

ORDER NO. 23-059

ENTERED Feb 23 2023

**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.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on February 21, 2023, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



Nolan Moser
Chief Administrative Law Judge



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. RA3

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 21, 2023**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: February 9, 2023

TO: Public Utility Commission

FROM: Caroline Moore

THROUGH: Bryan Conway **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 2273)
Request to open an investigation into HB 2021 implementation issues.

STAFF RECOMMENDATION:

Staff recommends the Public Utility Commission of Oregon (OPUC or Commission) open an investigation under ORS 756.515 into HB 2021 implementation issues and direct the Administrative Hearings Division (AHD) to initiate a scoping process.

DISCUSSION:

Issues

Whether the Commission should open an investigation under ORS 756.515 to consider HB 2021 implementation issues and direct AHD to initiate a scoping process.

Applicable Rule or Law

Under ORS 756.515(1), whenever the Commission believes that an investigation of any matter relating to any public utility or telecommunications utility or other person should be made, the Commission may, on its own motion, investigate any such matter.

Oregon House Bill (HB) 2021 Sections 1-15, codified as ORS 469A.400 to 469A.475, require the state's large investor-owned utilities (IOUs) and electricity service suppliers (ESSs) to decarbonize their retail electricity sales with consideration for direct benefits to local communities.

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ORS 469A.410 sets forth the following emissions reduction targets:

- By 2030, 80 percent below baseline emissions level.
- By 2035, 90 percent below baseline emissions level.
- By 2040, and for every subsequent year, zero emissions.

Among other provisions, ORS 469A.400 to 469A.475 provide direction for the development and review of Clean Energy Plans (CEP) by the OPUC, direction for the Oregon Department of Energy (DEQ) to verify the emissions projections in the CEPs, guidance for the Commission and DEQ in determining compliance with the targets in ORS 469A.410, a process for the PUC to identify whether an incremental cost threshold has been reached, and a process for the Commission determine if a reliability pause has been triggered.

In addition, ORS 469A.415(6) requires the Commission to ensure that the utilities demonstrate continual progress within the CEP planning period toward meeting the clean energy targets and are taking actions as soon as practicable to reduce emissions at reasonable cost to retail electricity consumers.

Analysis

Background

In the fall of 2021, the Commission published an initial HB 2021 implementation strategy.¹ The strategy describes a range of important implementation issues and identifies near-term actions based on time-sensitivity and the ability to leverage existing efforts and agency resources. The strategy also identifies critical, but relatively less urgent, work streams to "monitor and take action as necessary" in the near-term.²

The Commission's first action taken under this strategy was to open Docket No. UM 2225 Investigation into Clean Energy Plans on January 11, 2022. The

¹ The OPUC's HB 2021 Implementation Gantt Chart can be accessed at: <https://www.oregon.gov/puc/Documents/HB2021-Gantt.pdf>.

² For example, the strategy states, "[The] PUC will monitor utility actions and related impacts on reliability and costs, and take actions as appropriate. Given that compliance requirements begin in 2030, the PUC has identified no need to focus near-term resources on compliance-related actions. In particular, given the uncertainty of actions to be taken by the IOUs to meet the emission reduction targets, the status of regional and state resource adequacy discussions, and the status of other unknowns such as multi-state protocol agreements, the PUC believes it is premature to address questions related to the implementation of cost or reliability off-ramps (e.g., how to attribute investments to HB 2021 and what methodology to use for the cost cap). If related issues are raised in the near-term under §§ 9 and 10 in HB 2021, the PUC will respond by initiating the processes identified in the bill. Other PUC activities and utility filings, such as IRPs, RFPs, and resource adequacy showings, will help inform these issues. Also note that the planning activities identified in #1 will include establishing a process to monitor ongoing progress toward 2030, 2035, and 2040 targets."

