KIPP
KLAMATH INDEPENDENT PUBLIC POWER
to re-energize the Basin community

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February 17, 2016

From: Klamath Independent Public Power

To: Sen. Lee Boyer, Chair, and Members,
Senate Committee on Business and Transportation
Cc: Sen. Doug Whitsett, District 28

Re: **HOUSE BILL 4036 AND THE PUBLIC POWER "POISON PILL"**

Price analyses by the parties who negotiated the Agreement indicate the stated public policy basis for the public power poison pill provisions no longer applies. Those provisions are an unwarranted gift to the IOUs that undermines the right of Oregon communities to public power.

A request by Klamath County citizens to remove the public power poison pill provisions in HB 4036, "Elimination of Coal from Electricity Supply."

Dear Senator Boyer and Committee Members,

We write as members of a non-profit community group in Klamath County seeking to use our right under Oregon Constitution, Article XI, section 12, and ORS 261 to create an Oregon People's Utility District that would own and run our local electricity infrastructure in the community interest.

As currently drafted, HB 4036 contains public power "poison pill" provisions that Pacific Power apparently bargained for at least in part to hinder our local Klamath effort for independent public power.

Below, is KIPP's view of how certain proposed changes to ORS 469A are designed to negatively affect the path of Oregon communities to independent public power. We request the Legislature see the nature of these proposed provisions and remove them, leaving the treatment of newly-forming community-owned utilities as it is in the current

version of 469A. If the Bill is enacted as proposed, the Oregon Legislature will be inadvertently helping the multinational conglomerate that owns Pacific Power use insider, closed-door dealing to undermine a struggling Oregon community's effort for local autonomy, responsibility, and community-based economic development.

Before describing the proposed poison pill provisions, a new development, after HB 4036 was introduced, should resolve this issue in favor of leaving ORS 469A unchanged with regard to new public utilities.

New studies by Renewable Northwest, PGE, and Pacific Power show HB 4036 has no significant impact on future rates, removing the stated need for the poison pill provisions.

On January 27, Renewable Northwest, Pacific Power, and PGE announced their separate analyses have concluded the Investor-Owned Utilities' (IOUs) implementation of the Agreement inscribed in HB 4036 would not significantly affect the electricity rates charged to the IOUs' customers. Pacific Power's announcement specifically states, "Relative to current Oregon policy, HB 4036 results in an average annual cost increase of less than 1 percent between now and 2030."

This is important because the expected higher cost in a switch from coal to renewable energy *was the rationale for including the public power poison pill in the legislation*. The IOUs worried the higher rates associated with renewable energy could drive communities to public power alternatives. Thus, according to Renewable Northwest, the Agreement had to avoid "reverse-incentives" by imposing those same higher costs on new public utilities.

But with the new analyses from the parties themselves, stating the Agreement will *not* significantly raise IOUs' customers' rates, that concern evaporates. In other words, **the stated public policy reason for the public power poison pill no longer exists**. Of course, the remaining, less-public rationale for the poison pill remains: to protect Pacific Power from the rights granted Oregon communities under Or. Const. Art. XI, sec. 12, by undermining Klamath's path to independent public power. We are hopeful the Legislature would not change the law on that basis.

The public power poison pill changes to ORS 469A.052, .055, & .060

Based on Pacific Power's statements about KIPP, as well as its recent responses to municipalization efforts in Klamath Falls and Millersburg, we must assume a new Klamath P.U.D. will acquire the local infrastructure without Pacific Power's consent.

Several changes to ORS 469A proposed in HB 4036 apply specifically to new "consumer-owned" electric utilities that "acquire service territory" without the incumbent

IOU's consent. The changes to 469A.052, .055, and .060 have the specific purpose of making the initial electricity rates charged by such a public utility significantly more expensive, possibly prohibitively so. This is accomplished by limiting a new public utility's initial ability to rely on relatively cheap BPA electricity, requiring it to start from year 1 with a significant chunk of more expensive "renewable energy." (BPA's zero-emission hydropower does not count as renewable under the law). The specific issue in the proposed changes to the law is the *timing* with which a new public utility would have to add qualifying renewable power to their supply.

