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.	REPLY BRIEF OF COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

Introduction

The Columbia River Inter-Tribal Fish Commission (CRITFC) appreciates the opportunity to file this reply brief concerning House Bill 2021 Implementation Issues. We look forward to continued engagement with the Oregon Public Utility Commission (PUC) on these and related matters, such as the role of cost-effectiveness in carrying-out Oregon's clean energy mandates.

CRITFC was created in 1977 by the Warm Springs, Umatilla, Yakama and Nez Perce Tribes. It is wholly owned and governed by these tribes through procedures that require tribal unanimity. CRITFC is an arm of tribal government. Each tribe, however, maintains its own sovereign status from which CRITFC derives its mandates. Government to government consultation between state and tribal governments occurs with each tribe. CRITFC facilitates communications by or with the tribal governments but does not itself engage in consultation on behalf of the tribes. In 2022, CRITFC adopted an Energy Vision for the Columbia Basin, which we included with our opening brief.

I. Addressing Climate Change by regulating Greenhouse Gas Emissions is a Welcome Policy Change. The PUC Should Reach out to Tribes to Understand their Concerns and Aspirations.

In a very real sense, Oregon has shifted its utility-based climate policies from measuring how many PV panels and wind turbines it has added to the grid to instead regulating the amount of fossil fuel power plant emissions that it will reduce. From the standpoint of protecting tribal resources, this is welcome news. Tackling climate change causes is imperative. In so doing, emphasizing strategies that promote healthy communities, ecologies, and river systems and protecting the environment on which they depend is essential to honoring future generations.[1]

Tribal peoples in the interior Columbia Basin adapted over millennia to cultural practices that were seasonally cyclical. In April, Spring Chinook salmon were traditionally available for root feasts celebrating the re-emergence of plants that are secured in treaty language. Due to climate change, however, these plants are now ready for gathering in March while harvestable numbers of Spring Chinook do not return to Columbia River tribal fisheries until May. For the tribal peoples served by CRITFC, their traditions are at risk in ways that are unique. "From the vast and growing body of information now available concerning climate change, we understand that its impacts on our [Yakama] people will continue and that our grandchildren will likely see profound and ever-increasing changes within their lifetimes."[2]

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[1] Sections 1.2 though 1.4 of the Yakama Nation's Climate Action Plan describe its purposes, principles and goals for addressing climate change. "Climate Action Plan for the Territories of the Yakama Nation" April 2019. Available at https://yakamafish-nsn.gov/sites/default/files/YakamaNationCAP_Approved_Final_3_2021.pdf

[2] *Id.*

The proper acquisition of non-emitting generation resources, energy efficiency measures and the acquisition and use of demand response resources is vital to climate resiliency. And these resources are also vital to protecting the Columbia River and its ecosystems upon which the tribes depend. HB 2021 recognizes that the state's policy is to meaningfully engage consultation with federally recognized Indian tribes.[3] And Oregon must understand the breadth of tribal concerns.

The following graph shows an unacceptable future where fossil fuel generation is curtailed while solar and wind generation is stacked onto the Pacific Northwest grid without sufficient concern for grid-scale outcomes.[4] The depicted river operations are not sustainable for an inherently resilient and renewable resource like salmon. The graph shows Columbia River hourly flows during a one-week period forecasted to occur in mid-July in 2032. During certain morning hours on July 16 the Columbia River below The Dalles Dam would stop flowing. Later that day, between mid-afternoon and late evening, flows would ramp up to over 300,000 cfs. Salmon and steelhead migrations did not evolve to withstand this type of ecosystem perturbation.

