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Via Electronic Mail

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Re: UM 2225 Comments on Roadmap Acknowledgement and Community Lens Staff Memorandum and 10/4/22 Special Public Meeting Discussion October 6, 2022, Special Public Meeting – Agenda Item 1

Dear Commissioners:

NewSun Energy LLC ("NewSun") hereby submit these written comments for the Public Utility Commission of Oregon's ("Commission") consideration in advancing its next steps on implementing HB 2021 (docket no UM 2225). It includes:

(1) Discussion of concerns on the legal and analytical basis of Commission direction, and overall insufficiency relative to its due, central role, and consequences of insufficient action at this critical juncture;

(2) A request for a pause to correct course and re-review the HB 2021 statute (to better inform, ensure, and empower the Commission's proper role in its success), and specific recommendations;

(3) Specific requests and recommendations for actions and principles that must be applied, and corrections in the problematic messaging from the Commission to its regulated utilities, who have been clearly told by its regulator that a bare minimum and consequence free environment will be the Commission's approach on the issue of our age. Action should be taken today to correct much of this, explicitly, on record at Today's Public Meeting, October 6, 2022;

(And thus we recommend, *today*, correcting the problematic *on record* statements and signals by the Commission (and Staff) about bindingness, lack of consequences, and bare minimum continual progress being acceptable—and resetting the expectations—while taking a pause to re-group and, candidly, re-read the bill in a more comprehensive manner informed by your unique role, authority, and responsibilities in this context.); and

(4) Supporting legal context for Commission authority to take actions proposed.

(1) BACKDROP AND CONCERNS – Insufficient Action Relative to Agency Pivotal Role and Authority, Based on Insufficient and Erroneous Legal Analysis of Statute

Commission efforts thus far have centered on providing additional interim guidance to the utilities in the development of their first Clean Energy Plans ("CEPs"), with further refinement to occur in the future after the Commission, Staff and stakeholders develop learnings from those CEPs.

We are gravely concerned that the Commission is missing a critical moment – and failing to perform on a critical obligation and role of the agency in what is undoubtedly a pivot point for the key backbone (the CEPs, and especially the first CEPs) for a law which is a generational, transformational statute, the will define the future of the Oregon electric power, regulated utilities, and economic space for decades. *This state agency* has the core role, core *responsibility,* and core authorities to either:

(a) successfully facilitate successful achievement of the State of Oregon's clearly stated decarbonization goals and *requirements* in HB 2021 (and in the other clean power related laws and standards)*;* or

(b) allow, condone, and facilitate irreversible pathways of failure, which—whether through insufficient foresight and competence or intentional utility actions misaligned with the State's objectives and best interests—

The second path—that of failure—is overwhelmingly avoidable through *your* actions, *your* use of authority, process, scrutiny, and critical engagement. But *only* if you do actually use your powers *sufficiently, fully, and vigorously* to sculpt, ensure, pressurize, and indeed demand that outcome.

The Commission is not currently on that first, necessary, success-ensuring path. Staff's recent recommendations are insufficient to achieve this.

Moreover, the Commissioners comments repeatedly err towards a perspective of what the *minimum* it must do is—what bare minimum the law requires of its actions—rather than full employment of powers to ensure a successful path. The discussions at the May 31, 2022 public meeting, and this week's October 4, 2022 public meeting both reflect this problem, and explicitly signal a lack of consequences for compliance failures—by declining to pursue steps to define consequences—and speculating whether the law "is even binding"—as well as the Commission's explicit statements and actions in UM 2166 asserting a right to do *nothing* on core parts of the law, and that such conclusions are *unchallengeable in court, along with (by implication) the CEPs themselves and Commission approvals of them*. Among many other statements and actions of minimalizing bindingness, Commission obligations, and up-playing excuses, while simultaneously over-focusing (and wasting precious time and Commission resources) on the *non*-required aspects (or non-aspects) of the statute.

It is hard to overstate the wrongness, the inappropriateness—indeed the neglect of responsibility—evidenced by the Commission's May 31 comments, in particular those of

Commissioner Thompson, which reflected a failure to even know whether HB 2021 was binding. [1]. Stated differently: **It appeared that the Commissioners had not even reviewed the statute itself, either at all, *certainly not with sufficient rigor*, before presiding over a pivotal meeting on the direction of a generational law that will transform Oregon's economy and entire power sector—the sector *your* agency presides over and regulates—because *Compliance is Procurement of New Resources.***

To say it is concerning that Oregon Public Utility Commissioners arrived at a meeting to make such consequential decisions—about what to do, what not to do, how to direct staff, and how its regulated utilities should approach the law and its regulator's view of the law, is an understatement. The Commissioners arriving unprepared, unsure of the obligations of the statute itself, to pass judgement over its future, over the path of its regulatory role and the utilities it regulates (essentially the primary targets of the statute itself), and thus the state's future, is of the gravest concern.

