission) should adopt the amended and proposed rules for Chapter 860, Division 27 regarding filing, review, and update of Clean Energy Plans (CEPs).

Applicable Law or Rule

Under Oregon Revised Statute (ORS) 756.060, the Commission “may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission...” The Oregon Administrative Procedures Act sets forth the process for rulemaking.

Analysis

Background

Oregon House Bill 2021¹ requires the state's electric companies² to decarbonize their retail electricity sales with consideration for direct benefits to local communities. HB 2021 set emissions reduction targets for Oregon retail electricity providers requiring greenhouse gas emissions reductions of a certain amount by certain dates:

- By 2030, 80 percent below baseline emissions level;
- By 2035, 90 percent below baseline emissions level;
- By 2040, and for every subsequent year, 100 percent below baseline emissions level.³

The foundation of HB 2021's decarbonization framework is the development of CEPs by Oregon electric companies that are to be submitted to the Commission and the Department of Environmental Quality.⁴ These CEPs must incorporate the emissions reductions targets and "include annual goals set by the electric company for actions that make progress towards meeting the clean energy targets * * *."⁵ The CEPs also must include and examine several other items in their articulation of the electric company's plan to achieve the required greenhouse gas emissions reductions.⁶

As a result of HB 2021's new requirements, the Commission opened docket UM 2225, Investigation into Clean Energy Plans, on January 11, 2022. Throughout 2022, Commission Staff gathered feedback from interested parties through questionnaires, workshops, informal comments, and formal commenting opportunities on the Commission's implementation of HB 2021 and the first round of CEPs that were expected to be filed in 2023.⁷

At the May 31, 2022 Public Meeting, the Commission adopted Staff's recommendation for an approach to the first round of CEPs and issued Order No. 22-206 on June 3, 2022. Order No. 22-206 required that the first CEP be filed with the utility's next Integrated Resource Plan (IRP), that the CEP be consistent with the IRP analysis and IRP action plan, and that the CEP describe how the IRP and CEP have met the planning requirements of HB 2021. The Commission directed the electric companies to "file IRP updates, after the first CEP filing, that include updates on utility actions and

¹ HB 2021 is codified at ORS 469A.400 to ORS 469A.475.

² As defined in ORS 757.600(11).

³ ORS 469A.410.

⁴ ORS 469A.415(1)-(2).

⁵ ORS 469A.415(4).

⁶ *Id.*

⁷ A complete procedural history of Docket No. UM 2225 can be found in Order No. 22-477, Appendix 1 (Dec. 14, 2022).

progress toward the annual goals described in the CEP” and decided to “[t]ake no action on compliance penalties” at that time.⁸

The Commission held Special Public Meetings on October 4 and 6, 2022, to consider Staff’s recommendations for “expectations for the development of the roadmap of actions and goals and Community Lens analysis” and to “direct PacifiCorp (PAC) and Portland General Electric (PGE) to consider this guidance in developing each utility’s first Clean Energy Plan (CEP) filings.”⁹ The Commission adopted Staff’s recommendations, but noted electric companies were expected to provide “a full explanation of why [meeting any expectations in Staff’s recommendations] was infeasible or impractical” to aid our “determination of whether to acknowledge a CEP that may have fallen short of these expectations.”¹⁰

On November 1, 2022, the Commission adopted Staff’s recommendations for “expectations for analytical improvements” with amendments and directed the electric companies “to consider this analytical guidance in developing each utility’s first [CEP] filings and associated [IRP].”¹¹

At its December 13, 2022 Public Meeting, the Commission adopted Staff’s recommendation to initiate formal rulemaking by “issu[ing] a notice of proposed rulemaking to adopt rules for the filing, review, and update of [CEPs] revising OAR 860-027-0400.”¹²

On February 24, 2023, the Commission filed with the Secretary of State and posted in this docket a Notice of Proposed Rulemaking Including Statement of Need & Fiscal Impact.¹³ A rulemaking hearing was scheduled for March 22, 2023, and a comment deadline was set for April 5, 2023.

At the March 22, 2023, rulemaking hearing, PGE and PacifiCorp provided oral comment on the proposed rules. On April 3, 2023, the comment deadline for this rulemaking was extended to April 19, 2023. Timely written comments were received from NewSun, Joint Utilities (PGE and PacifiCorp), Northwest Natural Gas Company, dba NW Natural, and Joint Energy Advocates (Green Energy Institute at Lewis & Clark Law School, Climate Solutions, Coalition of Communities of Color, Metro Climate Action Team Steering Committee, Multnomah County Office of Sustainability, NW Energy Coalition, Oregon Citizens’ Utility Board, Oregon Just Transition Alliance, Oregon Solar + Storage Industries Association, Renewable Northwest, Rogue Climate, and Sierra Club).