Salmon are wonderfully resilient species, but many populations are on the brink of extinction due primarily to hydro power effects.[5] Tribal, state, and federal governments are

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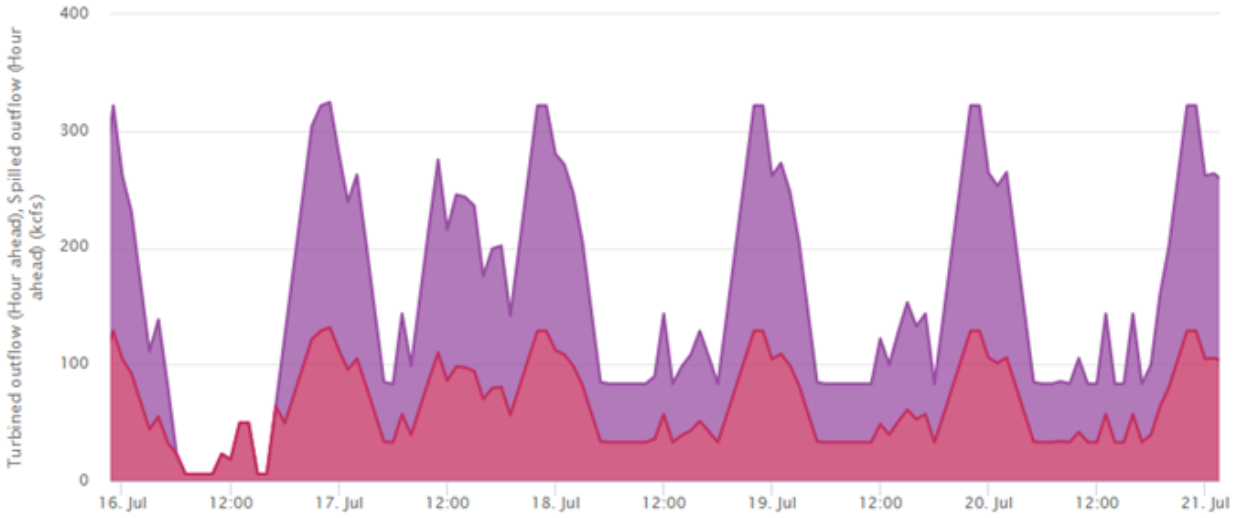
[3] Oregon considers tribal consultation is the overall process of sharing information, coordination, engagement, and dialogue that occurs between Tribal Governments and governmental or administrative entities within the United States. Tribal consultation occurs before an agency commits itself to a path of action that will affect Tribal rights, lands, resources, governance, or interests. https://www.oregon.gov/lcd/Commission/Documents/2022-03_Item-4_TSPPart3_Attachment-B_West-Coast-Tribal-Engagement-Guidance-March-2020.pdf

[4] The graph was provided to CRITFC by staff from the Northwest Power and Conservation Council, who generated this information in development of the Council's 8th Power Plan.

[5] CRITFC 2020 Energy Vision at pages 30-31 and Appendix C. www.critfc.org/energy-vision/

struggling to improve conditions for salmon and steelhead in the Columbia Basin's hydro systems. Worsening the effects of hydro operations on salmon, like those depicted below, is going in the wrong direction.



Fortunately, HB2021 shifts Oregon's policies in favor of environmentally just outcomes, tribal consultation, energy security and community resiliency. Oregon's regulated utilities need not burden the Columbia River or local communities with their compliance responsibilities. They can add demand-side resources including energy efficiency measures like weatherizing low-income housing, supporting grid interactive hourly net-zero commercial buildings. Increasing the capabilities and commitments of the Energy Trust of Oregon to acquire energy efficiency measures, and implement grid-interactive demand response measures in residential and commercial settings are outcomes that should flow from HB 2021.

II. Retirement of Renewable Energy Certificates is Consistent with HB 2121

When considering the future application of Renewable Energy Certificates (RECs) in Oregon it is important to consider the overarching directive in HB 2021 to "eliminate greenhouse gas emissions associated with serving Oregon retail electricity consumers by 2040." [6]And, among other things, to do so "in a manner that minimizes burdens for environmental justice communities."[7] The intent of HB 2021 is clear. Despite assertions in the Joint Utilities Opening brief to the contrary,[8] the policies and text of HB 2021 are simply and plainly consistent with one another. HB2021 is about reducing greenhouse gas emissions and doing so with a social conscious.

