

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 2273**

In the Matter of the Application of:

PUBLIC UTILITY COMMISSION OF OREGON,

Investigation into House Bill 2021
Implementation Issues

REPLY BRIEF OF CLIMATE SOLUTIONS

I. INTRODUCTION

Pursuant to Order 23-227 (the amended procedural schedule), Climate Solutions hereby submits its Reply Brief in the above-captioned proceeding. In this Reply Brief, Climate Solutions responds to several arguments raised by the Joint Utilities in their Opening Brief. Additionally, Climate Solutions concurs with the position of NW Energy Coalition and Renewable Northwest that the Oregon Public Utility Commission (“Commission”) should begin a separate phase of this proceeding related to planning and procurement.

The following table lists summaries of Climate Solutions’ responses.

Issue	Party Argument Addressed	Response
Issue I(a)(2) – Public Interest	The Joint Utilities’ assertion that the Commission is constrained in developing additional public interest factors is flawed as a matter of statutory interpretation.	The legislature recognized the Commission’s expertise and depth of experience, and intentionally gave the Commission discretion to determine additional public interest factors. The Commission should consider equity as an additional public interest factor.
Issue I(a)(4) – Continual progress and annual goals	The Joint Utilities’ argument that continual progress can be ascertained by comparing initial and subsequent IRPs/CEPs with emissions reports fails to recognize the importance of the continual progress standard in meeting the targets.	A separate section in the CEP on continual progress is merited and it should be forward and backward looking analyses of continual progress and informed by demand forecasts and resource availability.
Issue I(b) - Comments	NW Energy Coalition and Renewable Northwest advocate for the Commission to prioritize updates to its planning and	Climate Solutions concurs with and supports the position of NW Energy Coalition and Renewable Northwest that

	procurement processes, initiating the workstream before 2024 if possible.	planning and procurement should be addressed in the near term.
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II. ARGUMENT

In this Reply Brief, Climate Solutions addresses arguments raised by the Joint Utilities on Issues I(a)(2) and I(a)(4). We reserve the arguments on Issue I(a)(3) raised in our Opening Brief. In addition, Climate Solutions concurs with the position of NW Energy Coalition and Renewable Northwest on addressing planning and procurement in Phase I(b).¹ Additional argument on the latter issue is not necessary at this time.

A. [Issue I(A)(2)] The Joint Utilities’ argument that the Commission should refrain from identifying additional public interest factors ignores both foundational principles of statutory interpretation and the wide discretion intentionally granted to the Commission by the legislature

The Joint Utilities invoke a markedly different framework of statutory interpretation on the issue of policy statements than the one they utilize to assess the public interest factors. In their analysis of the policy statements, the Joint Utilities rely on the principle that “policy goals are not always subjected to the critical and sometimes contentious scrutiny in the legislative process that is lavished on important operative words.”² This leads the Joint Utilities to the conclusion that only the substantive provisions, and not policy statements, of the statute are binding. However, in addressing the question of whether the Commission should develop additional public interest factors pursuant to ORS 469A.420(2)(f), the Joint Utilities seem to abandon the above-referenced principle in favor of an analysis that would tightly constrain the Commission from invoking the broad discretion explicitly granted it by the legislature to develop additional public interest factors.

ORS 469A.420(2)(f) is an ‘operative’ provision of law, to utilize the language cited by the Joint Utilities. The provision clearly states that the Commission may consider “any other relevant factors as determined by the Commission” in evaluating whether a Clean Energy Plan is in the public interest. Here the legislature *clearly intended* to give the Commission discretion in determining non-enumerated public interest factors, which is in effect a substantive provision of the law.

By including this catch-all provision in the statute, and granting the Commission broad discretion, the legislature recognized that the Commission has accumulated significant expertise and experience in determining whether utility plans are in the public interest. Indeed, the Commission has been reviewing IRPs since the 1980s and is more than capable of navigating a number of public interest factors while ensuring an overall public interest analysis of an IRP/CEP is not overbroad.

The Joint Utilities’ assertion that the Commission should consider “other relevant factors” *only* within the context of the first five factors is at odds with the statute’s very construction.³ Had the legislature intended for the Commission to be so confined, it could have easily limited its direction to the Commission

¹ Opening Brief of NW Energy Coalition and Renewable Northwest, page 16, UM 2273, submitted July 24, 2003

² Ogdan v. Bureau of Lab., 299 Or. 98, 102, 699 P.2d 189, 191–92 (1985)

³ Joint Opening Brief of Portland General Electric Company and PacifiCorp d/b/a Pacific Power, page 6, UM 2273, filed July 24, 2023

accordingly. For example, the legislature could have stated outright that the Commission should consider “other *related* factors” within the context of the other factors. It refrained from doing so.