Seemingly, nothing has been done by or at the level of the Commissioners since that May 31, 2021 meeting to correct course—either in its legal analysis, its message to utilities, or otherwise, as evidenced at the October 4, 2022 meeting.

In doing so—in its path to inadequacy—the Commission seems to be overwhelmingly informed by legally erroneous, slap-dash, cherry-picked reading of the HB 2021 statute—rather than a full, comprehensive read that recognizes its role, authority, obligations, and the *interactive, comprehensive mutually referencing language among sections of the statute*, particularly "Section 1 to 15" (a quote of specific language used across almost all the section 1 to 15) and as relates what is sufficient for a CEP and for Section 3's compliance.

Section 3 says that the "greenhouse gas emissions" reductions requirement themselves—the "shall reduce" by levels—are *contingent* and "*measured*" only "to the extent compliance is consistent with section 1 to 15 of this 2021 Act."

Sections 1 to 15 include:

- Section 2, the state policy associated with this "electricity generated in a manner that produces zero greenhouse gas emissions… *to the maximum extent practicable*, in a manner that provides additional direct benefits to communities in this state in the forms of creating and sustaining meaningful living wage *jobs*, *promoting workforce equity* and *increasing energy security* and *resiliency*."

We note [orientation on hypothetical price and costs on completely uninformed basis that is disconnected from the new world order in which renewables are the cheapest power sources in the world, and thus cost risk is not the primary function of the agency now. It is not appropriate to pre-signal lack of bindingness and consequences in (it seems) a view to [well, it might cost more] when you don't even have the results and mid-C prices and spiking and high—and candidly it is *more* likely that the next decade's actions should *save* ratepayers money, not the

[1] See Rep. Helm October 4, 2022 letter and citations, incorporated here fully by reference.

opposite. In short, if this is the self-perceived justification for laxity on climate action and onerousness of standards to apply to your utilities, then you are wrong and out of sync with the economic reality of the times and renewables themselves, nevermind the statute.

In the meantime, the urgency is real. And the risks to Oregon's economy—from You, Your Agency, This Commission—and to *lives of Oregonians*—and to the *once in a lifetime* opportunity for Oregon with $10-20B or more of new generation to occur *here, in Oregon, the state your agency serves and implements policy for,* if you implement these policies correctly and fully—generation, storage, resiliency features, distributed generation, energy efficiency projects—which could provide the nearby back-up generation to power our state and communities through wildfire crises and earthquakes and power market shortage—and economically offset past and future harm to tens or hundreds of thousands of underserved, underrepresent and economically challenged Oregonian.

<u>80% of the emissions must occur by 2030</u>. That means 80% of the Building, the Location Selection, the Construction Jobs, the (overwhelmingly privately funded $Bs of resiliency backbone projects, if but for minor modifications), etc, *will all be decided and set on rails in these first CEPs.* And by implication, all the regulatory process you will preside over to decide *which, what, how* decisions will occur—on plan viability, how outcomes are ensured and sculpted, and how and whether the IOUs will use this law to serve ends not in the best interest of Oregon.

Will you let this opportunity for Oregon pass? In stark contrast to the explicitly *adopted* state policies and requirements of HB 2021? Which explicitly says this new clean generation "be generated , to the maximum extent practicable in a manner that provides additional direct benefits to communities in this state"?

The first CEP is everything for the State of Oregon. Its viability. Its achievability. Its minimum acceptable conditions. Its adequate engagement of the real, "heroic" challenges ahead—particularly if wrong paths are chose. It must have strong clear guardrails. The Commission must use its powers to ensure that it will not approve CEPs that do not meet certain requirements. The Commission must make clear that the whole law is incorporated. The Commission must define (per Section 5(2)(f)) "[any] other relevant factors" for CEPs to be acceptable.

It must also correct course on messaging—and fully evaluate the actions it can and will take to create and cause a roadmap to compliance with Section 3's reduction requirements, informed as follows:

How can the Commission use its full powers and authority to ensure the successfully achievement of HB 2021's emissions reduction requirements and explicit state policies?

That is your job. That is your agency's responsibility. As the agency overseeing the transformation of the entirety of the electric power utilities you regulate.