Here is how the current law works when applied to a new community-owned electricity utility that takes over any IOU territory without the IOU's consent: Under 469A.055(5), that new public utility does not get the RPS exemption from .052 that other "small electric utilities" do. Instead, under .055(6), a new without-consent public utility falls under the large electric utility RPS defined in .052(3). This is the same RPS that applies to a small electric utility that becomes large, or one that starts using coal-fired electricity. If one of these triggering events happens, the utility falls under the .052(3) RPS and must start a process of phasing in qualifying renewable electricity over a 20-year period, resulting in an electricity supply of at least 25 percent qualifying electricity. The initial requirement (.052(3)(a)) is five percent qualifying electricity after four years. This is the scenario we expect to apply to a new People's Utility District in Klamath.

Under HB 4036's changes to ORS 469A.052, .055. and .060, a new community-owned electric utility would no longer fall under the phased-in RPS in .052(3), but would instead be "subject to the renewable portfolio standard that is applicable to the [IOU] electric company . . . beginning in the calendar year following the acquisition." (469A.055(5), as amended.) In other words, whatever RPS percentage the IOU is adhering to would immediately apply to a new public utility. Until 2019 the requirement is 15 percent, 20 percent starting in 2020. This provision would apparently apply until 2025.[1] From 2025, any community-owned public utility falling under .052 would be required to use 25 percent qualifying electricity (.052(d), as amended). So, apparently, under both the

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1 This schedule seems related to the closing window for new public utilities in the Northwest to get Tier 1 rates from BPA. When that window closes around 2025, the cost-benefit of BPA power will presumably be much reduced. Pacific Power appears to be trying to run out the clock on Tier 1 power for Oregon communities. The Oregon Legislature's goal, on the other hand, should be to facilitate the move of as many communities as possible onto the energy security of Tier 1 BPA power before the window closes or Washington State communities fill the few remaining slots.

current and proposed laws, a new public utility's RPS would top out at 25 percent. But under current law, it has 20 years to get there. Under the proposed changes, a new public utility would have to start at 15 or 20 percent and get to 25 percent by 2025.

This difference is the poison pill.

Under current law, a new public utility can initially take the full benefit of BPA's cheap hydropower and use those savings to become established and start preparing to meet the phasing-in RPS. Under the new law, a new public taking control of the local infrastructure in, say, 2020, would have to *start out* at 20 percent qualifying renewable electricity. Given the financing required to start a new community-owned utility, the added cost of 20 percent qualifying electricity would likely make community ownership cost prohibitive.[2] Oregon communities exploring public power should not be handicapped in this way. RPS requirements for new public utilities should remain phased in as they are under the current law (.052(3)) – and as they have been for Pacific Power (.052(1)).

The best interest of Oregon communities is to retain ORS 469A's current treatment of consumer-owned utilities

It makes sense that Pacific Power wants to use the law to alter our path and make independent public power cost prohibitive. But we do not believe that is the conscious aim of the Oregon Legislature. That is why we are hopeful you will remove the changes relating to the treatment of "consumer-owned utilities" in HB 4036's revisions of ORS 469A.052, .055. and .060.[3] Happily, you are not bound by back room deals and are free to write the law so Pacific Power does the right thing without making it harder for Oregon communities to put into action our right to public power under Article XI, section 12, of the Constitution.

We appreciate your time and consideration, as well as your work for the people of Oregon.

"***Alis Volat Propriis***"

Sincerely,
Art Martin
for KIPP

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2 This is ironic to the extent the goal of the Bill is reducing Oregon's electricity-based carbon footprint. A new Klamath P.U.D. using BPA hydropower would have virtually zero carbon footprint; a Klamath remaining dependent on Pacific Power would still be using gas-fired electricity – 50 percent as bad as coal. We can do better on our own.

3 Another provision of HB 4036 involving new public power utilities, Sec. 14 of the Bill (Acquisition of Electric Company Service Territory or Property), does not appear to be a poison pill, but a reasonable protection of an IOU's stranded costs, as determined by the Public Utilities Commission.