Prior Oregon statutes emphasized the development of renewable resources in utility integrated resources portfolios. For instance, in 2007 Oregon passed SB 838 that required Renewable Portfolio Standards (RPS), which were designed to operate as a REC-based system. The RPS requirements spurred the development of renewable resources but did not directly require reductions in greenhouse gas emissions. In HB 2021, Oregon changed policy direction to directly controlling and reducing greenhouse gas emissions. Oregon now requires its regulated utilities to develop clean energy plans that include "acquisition of non-emitting generation

[6] ORS 469A.405 (1) and ORS 469.410 (1)(c) (HB 2021 sections 2(1) and 3(1)(c)).

[7] ORS 469A.405 (4) (HB2021 section 2(4)).

[8] Joint Utilities Opening Brief at 8-9.

resources, energy efficiency measures and acquisition and use of demand response resources" to facilitate rapid reduction of greenhouse gas emissions.[9]

Oregon's emissions control framework thus covers in broadest terms the environmental qualities of the electricity that will be delivered to retail electric consumers and the management of its use by these same consumers. Oregon's statutory scheme also recognizes the significance of eliminating carbon-fueled generators from utility resource stacks by affording the electric industry and its customers almost 20 years to achieve its no-carbon objective.[10] The statute's call for "transition" to a carbon-free electric resource stack is facilitated by allowing both bundled and unbundled RECs to act as markers or substitutes for the acquisition of a compliance resource.[11]

As used in Oregon's regulatory construct, RECs help support the reliability of the grid by stimulating the grid-wide expansion of diverse and non-emitting resources. RECs also help protect electric utilities and their customers from the increased costs of compliance, including the high capital costs that would otherwise be required to "flash cut" the industries' reliance on fossil fuels. Thus, their use allows for the more measured shift to an emission-free electric grid sanctioned by HB 2021 and the earlier RPS. As these compliance structures mature, the need for unbundled RECs should likewise track the grid's transition.

As the grid "de-carbons" and non-emitting technologies become the its principal resource pool, continued REC support should not be needed to advance the state's goal of emission-free

[9] ORS 469.414(4)(b) (HB2021 section 4(4)(b).
[10] *See* ORS 469A.052 and HB 2021 §3(1).

[11] *See* ORS 469A.070 and ORS 469A.135(1) and (2).

energy service. Likewise, the financial impacts to customers caused by the grid's transition will also be realized over a more reasonable period; thus diminishing the need for unbundled RECs to soften the financial blow.

This anticipated transition permits the PUC to elevate the other grid investments noted above, such as enhanced energy efficiency and weatherization, net-zero buildings and neighborhoods, and robust demand response programs. In the end, customer-based investments such as these will dependably support both the reliability of the grid and the welfare of customers that participate in these programs. Importantly, investments such as these touch the customer in a way that encourages participation in the grid's restructuring – for their benefit and that of others on the system. CRITFC encourages the Commission to take the longer and broader view of both RECs and alternative customer-based grid investments when it considers a utility's resource stack and its obligation to comply with HB 2021 – compliance that "minimizes burdens for environmental justice communities."

III. The PUC Should Look Beyond Market Driven Procedures to Uphold Statutory Policies

Many rightly claim that climate change is the greatest market failure the world has ever seen. Undeniably, greenhouse gas emissions are a market externality and government intervention is being required across the globe.[12] Understanding that HB 2021 is Oregon's

[12] https://www.brookings.edu/articles/the-danger-of-dismissing-market-failures/.

> "The failure of free markets to curb the air and water pollution caused by the economic activity should by now be beyond question. But certain political and industrial groups argue that markets should be left alone to fix these problems. Here, the contention that markets on their own will tackle carbon emissions and the resulting global warming is

governmental intervention to address a globally recognized market failure is instructive. It informs the PUC's regulatory mission related to least-cost and least-risk analysis and cautions against solutions that rely heavily on failed market analyses. This broader recognition of market failure also helps explain how and why certain land-based cultures, such as tribal communities, are uniquely vulnerable to the effects of climate change. Equity demands and HB 2021 offers the opportunity for community resiliency and environmental justice needs to be addressed.[13]

In the early years of modern environmental regulation, much written about the distinction between cost-efficiency, cost-effectiveness, and other economic frameworks, including their limitations in capturing societal goals. At a broad scale cost-effectiveness was and is generally understood to mean achieving a goal or desired outcome in a least cost manner.[14] Cost-effectiveness in utility planning models over the last several decades, often has been more narrowly measured, frequently considered in terms of whether a particular energy resource was cheaper than the levelized cost of a combined cycle combustion turbine gas plant (CCT). The

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> problematic. It misses the reality that it is the market's inability to price or put a value on clean air that underlies man-made climate change."