This includes whatever actions now, today. It includes expedited rulemakings on key topics. It includes looking across other policy areas to target accelerators and enablers of climate action success—whether on PURPA, community solar, procurement cycles, recommendations for rebates, or seeking financial resources from the state to support these ends.

It includes, and must be, a success-achievement-oriented approach—not a "what's the minimum" approach.

With the world's fate on your shoulders, along with millions of Oregonian's whose economic future (their jobs, their water supplies, their electricity, their livelihoods)—to quote U.S. Women's Olympic and World Cup soccer champion, Megan Rapinoe—"**Do What You *Can***".

(2) RECOMMENDATIONS

We urge the Commission to take a strong a stance at this early stage to set specific requirements and guidelines. We agree with Staff that it is important to "clarify expectations for the most critical CEP requirements," and to "avoid a major mismatch in expectations that sets us back in making progress toward the state's goals."[2]

The Commission should not be deterred from setting guidelines as Section 5(2)(f) empowers it to do so (in addition to other Commission authority).

> The commission may, after making an investigation on the commission's motion, but without notice or hearing, make such findings and orders as the commission deems justified or required by the results of such investigation. Except as provided in subsections (5) and (6) of this section such findings and orders have the same legal force and effect as any other finding or order of the commission.[3]

Additionally, as relates specifically to this process, the legislature explicitly gave the Commission the authority to determine "[a]ny other relevant factors" that it deems relevant in the consideration of whether a CEP is in the public interest.[4]

We recommend the Commission adopt the below core criteria—i.e. provide explicit guidance to the utilities of what is and is not acceptable—for determining what is acceptable for these CEPs.

<u>A) Correct the Commission's Messaging on Bindingness and Expectations:</u>

(i) Issue a Statement: HB 2021's emissions reduction targets are mandatory. Per the statute, the retail electricity providers "shall" reduce greenhouse gas ("GHG") emissions to 80% below the baseline by 2030, 90% below the baseline by 2035, and 100% by 2040.[5] At the Commission's last decision meeting in this docket, there was some discussion around deferring

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[2] Staff Report at 6 (Sept. 28, 2022)
[3] ORS 756.515(4).
[4] 469A.420(2)(f).
[5] ORS 469A.410.

action on compliance penalties in which the Commission appeared concerned about whether the targets were even mandatory. However, Staff appears to agree that the targets are mandatory.[6] We recommend that the Commission make a clear statement now that there will be consequences for failure to meet the mandatory targets and that it considers the law to be binding.

(ii) Issue a Statement: HB 2021's compliance obligations began upon September 25, 2021, when the law took effect, *not* in the future, *not* upon CEP plan acceptance, etc.

B) Define Minimum Criteria and Principles for Initial (and all) CEPs to be Acceptable:

Some of these should be hard and fast, some could be rebuttable presumptions. But the bars and standards and expectations need to be set now, at the beginning, not later. Given the cycles of CEPs, IRPs, RFPs, and build times, anything else—as the timing of failures and when the Commission could correct course—is untenable and grossly exposed to uncorrectability until too late. The Commission must anticipate that and act now to mitigate this obvious risk.

(iii) This first CEP needs to successfully get the Utility to the 2030 target. If we wait until the next CEP, then there will be no time to course correct. It has taken four to five years from the initial filing of an integrated resource plan ("IRP") through a request for proposal ("RFP") until a resource can be expected to be online.[7] And this timeline does not account for the uncertain future timelines necessary given major transmission constraints in the region. If the first IRP/CEP is expected in March 2023, then we could expect online dates by year end 2027 or 2028. Staff has similarly expressed concern about the ability of utilities to conduct a two more RFPs this decade to meet that 2030 target.[8] As such, this next IRP/CEP/RFP cycle is critical for compliance (in addition to all other options being on the table as discussed below).

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6 Staff Report at 2 (Sept. 28, 2022) ("The emissions reduction targets established under ORS 469A.410 *require* electric companies to reduce greenhouse gas emissions as Follows") (emphasis added).

7 Pursuant to the usual Commission process, comments on the IRPs are submitted within 6 months of the filing, and then the Commission will make its decision. OAR 860-02-0400(5). The Commission's rules then contemplate that utilities file an RFP after the IRP. OAR 860-089-0250(2). The Commission will generally issue a decision on the design of the RFP within 80 days. OAR 860-089-0250(6). The utility must then issue the RFP, score bids, seek Commission approval of the final shortlist, negotiate with bidders and execute contracts which takes about a year. See Schedule in PGE RFP UM 2166 and PacifiCorp 2022 RFP Schedule https://www.pacificorp.com/suppliers/rfps/2022-all-source-rfp.html. Finally, projects need time after execution of agreements to be constructed and reach commercial operations. For example, PGE's 2019 IRP filed in July 2019 (LC 73), led to the filing of its 2021 all-source RFP (UM 2166) which asked for resources with an online date of the end of 2024. PacifiCorp filed its last IRP and RFP concurrently in September 2021 seeking resources to be online by the end of 2026.

