



September 15, 2022

Via Electronic Filing to Madison.bolton@puc.oregon.gov

Madison Bolton
Oregon Public Utility Commission
201 High St. SE, Suite 100
Salem, OR 97301-3398

Re: OPUC Docket AR 651—Comments on Division 38 Direct Access Regulation Straw Proposal dated September 1, 2022

Climate Solutions and the Green Energy Institute thank OPUC staff for an expansive stakeholder process in the AR 651 docket. Climate Solutions is a regional non-profit working to accelerate clean energy solutions to the climate crisis. The Green Energy Institute at Lewis & Clark Law School develops equitable, comprehensive, effective strategies to prevent catastrophic climate change by furthering the just transition to a sustainable, carbon-free energy grid.

We appreciate the opportunity to provide these comments, which relate to the ESS reporting component of the rules.

I. Timing of Subsection (4) Reports

As reflected in our April 21, 2022 comments, and repeatedly reiterated, we remain concerned about the cadence proposed for ESS reports and strongly urge staff to reconsider the date set for the first ESS Emissions Planning Report.¹ As an initial matter, HB 2021 gives the Commission discretion to determine when the first plans from ESSs for meeting the clean energy targets are due.² ESSs are included in the first HB 2021 target in 2030 - a mere 7.5 years away - and nothing in the statute limits the timeframe within which the Commission may require the ESSs to begin the difficult planning work ahead. To the contrary, the policy and context of the statute, together with the unprecedented nature of the task ahead of the ESSs, support an earlier reporting deadline. An earlier planning report deadline will provide assurances to the Commission, stakeholders, and the ESSs themselves that they are on the right track, or give the ESSs sufficient time to course correct.

The looming deadline demanding an 80% GHG emissions reduction by 2030 contained in HB 2021 may well upend business practices of some ESSs in a monumental way. From an ESS perspective, we expect that obtaining some certainty earlier rather than later about how resource

¹ AR 651: Division 38 Direct Access Regulation Straw Proposal, Attachment A: Proposed Division 038 Rules, proposed OAR 860-038-0405(2), available at <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah164623.pdf>.

² An Act Relating to Clean Energy, HB 2021, 81st Oregon Legislative Assembly, 2021 Regular Session, Section 5(3) (setting forth the reporting criteria); Section 14(1) (“The Public Utility Commission may adopt rules as necessary to implement sections 1 to 15 of this 2021 Act.”), available at <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2021/Enrolled>.

development and other actions to facilitate a rapid reduction in GHG emissions will occur provides the kind of stability that is better for relationships with their customers and with regulatory bodies, and better for business.

We urge staff to take a second look at the proposed reporting framework. We reiterate our recommendation that the first report be required as soon as feasible but no later than 2024. This schedule conforms to the three-year schedule prescribed in HB 2021 and would ensure the trajectory to 80% reduction of GHGs is well underway before the end of the decade.

II. Confidential Information

As an initial matter, we greatly appreciate staff's attempt to address our request to set forth in rules the way in which specific categories of information from ESSs should be treated.³ We reiterate our support for an approach that makes it clear to the ESSs and the public how categories of information will be treated—whether confidential or not—and how access to that information may be facilitated. We recognize that identifying those categories of information is not an easy task, and we appreciate staff's willingness to accept that charge. We continue to urge the delineation of categories of information that will be subject to appropriate confidential protections, both for regulatory certainty and for the benefit of the public.

With respect to which categories of information should be treated as confidential, and under which level of protection, we recognize the tensions between different stakeholder needs. We appreciated the opportunity to learn helpful background information about ESS business operations, market constraints, and the need to maintain confidentiality in some instances, and to explore options with the ESSs that might provide access to sensitive information. At this point, we rely on the expertise of PUC staff to ensure information in the reports filed by the ESSs is made as publicly available as possible while protecting commercially sensitive information and avoiding unintended consequences. If additional staff-led conversations on this issue would be helpful, we would be pleased to participate.

Respectfully submitted,

Carra Sahler
Green Energy Institute at Lewis & Clark Law School

Joshua Basofin
Climate Solutions

³ AR 651: Division 38 Direct Access Regulation Straw Proposal, Attachment A: Proposed Division 028 Rules, proposed OAR 860-038-0405(8), available at <https://edocs.puc.state.or.us/efdocs/HAH/ar651hah164623.pdf>.