Also see, https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Externalities;https://www.ecb.europa.eu/press/key/date/2020/html/ecb.sp200928_1~268b0b672f.en.html.

[13] Under House Bill (HB) 3141, the legislature requires the Commission to establish equity performance metrics for the Energy Trust related to environmental justice communities. Tribes are trying to respond to climate impacts with their own initiatives, but have limited regulatory tools. https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00997

[14] Liroff, Statutory Requirements for Analysis of Costs and Benefits, in *Cost-Benefit Analysis and Environmental Regulations: Politics, Ethics and Methods*, (D. Swartzman, R. Liroff & K. Croke eds. 1982). Kneese, Costs of Water Quality Improvement, Transfer Functions, and Public Policy, in *Cost Benefit Analysis & Water Pollution Policy*, 175-183 (1975).

global climate effects of that CCT's carbon emissions were not adequately part of the equation. Climate change was essentially an unquantifiable, but daunting externality in this least-cost planning. Including carbon-pricing in least-cost analyses proved elusive. And ultimately Oregon did not adopt carbon-pricing policies. Instead, HB 2021 now simply eliminates carbon emissions from Oregon's regulated utilities in a step-wise fashion through 2040.

The PUC's cost-effectiveness policies, which among other things limit the Oregon Energy Trust's investment in energy efficiency, need to be overhauled.[15] They originated at a time when the environmental costs of greenhouse gas pollution were not understood, and greenhouse gas emissions were unregulated. Although the PUC updates these policies in UM 1158, a full reckoning with the goals of HB 2021, many of which are not susceptible to monetization and may never be, should no longer hamper energy efficiency and demand response solutions in Oregon.

The PUC staff report in docket UM 1158, implicitly acknowledges that its current cost-effectiveness tests under-value energy efficiency measures:

> While levelized costs are an important indicator of performance, the importance of net peak reductions, greenhouse gas reductions, and other forms of targeted energy efficiency to alleviate energy burden or localized distribution needs continues to become more important. A low levelized cost is an indicator of Energy Trust's efficiency, it also suggests unrealized opportunities to attain additional cost-effective energy efficiency. [16]

[15] The Energy Trust of Oregon recognizes that there are non-energy benefits with energy efficiency that are not yet quantified and would require more research before they could be included in current cost-effectiveness calculations. https://www.energytrust.org/wp-content/uploads/2016/11/GEN_FS_CostEffectiveness.pdf

[16] Oregon PUC Order 23-082, page 4 (March 10, 2023).

Stated another way, market-based efficiency goals can and have over-ridden the importance of net peak reductions, greenhouse gas reductions, and other forms of targeted energy efficiency to alleviate energy burden or localized needs. The Oregon Department of Energy put its similar concerns more directly:

> [It is] the right time to re-examine the way we treat energy efficiency and create an economic valuation system that captures its full value – including a complement of non-energy benefits, generally called co-benefits. Not including the co-benefits in the current valuation process sends the message that they have no value. A new system could include making sure the value to the utility system is quantified and counted when applying cost-effectiveness tests, including energy, capacity, reliability, resilience, adoption and use of distributed energy resources (DERs), avoided environmental impacts, and reductions in greenhouse gas emissions.[17]

In this regard we support and incorporate by reference the brief of Sierra Club et al. replying to the joint utilities' arguments regarding cost-effectiveness.

Conclusion

Thank you again for the opportunity to submit this brief.

Dated this 21st day of August 2023.

Respectfully submitted,
COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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[17] Oregon Department of Energy 2022 Biennial Energy Report (November 2022) at page 526. Available at https://www.oregon.gov/energy/Data-and-Reports/Documents/2022-Biennial-Energy-Report.pdf.