

**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

**COMMENTS OF PORTLAND
GENERAL ELECTRIC COMPANY
REGARDING INITIAL SCOPING
QUESTIONS**

Portland General Electric Company (PGE) respectfully submits these comments in response to the Administrative Law Judge’s (ALJ) scheduling and scoping memorandum issued March 16, 2023. PGE incorporates by reference our comments submitted with PacifiCorp d/b/a/ Pacific Power in this docket on February 17, 2023 (Joint Utility Comments). PGE believes that the questions raised by Public Utility Commission of Oregon (OPUC or Commission) Staff (Staff) in their Report dated February 21, 2023, are directly relevant to the scoping questions posed by the ALJ in the scheduling and scoping memorandum.

PGE continues to appreciate and support the Commission and Staff’s diligent efforts to consider and address House Bill 2021 (HB 2021)-related issues. Nearly two years after the Oregon Legislative Assembly’s adoption of HB 2021, issues remain outstanding that require attention and clarification to ensure the goals outlined in HB 2021 can be satisfied, but focus on these matters needs to be balanced against the heavy workload associated with the 2023 IRP/CEP review and associated procurement activities. Thus, PGE proposes narrowing the focus of this docket as suggested below.

I. Scoping question 1, “What open questions or issues need to be address or resolved by the Commission?”

PGE recommends addressing this question through four distinct categories and includes discussion of each category in further detail. These categories are:

- Legally unambiguous issues that need no discussion in this docket and should be excluded from the scope of UM 2273.
- Implementation issues that are potentially complex and currently legally unresolved and should be included in this docket.
- Compliance and enforcement expectations unresolved by previous work in UM 2225 to promote common understanding and to lay the groundwork for future Clean Energy Plans

(CEP), issues that are not urgent and can be delayed, but are appropriate to address in this docket.

- Process and guideline updating and streamlining, informed by the experiences of all parties in completing and filing the first utility CEPs, associated requests for proposals, and development of community-based renewables, all issues that should be included in this docket.

A. Legally unambiguous issues should not be included in the scope of UM 2273

PGE includes these items in the discussion of ‘open issues’ to the extent that their inclusion in Staff’s memo has introduced them to the UM 2273 scoping discussion; however, in PGE’s view, they need no discussion for purposes of implementing HB 2021.

i. Emissions accounting policy

Staff’s memorandum asks whether HB 2021 assigns emissions accounting to the Oregon Department of Environmental Quality (DEQ) exclusively.¹ PGE believes that HB 2021 clearly delegates emissions accounting to DEQ but compliance considerations to the OPUC. The framework established in HB 2021 made this DEQ accounting delegation in several places:

- ORS 469A.410 provides in part that emissions shall be “measured . . . as greenhouse gas emissions reported under ORS 468A.280.”
- ORS 469A.420 provides in part that “the [DEQ] shall use the method of measuring greenhouse gas emissions set forth in ORS 468A.280 to verify the projected greenhouse gas emissions reductions forecasted in a clean energy plan” and report those findings to the Commission.
- ORS 469A.475 (2) provides that DEQ “may periodically review and update its calculation under ORS 468A.280 of the greenhouse gas emission rates . . . to reflect the current resource mix and associated emissions.”

PGE recognizes that there are complexities related to assessment of compliance with emissions targets, and this topic is addressed below in our discussion of compliance and enforcement issues. But HB 2021 is clear that emissions accounting is delegated to DEQ.

ii. In-state preference for resources

Staff also asks the question of whether HB 2021 places any requirements on the Commission related to in-state resource preferences.² PGE believes the law is clear, providing no express

¹ “Does HB 2021 assign emissions accounting policy to DEQ exclusively?” Staff Memorandum, pg. 4, UM 2273, February 9, 2023.

