

April 11, 2023

Via Electronic Filing

Oregon Public Utility Commission
Attention: Filing Center
201 High Street, Suite 100
Post Office Box 1088
Salem, OR 97308-1088

Re: UM 2273 – HB 2021 Implementation Scoping Comments

Dear Staff, Stakeholders and Commissioners:

NewSun Energy LLC (NewSun) provides the following feedback in response to Staff's February 9, 2023 Report recommending the opening of this docket and suggesting initial issues for resolution, and Chief Administrative Law Judge (ALJ) Moser's March 16, 2023 Memorandum as later modified by ALJ Moser's March 22, 2023 Ruling. NewSun looks forward to further discussion on the scope, process, and sequencing of this docket.

It is important that the Oregon Public Utility Commission (Commission) address HB 2021 implementation and the issues in this docket through the lenses of its existing regulatory oversight over monopoly utilities,¹ its responsibility to enforce utility laws,² its responsibility to eliminate barriers to the development of a competitive retail market,³ the State's goal to promote the development of permanently sustainable energy resources, and the policy to increase the marketability of electric energy produced by qualifying facilities.⁴ Utilities that are both a monopoly in the sale of electric service and a monopsony in the purchase of power have a unique ability to abuse their market position, which is why the Commission exists to regulate them. The binding clean energy targets in HB 2021 will require heroic efforts to meet. Ultimately, NewSun believes that success is possible, but that in reaching those goals, the Commission should not lose sight of the utilities' ability to suppress competition and should ensure that all market participants contribute to this transformational change.

The process, issues list and sequencing proposed below keeps these themes in mind and recommends a course of action that provides for immediate near-term guidance on topics that affect current ongoing efforts to procure HB 2021 compliant resources.

¹ See e.g. ORS 756.040.

² See e.g. ORS 756.180.

³ ORS 757.646.

⁴ ORS 758.515.

Process

NewSun is open to using contested case procedures as suggested by Staff and the ALJ.

Issue List/Sequencing

At this time, NewSun proposes that related issues be grouped into issue “buckets” and either addressed in separate dockets concurrently but on schedules that recognize the priority need for resolution. Handling issue groups in separate dockets will also create some clarity and separation of issues, help avoid confusion, and to avoid burdening the record in either docket with different “tracks” of issues running concurrently.⁵ In several areas, NewSun also recommends addressing certain questions sequentially, resulting in a final order on that question before moving onto the next issue. There are also several questions initially raised by Staff but that are re-phrased below and several additional questions not in Staff’s initial issue list.

A. Issue Bucket 1: Issues in Need of Near-Term Expedited Resolution

NewSun recommends addressing several issues in an expedited near-term docket so that the resolution of those critical inputs can inform analysis of current pending integrated resource plans (IRPs), Clean Energy Plans (CEPs), and requests for proposals (RFPs). Questions in this bucket include:

1. What rules will the Commission adopt pursuant to Section 14 of the bill to implement the policy statements in Section 2(2) that “electricity generated in a manner that produces zero greenhouse gas emissions also be generated, 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”?
2. How should the Commission define “maximum extent practicable”?
3. How should the Commission define and measure “direct benefits to communities in this state”?
4. What reporting should the Commission require related to the Section 2(2) policy?
5. What interim minimum expectations are needed for the Commission to ensure that utilities are taking actions as soon as practicable?⁶
6. What are the minimal acceptable criteria for a CEP to be “economically and technically feasible” and how will the Commission ensure that such criteria are properly demonstrated to ensure success and compliance with the law?

⁵ NewSun found it extremely difficult to keep track of the different “tracks” of issues all running concurrently in UM 2225. If the Commission is inclined to have overlapping testimony, comment, or briefing periods that address different issues, then each issue should be off-ramped into a separate docket.

⁶ Note, this issue is also included in the compliance issue bucket below because both near-term expedited guidance is necessary as well as how this issue will be implemented in an ongoing manner.

7. What additional relevant factors will the Commission consider in determining whether a CEP is in the public interest?
8. How should the Commission implement HB 2021 in a manner that also ensures the Commission is furthering its statutory objective to eliminate barriers to a competitive retail market?

B. Issue Bucket 2: Emissions, Renewable, Capacity and Other Attributes

NewSun recommends grouping all issues related to the resource attributes, including but not limited to emissions attributes, renewable attributes or renewable energy certificates (RECs), and capacity attributes. This issue bucket should be addressed in a separate docket launched immediately but perhaps resolved over a slightly longer schedule than the above Issue Bucket 1. Questions include:

1. How should renewable attributes or RECs be treated?
2. How should emissions associated with ratepayer funded assets and purchases be treated?
3. How should the attributes (emissions, renewable, capacity) of ratepayer-funded resources be tracked?
4. Should there be visibility into how the utilities are using the attributes (emissions, renewable, capacity) associated with ratepayer-funded resources?
5. What are the implications of regional emissions accounting activities and their timelines?
6. What are the roles of DEQ and the Commission as relates to emissions and achieving the goals of HB 2021?

C. Issue Bucket 3: Compliance, Continual Progress and Actions As Soon As Practicable

NewSun recommends grouping all issues related to compliance, continual progress and how the Commission will ensure that the utilities are taking actions as soon as practicable. This issue bucket should be addressed in a separate docket launched immediately and addressed concurrently with Issue Bucket 2. NewSun recommends further that the first question below be addressed first resulting in a final order before launching into the remainder of the issues.

1. Are compliance penalties necessary to ensure HB 2021's goals are achieved?

The remainder of the questions in this issue bucket include:

2. How will the Commission ensure that utilities are taking actions as soon as practicable?
3. How will the Commission ensure continual progress?
4. What is the appropriate yardstick for measuring continual progress?
5. How will the Commission ensure compliance in emissions reduction target years (e.g., 2030, 2035, 2040)?
6. What, if any, compliance determinations will the PUC make in the interim?

7. What are the enforcement mechanisms for compliance in the target years and in the interim?

D. Issue Bucket 4: Early Compliance Incentives

This issue bucket was not raised in Staff's initial Staff report, but NewSun believes that it warrants some attention. Section 12 of HB 2021 notes that "[i]n furtherance of the clean energy targets set forth in section 3 of this 2021 Act, the Public Utility Commission may apply a performance incentive for early compliance with one or more of the clean energy targets." NewSun asks Staff and other stakeholder for input on whether this issue could be added to one of the above issue buckets or addressed as a stand-alone issue. This issue could benefit from near-term guidance because if the Commission waits too long to implement something, it may no longer be "early" enough to incentivize early compliance. Questions include:

1. Should the Commission implement one or more early compliance incentives?
2. What would incentivize early compliance?
3. Should the Commission incentivize early compliance with performance-based ratemaking?

E. Issue Bucket 5: Cost Cap and Rate Base Considerations

The final issue bucket NewSun identified is related to the cost cap and rate base. NewSun is open to hearing from others about what priority level this issue bucket should have and what other questions need to be addressed within this grouping. At a minimum, this bucket should address the following questions:

1. What limits or exclusions should the Commission create relative to whether certain costs qualify under the cost cap or to rate base?
2. Should costs that would otherwise be required to serve load but that would also be used by HB 2021 compliant resource be allowed to count towards the cost cap?
3. Should utility expenditures funding efforts to evade or delay compliance with clean energy law be recoverable or included under the cost cap?

NewSun appreciates your thoughtful consideration and looks forward to continued engagement in this important docket.

Sincerely,



Marie P. Barlow

In-House Counsel

Policy & Regulatory Affairs

mbarlow@newsunenergy.net