⁸ Order No. 22-206, Appendix A at 1 (June 3, 2022).

⁹ Order No. 22-390, Appendix A at 1 (October 25, 2022).

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

¹¹ Order No. 22-446 at 1 (Nov. 14, 2022) (as corrected by Order No. 22-470 (Dec. 5, 2022)).

¹² Order No. 22-477, Appendix A at 1 (Dec. 14, 2022).

¹³ The Notice of Proposed Rulemaking Including Statement of Need & Fiscal Impact was reposted to the AR 655 docket on March 2, 2023, to correct technical issues with the original document.

Proposed Rules

Below, we address Staff's draft rules proposing revisions and additions to OAR 860-027-0400. We do not address minor and technical revisions to the rule individually.

Section 2

This section includes definitions applicable to OAR 860-027-0400. Staff proposes an addition to the existing rule defining the phrase "Clean Energy Plan" or "CEP" for the purposes of OAR 860-027-0400. No comments were received on the proposed revisions to this section.

AHD Recommendation:

Adopt Staff's proposed revisions.

Section 3

This section states the time frame within which an energy utility must file an IRP. Staff proposes an addition to the existing rule requiring an electric company to explain how it will make continual progress towards meeting the greenhouse gas emissions reductions targets during any requested extension of the deadline to file its IRP. No comments were received on the proposed revisions to this section.

AHD Recommendation:

Adopt Staff's proposed revisions.

Section 4

Staff proposes a new section to the rule requiring an electric company to file its CEP concurrently with its IRP in the same docket as the IRP. Staff's proposal allows an electric company to request a deadline extension to file its CEP of up to 180 days after the deadline to file its IRP if filing the CEP and IRP concurrently would create an undue burden.

On April 14, 2023, the Energy Advocates submitted comments supporting Staff's proposal. The Energy Advocates explained the suggested standard "encourages utility conformance to the expressed preference of all the parties for simultaneous filing." The Energy Advocates also reiterated the merits of the IRP and CEP being filed together as justifying the higher standard.

On April 19, 2023, the Joint Utilities submitted comments advocating for a "good cause" standard to apply to the Commission's review of a request to extend the deadline to file

a CEP. The Joint Utilities explained “[t]here are many hypothetical situations that would justify extending the deadline to file either an IRP or CEP for good cause, that may not justify an extension under an undue burden standard.” According to the Joint Utilities, such situations might include “reasonable extensions of time to incorporate additional analysis on novel technologies that were recently completed; results of contract negotiations on specific generation, transmission, or distribution resources that were just finalized; or recently enacted federal or state statutes or regulations.”

Discussion:

For CEPs to fit successfully into the existing utility planning framework, they should be filed concurrently with the IRP under most circumstances. Doing so allows for a better comparison between the two documents (if they are separate) and enables individuals to see how they work together while making review of the documents more efficient. We agree that limited circumstances exist where it might make sense to allow a CEP to be filed later; however, we agree with Staff and Energy Advocates that this should be an exception to the rule and that a good cause standard might be too lax. We also agree with Joint Utilities that situations may arise that might justify filing a CEP later than the corresponding IRP that may not rise to the level of causing an electric company undue burden.

Accordingly, AHD recommends adopting Staff’s revisions with an amendment allowing other situations to be the justification in seeking a delay in CEP filing.

AHD Recommendation:

Adopt Staff’s proposed additions with an amendment adding “other significant issue impacting IRP or CEP review” to the circumstances under which an electric company could seek leave to file its CEP at a later time than its IRP.

Section 5

Staff proposes a new section to the rule requiring that a CEP be “written in language that is as clear and simple as possible, so that it may be understood by non-expert members of the public.” Staff also proposes additions that restate the statutory requirements for CEPs and require CEPs to present annual goals for actions balancing costs, risks, and uncertainties for the utility.

On April 14, 2023, the Energy Advocates submitted comments supporting Staff’s proposal. Energy Advocates noted they previously advocated for rule language requiring CEPs to be “written in language that is clear and simple” without allowing utilities to comply with the standard as possible, but now believe Staff’s proposal adequately balances the parties’ positions.

On April 19, 2023, the Joint Utilities submitted comments expressing concern with this section's directives that a CEP be written "as clear and simple as possible, so that it may be understood by non-expert members of the public" and asking that the phrase be removed. The Joint Utilities explained their belief that it was not "appropriate to codify this requirement in Commission regulations" because "CEPs are fact-specific, technical documents, that combine multiple subject areas (engineering, finance, economics, policy, and law)" with forecasts covering decades. The Joint Utilities also explained their belief that Staff's proposal is vague and may create enforcement problems. The Joint Utilities noted they "will strive to ensure that future IRPs and CEPs are accessible, transparent, and readable" but that they "want to preserve the ability to use as accurate and precise language as necessary to communicate complex subjects."