² “What, if any requirements does HB 2021 place on the Commission related to in-state resource preferences?” Staff Memorandum, pg. 4.

language indicating an intent for an in-state preference.³ The law expressly contemplates that compliance entities will use electricity that is generated out of state, including in ORS 469A.435 (3) (use of electricity purchased from the Bonneville Power Administration) and from the energy imbalance market from “across a wide geographic area to increase the availability of non-emitting resources to serve load in the state.” ORS 469A.475. Further, PGE believes that the dormant commerce clause prohibits such in-state preferences and it would be a disfavored reading to imply one, absent express language. In enacting the 2007 Oregon Renewable Energy Act (establishing renewable portfolio standards (RPS)), the legislature allowed resources from across the Western Electricity Coordinating Council region to qualify to meet the RPS due to this constitutional concern.

iii. Use of RECs associated with emissions-free generation

Staff asks whether there should be requirements for the use of renewable energy certificates (RECs) associated with emissions-free generation.⁴ HB 2021 is clear that compliance with emissions targets is in no way tied to REC retirement; that position is informed by the plain language of the statute and the method of compliance with the targets. Nowhere in ORS 469A.400 to 469A.475 are RECs discussed or mentioned. The legislature provided no linkage to the RPS where RECs are the means of compliance. There is no confusion between the two systems and none should be inserted. The RPS is REC-based and the Clean Energy Plan is emissions-based. It is not how much bundled renewable energy (with a REC) is used to serve customers to determine whether the targets in ORS 469A.410 are met, it is the amount of greenhouse gas emissions produced in doing so. Compliance does not work from the top down, taking total energy and subtracting emissions if connected with a REC, but from the bottom up, counting tons of greenhouse gas emissions for energy generated that serves retail customer load. Further, the legislature provided clarity on this issue through the language in ORS 469A.430, which ensures that RECs are not needed for compliance. If the Commission deems it appropriate to undertake a policy discussion regarding claims associated with bundled and unbundled RECs, PGE recommends that discussion occur in the context of program-specific investigations, rather than linking the issue to HB 2021 implementation where it would slow resolution of other HB 2021 implementation issues. PGE would support such discussions, as many of our customers support their sustainability compliance through PGE’s voluntary green power products and programs.

³ One of the sponsors of HB 2021 lamented this fact in recent public comments, stating, "Looking at our dais, realizing that the 3 chief sponsors of HB 2021 are on the committee [...] You know, my big regret is nobody—I hardly let anybody forget but I’ll say it nicely today—one of my great regrets is that we didn’t require some of the facilities that we hope to fuel the green revolution to be built in this state." Rep. Ken Helm, House Committee on Climate Energy, and Environment, Public Hearing on HB 3003 (2023), 3/15/2023.

⁴ “What are the requirements for the use of RECs associated with generation attributed to the utility under the HB 2021 emissions accounting methodology?” Staff Memorandum, pg. 4.

B. Complex implementation issues not currently addressed in another docket should be included within the scope of UM 2273

i. Cost cap

With the filing of utility CEPs and with associated actions specified in the combined Integrated Resource Plan (IRP), PGE believes that decisions regarding whether “investments or costs contribute to compliance”⁵ may need to be made soon. While ORS 469A.445 relies heavily on existing mechanisms for the process of calculating costs toward compliance, the cost cap directs a novel process, unlike that in the RPS cost cap, to be used in that calculation. PGE would prefer to see any cost cap rules in place sufficiently before Q1 2026, when the next IRP/CEP would be due, to allow for consideration of the cap into the next planning cycle and allow for proactive management of customer rate impacts. Depending on when direct access Electricity Service Suppliers (ESSs) will be required to submit their forward-looking emissions planning reports through the rulemaking in AR 651 (Direct Access Rulemaking - HB 2021 et al) this discussion could incorporate the cost cap for ESSs.⁶ Within this topic, PGE would want to see discussions of annual vs. cumulative cost caps,⁷ relationship to the RPS cost cap if any, proactive vs. retroactive application, and the scope of costs to be considered for inclusion under the cap other than project costs, such as transmission, distribution and distributed energy resource costs.