8 *PGE 2021 All-Source Request for Proposals*, Docket No. UM 2166 Staff Report at 11-12 (October 5, 2021) available at https://edocs.puc.state.or.us/efdocs/HAU/um2166hau17502.pdf ("PGE's possible procurement plan leading up to the 2030 target raises questions. Staff questions whether a

(iv) The first CEP needs to account for contingencies, failure rates, and reasonably expectable and likely delays and challenges. In other words, the CEP can't assume all will go according to plan and ideal cases. The levels of procurement and the timing of the actions planned must already anticipate some level of failures and delays—but still achieve the 2030, 2035, and 2040 standards. Utilities should not be allowed to show up later and say "whoops, it turns out interconnections and transmission delays occurred…" Those are known problems, today. Some reasonable contingency, likely in the form of overprocurement and earlier actions, to leave room for these inevitable realities, must be core to an acceptable plan. This also will then mean that alternatives that do not bear the same risks must be properly evaluated—so that statutory timeline requirements are achieved.

(v) CEPs must be "economically and technically" feasible.[9] ***Technically feasibility requires timeline feasibility.*** This is particularly important given the enormous lift presented by the GHG reduction mandates, transmission constraints facing the Northwest and the 10-15 years needed to develop new transmission. A CEP that relies on transmission which is not technically feasible within the timeline necessary, therefore cannot be acknowledged. UM 2225 thus far has not focused on this provision, but it is an important element that the Commission should be incorporating into its guidance to the utilities as they embark on their first CEPs. *A non-timeline feasible plan can not be an acceptable plan.*

(vi) CEPs assumptions must be reasonable, viable, and transparent for scrutiny and dissection for viability, including in particular cost and schedule assumptions. The problems of the IRPs cannot permeate and define the CEP processes. The Commission must enable further rights for itself and stakeholders to avoid the black box, utility dominated realities of its current IRP processes, which are a core threat to decarbonization and HB 2021's success.

(vii) CEPs proposals contingent on new transmission must be realistic on reliably achievable timelines, in particular NEPA and EFSC processes. Permitting realities for transmission will be the bottleneck of the effort, in particular NEPA. Boardman to Hemingway demonstrates the 10-15 year processes new lines will achieve. A plan that does not assume the realistically expectable 10-15 year timelines for almost any new transmission project, and has emissions reductions contingent on those transmission facilities, can not be accepted under Section 2(2)(b) or (c).

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third RFP this decade – PGE's 2027 RFP as proposed in its Reply Comments – could actually deliver the resources PGE needs in time for 2030 compliance given the lead-time needed for resources to come online. The current RFP is already considering resources that may not come online until the end of 2027. Furthermore, PGE seems to be assuming a significantly shorter timeline (a year and a half) between Final Short List acknowledgement and when resources need to be online for the future RFPs compared to the current RFP. The current RFP allows about two and a half years (with a longer allowance for pumped hydro projects), which in Staff's experience is the more typical timeframe. Assuming this more typical timeframe is needed, it would further call into question the ability to leverage a third RFP this decade to address HB 2021 compliance.")

[9] ORS 469A.420(2)(b).

(viii) The standard of "continual progress" should contemplate a linear glide path towards compliance as the yard-stick for acceptable scale and timing of action—and to inform future compliance failure consequences. Staff's recommendation proposes that utilities show continual progress by demonstrating year-over-year emissions reductions on an expected basis in the CEP. However, this definition leaves open the possibility of utilities reducing GHG emissions by only a negligible amount each year, with a large "just in time" procurement. Such an approach may not be technically or economically feasible as required under the law as some projects may fail. As such, we recommend that the Commission consider the continual progress standard under the law to contemplate a linear glide path towards compliance. While we understand that some wiggles will occur along this linear glide path, major deviations from it should be discouraged. The utilities can always argue later that whatever actions they took were reasonable based on the information at hand, but that is at their risk. The Commission here should be setting up its expectations as to how to meet the intended policy outcomes.

(ix) Compliance obligations are binding, and not contingent on the pace and outcomes of Commission process.