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investigation was prioritized because the CEP is HB 2021's key regulatory mechanism for implementation of the emissions reduction targets prior to 2030, and the first CEP filings were anticipated as early as March 2023. The UM 2225 investigation focused on identifying near-term guidance that is most needed prior to the first CEPs and resulted in several Commission decisions guiding the development and review of the utilities' first CEPs and associated IRPs.³

The CEP investigation also surfaced important questions of statutory interpretation, which are described in greater detail later in this Staff report. Staff highlighted these issues for the Commission during UM 2225 but explained that the issues were out of scope, and it would not be feasible to address them until the completion of the CEP Investigation. The Commission underscored the importance of addressing these matters of law and policy in a timely manner and encouraged Staff to open an investigation as soon as possible.

Investigation Request

In line with the Commission's urging, Staff proposes that the Commission open an investigation into HB 2021 implementation issues. Staff's goals for this investigation are to identify key implementation issues that are within the Commission's authority to address, and to answer legal questions so that the Commission can address the policy and implementation issues.

Staff proposes that the investigation begin with a time-limited public process to establish a scope. The scoping process will allow consideration of the appropriateness of the issues surfaced in the CEP Investigation for this investigation, as well as any additional issues that are identified in collaboration with the Commission and Stakeholders. It will also allow the procedural elements of the investigation to be better informed.

Staff believes that a contested case, with an emphasis on legal briefing, may be the best format to address these matters of legal interpretation, and could also allow for public workshops and other opportunities to explore policy considerations which are sometimes difficult to separate completely from legal analysis. In addition, Staff may provide the most value to the investigation as an advisor to the Commission, rather than a party to the contested case. However, Staff proposes that these procedural determinations should be made through the public scoping process.

³ See Docket No. UM 2225 wherein Order No. 22-206 requires first CEPs to be filed with next IRP end of Q1 2023; Order No. 22-390 sets expectations for the roadmap of actions in the CEP, community-based resource acquisition targets, and the use of metrics; Order No. 22-446 sets expectations for planning analysis, including modeling scenarios, options for reducing emissions from fossil fuel resources, and data to be included in the first CEPs; Order No. 22-477 adopted Staff's recommendation to move basic procedural rules for the CEP.

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Staff also recognizes that there are tradeoffs with any approach. For example, the approach described above may have issues with broad accessibility and the bandwidth of parties to explore major legal questions concurrently with the review of the CEP. These considerations support Staff's proposal for a public scoping process as the next step.

Scoping Considerations

This section includes an overview of potential issues for consideration in the scoping process. Staff does not intend this overview to bind the scoping process. Rather, Staff seeks to provide context for the request to open the investigation and initiate a dialogue about the scoping process.

From Staff's understanding, the key legal, policy, and implementation questions surfaced in the CEP Investigation include:

- What is the compliance process in emissions reduction target years (e.g., 2030, 2035, 2040)?
- What, if any, compliance determinations will the PUC make in the interim?
- What are the enforcement mechanisms for compliance in the target years and, potentially, in the interim?
- What does ensuring continual progress require?
- What are the requirements for the use of RECs associated with generation attributed to the utility under the HB 2021 emissions accounting methodology?
- Does HB 2021 assign emissions accounting policy to DEQ exclusively?

If there are elements of the UM 2225 guidance that parties believe are legally inappropriate to be included in rules, those issues could be teed up and addressed before substantive CEP rules are considered in a future rulemaking.

Finally, the scoping process should consider additional questions that would benefit from near-term resolution. Staff provides the following examples and looks forward to further discussion with parties:

- What, if any, requirements does HB 2021 place on the Commission related to in-state resource preferences?
- How is the incremental cost cap calculated (e.g., annual v cumulative)?
- What are the implications of regional emissions accounting activities and their timelines?

Conclusion

Staff greatly appreciates the insights and perspectives provided by Stakeholders throughout the Clean Energy Plan investigation. Staff appreciates the Commission's

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desire to address the matters of statutory interpretation surfaced by participants in UM 2225 in a timely manner and proposes that the Commission open an investigation to begin this work. Staff provides a few considerations for the investigation, including the option to conduct a contested case process focused on legal briefing with Staff serving as an advisor to the Commission. However, Staff proposes that the Administrative Hearings Division initiate a scoping process to identify the appropriate path forward in a manner that can be informed by public input.

PROPOSED COMMISSION MOTION:

Open an investigation under ORS 756.515 into HB 2021 implementation issues and direct AHD to initiate a scoping process.