ii. Reliability pause

Similarly, PGE urges resolution of implementation of ORS 469A.440 before the next IRP/CEP cycle. Because the reliability pause provisions in ORS 469A.440 implicate matters which in other contexts have taken years to conduct,⁸ prudence suggests that a discussion of how the reliability pause would operate and any legal issues needing resolution within its terms should occur sooner, rather than later. We must have this understanding in place in advance of any potential reliability issues.

iii. Early compliance incentives

ORS 469A.455 allows the Commission to offer a performance incentive to a utility that complies early with one or more of the HB 2021 emissions targets. If a utility were to seek to use this incentive structure, it would need to be clarified in order to be meaningful. An investigation in UM 2273 would provide the appropriate timing to precede the 2026 CEP/IRP cycle.

⁵ ORS 469A.445 (1).

⁶ See OPUC AR 651, Direct Access Rulemaking (HB 2021 et al), available at: <https://apps.puc.state.or.us/edockets/docket.asp?DocketID=23063>

⁷ Staff raised this issue as an example, “How is the incremental cost cap calculated (e.g. annual v. cumulative)?”, Staff Memorandum, pg. 4.

⁸ See, e.g. UM 2143, Investigation into Resource Adequacy in Oregon.

C. Unresolved compliance and enforcement expectations to promote common understanding

In this section, PGE agrees with the Staff Memorandum that there are unresolved compliance and enforcement expectations that require a common understanding amongst the parties.⁹ PGE sees no value in revisiting topics that were resolved in UM 2225, including expectations for continual progress in planning or the use of annual goals for actions for CEP targets. UM 2225 established that CEP acknowledgement is the process by which questions of continuous progress are considered and that the IRP update filings and subsequent CEPs are the vehicles to assess progress and consider adjustments from a planning perspective.

However, the UM 2225 scope did not address, and left unresolved, compliance and enforcement topics for the emissions target years. Any UM 2273 investigation of these compliance and enforcement issues should consider both expectations for ESS and for utilities.

These unresolved issues are neither particularly complex nor necessarily controversial. For example, the IRP/CEP oversight by the Commission, including the already developed guidelines, acknowledgement of resource actions and reporting of progress by utilities likely satisfies the requirement that the Commission “ensure that an electric company demonstrates continual progress” and is “taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at reasonable costs to retail electricity customers.”¹⁰ Similarly, while HB 2021 did not specifically include penalties within the statutory scope, because the OPUC has significant authority over utilities and ESSs to ensure compliance with the clean energy targets,¹¹ utilities or ESSs that fail to comply would be subject to the OPUC’s plenary enforcement authority,¹² let alone the authority it retains as economic regulator for utilities. While the two issues identified above are exemplary only, they serve to highlight that these issues may benefit from discussion but not require any specific action on the part of the Commission.

Other issues, such as the compliance process in emissions reduction target years may require additional discussion and action on the part of the Commission. PGE views the CEP/IRP as a planning process and exercise with the outcome being the range of investments and operational decisions that ultimately drive serving customers with electricity that meets the targets. This is different from the DEQ measurement of actual emissions. Because the CEP/IRP is a planning process that does not prescribe specifically how utilities operate, but rather how utilities plan to

⁹ Here Staff raised four separate questions, “What is the compliance process in emissions reduction target years?”, “What, if any, compliance determinations will the PUC make in the interim?”, “What are the enforcement mechanisms for compliance in target years and, potentially in the interim?”, “What does ensuring continual progress require?” Staff Memorandum, page 4.

¹⁰ ORS 469A.415 (6). ORS 469A.420 contains a similar “continual progress” requirement for ESSs. PGE recommends that these issues be investigated at the same time.

¹¹ ORS 469A.415 gives the OPUC authority over development of CEPs, ORS 469A.420 the authority to acknowledge CEPs, and ORS 469A.435 allows the OPUC authority over determining compliance with the clean energy targets.