(x) All options must pursued and enabled to contribute to meeting the targets and "continual progress" requirement. Large resource procurements via RFPs are "lumpy," occur infrequently, and may face the timeline and technical feasibility constraints noted above. However, the compliance obligation to meet the requirements of HB 2021 exists regardless of the timing of the IRP/CEP/RFP cycle or whether those have occurred. For example, PGE recently stated that it needs 3-4 gigawatts to meet the 2030 target.[10] There is only time for one RFP between now and 2030. It seems quite impractical, if not impossible, for all of those resources to be successfully developed and procured in one RFP. That is a huge lift. So, assuming PGE needs 3,500 MW, a glide path to compliance would have PGE acquiring the equivalent of 500 MW per year over the next 7 years, to have acquired sufficient resources by 2030. As such, the Commission should indicate its expectation that the utilities remove barriers and plan to acquire all other options including:

- Qualifying facilities under the Public Utility Regulatory Policies Act[11];
- Energy efficiency and demand response;
- Direct access;
- Distributed energy resources; and

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10 Portland General Electric September 2022 IRP Roundtable Presentation Slide 13 available at https://assets.ctfassets.net/416ywc1laqmd/70ZtUZu614Muls6lKSpNm0/72d85334b7e9f4152a169c230393970e/IRP_Roundtable_September_22-8_92822.pdf ("PGE is forecasting 3-4 GW of new resource need to meet the HB 2021 decarbonization target.") PGE clarified on the call that this is to meet the *2030* target. Call recording at 1:07:30, available at https://www.youtube.com/watch?v=mU9MMUa54G8.

11 PURPA is a powerful tool to enable success – and to mitigate utility execution risk – and which is decoupled from the utilities' own procurement and regulatory cycles (and biases) – and therefore able to offer a bolster and back-up plan, and shared contribution, to the "heroic" effort required. Further recommendations on this front will follow, but this should inform PUC decisions on current QF matters.

- Community solar projects;
- Among others

Indeed, these types of projects and programs are uniquely tailored to and situated to facilitate that "continual progress," which is contemplated by HB 2021 and woven throughout the bill. They are incremental progress that can be achieved more rapidly or on a more continuous basis than large, infrequent RFPs. In fact, not only is continual progress a requirement, but the Commission shall ensure that an electric company is "taking actions as soon as practicable that facilitates the *rapid reduction* of greenhouse gas emissions."[12]

(xi) Define the CEP Review Standard on Public Interest Standard to Include The Policy Statements, Section 3 targets, explicitl.

(xii) Clarify that the resiliency projects and Community Based Renewable Energy standards are not limited to small scale projects and must include meaningful evaluation of specific in-state and on-system projects sufficient to meaningful mitigate power outage risks to utility customers, at meaningful scales. Simply put: 100s or 1000s of MW will be needed to be built in Oregon. Minor modifications and design and selection criteria can bring these fuel-supply free resources to bear to protect against wildfire and storm and earthquake and market failure power outages. They have to be built anyways. Section 2's requirements demand in-state-ness—but further, HB 2021 emissions reductions cannot be timely implemented without these local generators (not constrained by mega-transmission projects issues). Therefore the CEPs must look at, and procurement standards must seek and facilitate, how these "gonna be built anyways somewhere" power plants—1, 2, 5, 10, 50, 80, 200, 500 MW facilities, likely most having major battery storage required (as is obvious)—can bolster Oregonians' resiliency outcomes. This is the opportunity of a lifetime. The Commission would be negligent to not ensure that this first CEP, this first front wave of **80%** of the emissions reductions, not simultaneously result in life- and economy saving back up power for Oregon's citizens. Thus, the CEPs must be developed to require multiple (if not all) major load service areas be served by procurements and facility modifications (switches, controllers, disconnects) that would bolster resiliency.

C) Define further criteria and standards needed in expedited processes

(xiii) Open an expedited rulemaking to define the principles and framework for compliance penalties that measures from a yard stick of continual progress (per principles above). It should be clear how consequences should be measured and that there will be consequences. They should be measured from a standard of actions from the bill effective date proportionate to achieve success. The penalty structure should be sufficient to ensure successful compliance, but relative to and informed by efforts and a meaningful continual progress yard stick. Alternatively, the Commission can clarity this standard in an order today.

[12] ORS 469A.415(6).

CONCLUSION

In conclusion, we recommend that the Commission adopt the recommendations as laid out in this letter. If the Commission believes a rulemaking is necessary in order to adopt these recommendations, then we request that a rulemaking be opened and concluded expeditiously in advance of the first CEP filings.

Regardless, a course correction is necessary. Please take the necessary steps, including the recommendations here.

Thank you, and we look forward to further engagement on these issues.

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s/ Jacob H. Stephens

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