Discussion:

We agree with Staff and Energy Advocates that CEPs and IRPs must be accessible to the public to increase participation in and understanding of Commission processes. We also agree with Joint Utilities that IRPs and CEPs must discuss complex topics that inform other complex processes. The Commission can explain that it does not intend this requirement to cause delay in IRP and CEP proceedings but rather is intended to ensure CEPs can be understood by the general public. The Commission can also explain that not every page and sentence of a CEP needs to be as "clear and simple as possible," but rather complex and technical material can be included alongside clear and simple explanations of that material.

AHD Recommendation:

Adopt Staff's additions and explain the intent and expectations behind the Section 5 rule additions in the final rulemaking order.

Section 7

This section articulates the time frame within which Staff and parties must file comments on an IRP. Staff proposes revisions to this section to have it apply to comments on a CEP and to explain when such comments are due when the CEP is not filed concurrently with the IRP. Staff proposes the addition of the word "generally" to the time frame within which IRP and CEP comments are due.

On April 14, 2023, the Energy Advocates submitted comments supporting Staff's proposed revisions. On April 19, 2023, the Joint Utilities submitted comments recommending that the word "generally" be deleted. The Joint Utilities note IRP processes are already lengthy and that Staff and parties can seek a waiver of the existing rules if needed. On April 19, 2023, NW Natural submitted comments expressing concern that Staff's proposed revisions may also apply to natural gas IRP comments and asked for further edits to clarify that the word "generally" does not apply when a natural gas company files its IRP.

Discussion:

While we understand NW Natural's concern that Staff's proposed revisions as written apply to both IRP and CEP comments, we believe the result is reasonable.

AHD Recommendation:

Adopt staff's revisions.

Section 9

Staff proposes a new section describing the actions the Commission may take in reviewing and acknowledging a CEP. On April 19, 2023, the Joint Utilities submitted comments supportive of the proposed language in OAR 860-027-0400(9)(c) giving the Commission discretion to determine an appropriate timeline to refile a CEP should the Commission not acknowledge it.

AHD Recommendation:

Adopt Staff's additions.

Section 10

This section articulates the requirements for IRP updates. Staff proposes revisions to this section to add requirements for IRP updates to include updates on the utility's actions to implement the CEP's annual goals. No comments were received on the proposed revisions to this section.

AHD Recommendation:

Adopt Staff's additions.

PROPOSED COMMISSION MOTION:

Adopt permanent rule changes as set forth in Attachment 1.

Division 27

AMEND: 860-027-0400

RULE TITLE: Integrated Resource Plan and Clean Energy Plan Filing, Review, and Update

RULE SUMMARY: The changes to this rule specify the content and filing requirements for a Clean Energy Plan (CEP) required under ORS 469A.415, additional content and filing requirements for Integrated Resource Plan (IRP) updates related to the CEP, provide additional changes to the process for review of IRP, CEP, and IRP update filings, and specify the actions the Commission may take on review of a CEP.

RULE TEXT:

Integrated Resource Plan **and Clean Energy Plan** Filing, Review, and Update

(1) Scope and Applicability: This rule applies to investor-owned energy utilities. Upon application by an entity subject to this rule and for good cause shown, the Commission may relieve it of any obligation under this rule.

(2) **(a)** As used in this rule, “Integrated Resource Plan” or “IRP” means the energy utility’s written plan satisfying the requirements of Commission Order Nos. 07-002, 07-047 and 08-339, detailing its determination of future long-term resource needs, its analysis of the expected costs and associated risks of the alternatives to meet those needs, and its action plan to select the best portfolio of resources to meet those needs.

(b) As used in this rule, “Clean Energy Plan” or “CEP” means the plan that an electric company subject to ORS 469A.415 is required to develop concurrently with the development of the IRP.

(3) An energy utility must file an IRP within two years of its previous IRP acknowledgment order or as otherwise directed by the Commission. If the energy utility does not intend to take any significant resource action for at least two years after its next IRP is due, the energy utility may request an extension of its filing date from the Commission. **An electric company subject to ORS 469A.415 must explain how it will make continual progress toward towards meeting the clean energy targets in ORS 469A.410 during the period of extension when making a request.**

(4) An electric company that is subject to ORS 469A.415 must file a CEP with the Commission concurrently with an IRP filing required under Section (3) of this rule

and in the same docket. If filing the CEP concurrently with the IRP would create an undue burden or a significant issue impacting IRP or CEP review exists, the electric company may file a written request to the Commission to extend the filing date for the CEP “up to 180 days after the IRP filing date”. If the Commission grants an extension for filing the CEP, it may establish an alternate schedule for a utility presentation and comments under Sections (6) and (7) below.

