

**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.

ADDITIONAL COMMENTS BY THE
GREEN ENERGY INSTITUTE AT
LEWIS & CLARK LAW SCHOOL
FOLLOWING ORAL ARGUMENT

1. A load-based HB 2021 avoids the downsides of a generation-based program, is consistent with other load-based programs in the region, and coexists with regional cap-and-trade programs.

GEI's briefing established that as an alternative to a preferred load-based HB 2021, the Commission should determine that HB 2021 is a generation-based program to avoid unnecessary confusion. A generation-based program does not use RECs to track non-power attributes to load. Explicitly establishing HB 2021 as a generation-based program ensures that Oregon utilities and customers do not double count or double claim the non-power attributes of generation attributed to HB 2021 compliance.

However, as we also briefed, a generation-based approach is not a silver bullet. Under a generation-based program, the same renewable energy generation can be used to satisfy other load-based programs and claims in neighboring states. Consequently, there will be less renewable energy development in the region, continuing our region's dependence on emitting generation. This is antithetical to the purpose of HB 2021. Further, Oregon electricity customers will still be required to foot the bill to support the increase in renewable energy generation to meet the clean energy targets but will not have a claim to that generation. Finally, a generation-based system conflicts with the equitable outcomes promised by HB 2021. Under a generation-based approach, only those who pay to participate in a voluntary program will have a claim. This contradicts the Oregon Legislature's desire to provide 100% clean electricity *for all* and to HB 2021 Section 2(4), which states the law should be implemented "in a manner that minimizes burdens for environmental justice communities."

HB 2021 Section 15 guides the Commission to "coordinate and collaborate with other states to achieve the goal of aligning accounting methodologies." Regarding which interpretation (load or generation) results in the most regional consistency, we note that a load-based HB 2021 is the most consistent with California and Washington load-based programs and is the best option to support regional cap-and-trade programs. No conflicts exist between a load-based HB 2021 and California and Washington's cap-and-trade programs because (1) neither of the cap-and-trade programs provides retail claims to customers, so no double counting occurs, and (2) HB 2021 would require the retirement of *bundled* RECs not needed for RPS compliance. Moreover, a generation-based HB 2021 remains misaligned with regional cap-and-trade programs because HB 2021 does not regulate in-state generation exported to other states.

If the Commission rejects our position that HB 2021 is a load-based program, it must conclude it is a generation-based program to avoid confusion. If the Commission chooses a generation-based path, we urge the Commission to accept that it has broader authority to reduce emissions beyond the narrow vision the utilities offer. A generation-based HB 2021 that drives down emissions from in-state generation would be most aligned with regional cap-and-trade programs and a boon to frontline communities, which would experience less air pollution.

Finally, we underscore that the big downside of *any* generation-based HB 2021 program remains: the RECs from renewable energy resources used to comply with HB 2021 can be unbundled and used elsewhere to comply with load-based policies. Although not technically double counting, it does diminish the incremental positive environmental impact of HB 2021.

2. If HB 2021 is a generation-based program, any order should acknowledge the lack of claims under the Green Guides, and the Commission should oversee the public statements made by the utilities to avoid misleading Oregon electricity customers.

If HB 2021 is a generation-based program, any order must specify that HB 2021 neither provides the utilities renewable energy delivery claims nor Oregon electricity customers renewable energy use claims. This statement will clarify for Oregon electricity customers, energy advocates, and the energy industry that RECs are not retired on behalf of Oregon customers. Not issuing this statement will sow confusion and may lead other states and entities to draw disparate conclusions about HB 2021.

The Commission should also oversee the utilities' public statements about HB 2021 to avoid misleading Oregon electricity customers and facilitating a violation of the Green Guides. Under the Green Guides, it is improper for the utilities to imply they deliver renewable energy under HB 2021 by using photos of wind turbines in press releases about HB 2021 or calling renewable energy generation "non-emitting" or "zero-emissions" on their Oregon-focused websites without a clear and prominent disclosure that the general public can understand. We support CUB's proposal to use the Portfolio Options Committee to identify disclosure practices that would be consistent with the Green Guides.

Relatedly, the Clean Energy Plan (CEP) should contain a short chapter dedicated to describing the GHG accounting method used for HB 2021, including how covered electricity generation is identified, that because RECs are not retired on behalf of customers, there are no delivery or use claims, and how the utilities report emissions to DEQ. Other CEP sections should provide cross-references to the disclosure chapter. OAR 860-027-0400(5) supports this concept, as it requires the [CEP] to be "clear and simple as possible, with the goal" that it is "understood by non-expert members of the public." Because the Green Guides are not binding, there is a *greater* need for the Commission to provide oversight, not less, as the utilities may lose sight of the U.S. Federal Trade Commission's interpretive rules over time.

Dated November 29, 2023

Respectfully,

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