¹² See, e.g., ORS 756.160, 756.180 and 756.990.

meet load, with what resources, over a time horizon, utilities and other parties would benefit from clarification on what the CEP outcomes are supposed to be and how, on a landscape level, the cost cap, the reliability pause, and annual reporting to the DEQ of emissions will inform the development of the plan. We admit that there is some level of ambiguity that is incorporated into the law and that is appropriate for Commission processes. It would be beneficial to understand how the Commission might use the flexibility provided in ORS 469A.435¹³ in cases where a utility fails to meet a target, even while taking all acknowledged actions in its CEPs. In the interim, between now and 2030, PGE recognizes that we have several opportunities to continue to refine the structure on how to meet the targets, a significant benefit to starting this work in 2023.

D. Updating and streamlining regulatory expectations governing planning and procurement

HB 2021 layered new CEP requirements on top of the existing IRP process, which have further complicated the already complex IRP administrative rules and Commission guidance. To promote efficiency and clarity in future cycles, a streamlining effort should consider updates to CEP and IRP rules and guidelines applicable to future cycles. PGE encourages consideration of the refining of competitive bidding rules in the event that targeted waivers of the existing rules are not the preferred path for streamlining. This effort could draw on learnings from utilities' efforts to develop and submit their first CEPs, as well as the accompanying Commission review. Areas of opportunity may include consolidation of duplicative IRP and CEP guidance and methods to streamline RFP initiation to conduct more tasks in parallel.¹⁴

HB 2021 also promotes several areas of resource development activity that warrant updates to Commission rules and guidance:

- First, PGE expects to procure new small-scale resources which fall under the Division 89 Resource Procurement rules size threshold, both as community-based renewable energy and potentially via a future community clean energy tariff (also known as the municipal green tariff). Regulatory guidance around cost recovery for these resources is needed.
- Section 23 of HB 2021 (ORS 757.646) made changes specifying the focus of Commission-protected competitive retail markets that affect competitive bidding rules. The new language demands a reassessment of Commission provisions regarding competitive and behind-the-meter offerings, including those offerings under the Voluntary Renewable Energy Tariff. Specifically, the flexibility provided by the change that directs the minimization of cross-subsidy, rather than a strict prohibition, should be reflected in the Division 38 Code of Conduct. UM 2273 should review and recommend adoption of revisions across applicable rules.

¹³ ORS 469A.435 provides in part that the OPUC shall “take into consideration unplanned emissions in excess of the amount projected” in a CEP, including the need to generate electricity to meet load.

¹⁴ This effort may include review of prior RFP processes and Commission direction that simultaneous review of resource plans and a draft RFP is a necessary and acceptable part of procurement to meet HB 2021 targets.

II. What procedures should be utilized

As stated in the Joint Utility Comments of February 17, 2023, it does not appear that the issues included in Staff's memorandum, or the points raised above, involve contested facts of a nature that would typically be the subject of a contested case proceeding. Thus, the need for any associated elements of contested cases, such as the need for discovery or to cross-examine witnesses, seem unlikely to come into play. Rather, some of the issues are pure questions of law that can be resolved through legal briefing, some involve matters that would be best addressed through rulemakings due to their general applicability, and still others are policy questions that can be addressed through standard investigation. PGE recognizes, with due respect, that the ALJ has determined that the case will commence as a contested case but asserts that these other processes may more expediently address these matters.

III. Sequencing of issues

PGE would respectfully request that the Commission determine that the legally unambiguous issues are dispensed with as a primary matter. After that, because the IRP/CEP implementation and enforcement matters need clarity and agreement among parties before the next IRP/CEP planning cycle begins, PGE recommends starting with the more noncontroversial elements. While the cost cap and reliability pause issues are important and may likely necessitate rulemaking, this longer-term approach should be placed toward the end of this process.

PGE looks forward to the next steps in this scoping process and engaging with parties to resolve these important matters. Please direct questions or comments to Sam Newman at (503) 464-2112.

Sincerely,

/s/ Shay LaBray

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