(5) The CEP must be written in language that is as clear and simple as possible, so that it may be understood by non-expert members of the public. The CEP must contain the information required by ORS 469A.415 and present annual goals for actions that balance expected costs and associated risks and uncertainties for the utility and its customers, including a demonstration of making continual progress toward meeting the clean energy targets, the pace of greenhouse gas emissions reductions, and community impacts and benefits.

(4) (6) The energy utility must present the results of its filed IRP, and, when applicable, its CEP, to the Commission at a public meeting prior to the deadline for written public comment.

(5) (7) Commission staff and parties must file their IRP comments and recommendations, and when applicable, their CEP comments and recommendations, generally within six months of IRP filing. If the CEP is not filed with the IRP, Commission staff and parties must file their comments and recommendations generally within six months of CEP filing.

(6) (8) The Commission must consider comments and recommendations on an energy utility’s IRP, and, when applicable, CEP, at a public meeting before issuing an order on acknowledgment. Except as provided in section (9), the Commission may provide the energy utility an opportunity to revise the IRP before issuing an acknowledgment order.

(9) For an electric company that is subject to ORS 469A.415, the Commission will issue an order memorializing its decision on acknowledgment for the CEP, which may be combined with the IRP acknowledgment order. The Commission may provide the electric company an opportunity to revise the IRP or CEP or both before issuing an acknowledgment order. The Commission may, at its discretion, take one of the following actions for the CEP portion of the acknowledgement order:

(a) Acknowledge a CEP as filed;

(b) Acknowledge a CEP with conditions; or

(c) Not acknowledge the CEP and require that the utility revise and resubmit all or certain elements of the CEP within the procedural timeline directed in the order.

(10) The Commission may provide direction to an energy utility regarding any additional analyses or actions that the energy utility should undertake in its next IRP, **and, when applicable, its CEP.**

~~(8)~~ **(11)** Each energy utility must submit an annual update on its most recently acknowledged IRP. The update is due on or before the acknowledgment order anniversary date. The energy utility must summarize the annual update at a Commission public meeting. The energy utility may request acknowledgment of changes, identified in its update, to the IRP action plan. The annual update is an informational filing that:

(a) Describes what actions the energy utility has taken to implement the action plan to select best portfolio of resources contained in its acknowledged IRP;

(b) Provides an assessment of what has changed since the acknowledgment order that affects the action plan to select best portfolio of resources, including changes in such factors as load, expiration of resource contracts, supply-side and demand-side resource acquisitions, resource costs, and transmission availability; and

(c) Justifies any deviations from the action plan contained in its acknowledged IRP **or, where applicable, CEP.**

(d) Includes an update that summarizes the utility's actions implementing the annual goals in the CEP filed with the most recently acknowledged IRP. The update will include, on an informational basis, an assessment of what has changed since the acknowledgment order that affects the utility's progress toward the clean energy targets in ORS 469A.410, reporting of measured impacts across the metrics that were presented in the most recently acknowledged CEP, and the electric company's two most recent annual emissions reports filed with the Oregon Department of Environmental Quality under ORS 469A.420(4)(a).

(9) **(12)** As soon as an energy utility anticipates a significant deviation from its acknowledged IRP **or, where applicable, its CEP,** it must file an update with the Commission, unless the energy utility is within six months of filing its next IRP. This update must meet the requirements set forth in section **(811)** of this rule.

(10) **(13)** If the energy utility requests Commission acknowledgement of its proposed changes to the action plan contained in its acknowledged IRP **or, where applicable, its CEP:**

(a) The energy utility must file its proposed changes with the Commission and present the results of its proposed changes to the Commission at a public meeting prior to the deadline for written public comment;

(b) Commission staff and parties must file any comments and recommendations with the Commission and present such comments and recommendations to the Commission at a public meeting within six months of the energy utility's filing of its request for acknowledgement of proposed changes;

(c) The Commission may provide direction to an energy utility regarding any additional analyses or actions that the utility should undertake in its next IRP, **or where applicable, its CEP.**

STATUTORY/OTHER AUTHORITY: ORS 183, **ORS** 756.040, & **ORS** 757.262
STATUTES/OTHER IMPLEMENTED: ORS 756.040, & **ORS** 757.262