On the contrary, reading the provision in a manner that allows the Commission to consider equity in assessing whether to develop additional public interest factors under ORS 469A.420(2)(f) is appropriate and logical. The legislature included equity as a foundational principle in HB 2021. Equity considerations are embedded in the policy statements⁴ and in the framework for the Utility Community Benefit and Impacts Advisory Groups⁵, and are appropriate to be considered as part of this public interest analysis.

B. [Issue I(a)(4)] The Joint Utilities’ argument that comparing initial and subsequent IRPs/CEPs and emissions reports will yield a conclusion as to continual progress fails to recognize the legislature’s identification of continual progress as a separate standard, and the inherent complexities of a continual progress analysis

The necessity of demonstrating continual progress toward the clean energy targets on a year-to-year basis is a fundamental principle in HB 2021. The legislature correctly recognized that the long timeline between the targets, and the challenging work involved in meeting them, requires that we not fall behind in making progress between target years. Indeed, the legislature vested in the Commission an obligation to 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 consumers.”⁶

The Joint Utilities argue that no additional analysis of continual progress is needed in the IRP/CEP cycle:

Given that HB 2021’s emissions targets are not triggered until 2030 (multiple IRP/CEP planning cycles away), the Joint Utilities agree that the typical IRP/CEP acknowledgement processes provide adequate oversight.⁷

On the contrary, it is *because* the first target is not triggered until 2030 that the Commission should ensure a robust continual progress standard.

The Joint Utilities propose that the Commission discharge its obligation to monitor continual progress by simply weighing future IRPs/CEPs against initial IRPs/CEPs and emissions reports. This would ostensibly give the Commission insight into whether continual progress is being achieved. The principal error in this argument is that the Commission would be required to intuit continual progress by piecing together a multitude of factors, including emissions reduction pathways, actual GHG reductions, annual goals, and acquisition of clean energy resources, among other factors. This information resides in various parts of IRPs/CEPs, which themselves are long and complicated documents. Such an exercise would be burdensome for PUC staff and would not necessarily yield insight into continual progress.

A more feasible approach would be for the Commission to direct the Joint Utilities to develop a separate analysis in the IRP/CEP that is dedicated to continual progress. Such an analysis should be both forward and

⁴ ORS 469A.405(4)

⁵ ORS 469A.425

⁶ ORS 469A.415(6)

⁷ Joint Opening Brief of Portland General Electric Company and PacifiCorp d/b/a Pacific Power, page 14, UM 2273, filed July 24, 2023

backward looking to determine if the continual progress mandate is being met, and to ensure accountability on action plans.

The legislature clearly articulated the need for a continual progress standard in two substantive sections, the first backward looking and the second forward looking, in addition to the aforementioned broader reference to continual progress:

1. The IOU must demonstrate it is making continual progress toward meeting the clean energy targets within the planning period⁸, and
2. The IOU must identify actions to make continual progress toward meeting the clean energy targets.⁹

The Joint Utilities seem to pick and choose the substantive provisions of law they suggest the Commission follow, and to ask the Commission to ignore the legislature’s firm and thrice articulated mandate to ensure continual progress is made. The Commission is more than capable of fulfilling this important mandate and could do so in a manner that is not unduly burdensome. A simple and elegant solution would be to require that the CEP set out a section on continual progress with a few condensed and basic components, including:

1. A forward looking analysis, including an action plan for continual progress during the IRP/CEP period.
2. A backward looking analysis, including an assessment of progress.
3. Demand forecasts. Both PGE and PacifiCorp have forecasted *significant* industrial load growth. Meeting these increased demands puts continual progress at risk.
4. Resource availability in order to “true up” the action plans and to ensure adequate nonemitting resources are available to make continual progress over the planning period.

III. Conclusion

The public interest and continual progress standards are both crucial elements of HB 2021. Implementing these standards is essential to the goals of the statute – a reliable and equitable transition to nonemitting electricity. Our success in meeting these goals will require a measure of accountability. The Commission has more than adequate authority to require such accountability through the public interest factors and the continual progress standard.

Dated: August 21st, 2023

Respectfully submitted,

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⁸ ORS 469A.415(4)(e)

⁹ ORS 469A.420(3)(c)(A)