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

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February 17, 2016

To: Sen. Lee Beyer, Chair, and Members,
Senate Committee on Business and Transportation
From: Klamath Independent Public Power
Cc: Sen. Doug Whitsett, District 28

Re: **FOLLOW-UP on HOUSE BILL 4036 and THE PUBLIC POWER "POISON PILL"**

Dear Senator Beyer and Committee Members,

This is a follow-up to the KIPP memo distributed earlier today, written after observing the Committee's hearing on HB 4036. I apologize if I am being a pest, but these issues are life or death for our grassroots community movement for independent public power.

The testimony of Legislative Counsel Mark Mayer before your Committee indicates the poison pill for new public utilities is significantly more deadly than we thought. Specifically, his opinion that a new "without consent" public utility would be placed in the IOU's stair-step RPS virtually guarantees no Oregon communities would be able to form public utilities for the foreseeable future. I do not believe that is the intent of the Legislature and am hopeful the Bill will be amended by your Committee to remove the poison pill provisions.

Since Mr. Mayer drafted the language, he presumably knows what is intended, but it is worth noting the relevant language is ambiguous. Under Section 5 of HB 4036-A, the new section 469A.055(5)(a) (page 7, lines 8-13) states that a new "without consent" public utility would be "subject to the renewable portfolio standard that is applicable to the electric utility from which service territory was acquired . . ." That could be read as putting the new public utility generally into the large utility RPS defined in 469A.052, not a specific subsection. On this reading, once within that section, the new .052(d) (page 2, lines 43-45) would appear to top out the RPS for a public utility at 25%, even if the

without-consent takeover occurred after 2025. That is the interpretation our earlier analysis was based on.

But if Mr. Mayer is correct that the proposed language moves a new public utility into the stair-step provisions comprising subsections (e) through (h) of 469A.052, requiring a new public utility get to 50% qualifying energy by 2040, the right to public power in the Oregon Constitution will become a meaningless relic. We know that is Pacific Power's desire -- their spokespeople explicitly and repeatedly say public power's "time is past." We, on the other hand, believe public power is an important, living constitutional right that can make a significant difference for our struggling rural community in the years ahead. We are hopeful the Legislature shares our view, rather than Pacific Power's.

The lack of any stated rationale, at least in public, for the poison pill provisions is striking. The only apparent reasons are the financial interest of the renewable energy industry and to protect the IOUs from Oregon communities' use of our right to public power under Oregon Constitution, Article XI, section 12, and ORS 261. (Protection of the IOUs also appears to motivate Section 14, which seems reasonable but has nothing to do with transitioning Oregon off coal-based electricity. In other words, Section 14 provides direct evidence that parts of this Bill were written for the IOUs. And that might be okay if the Bill did not undermine the rights of Oregon communities as do Sections 5 and 6.)

The fix to the poison pill provisions is simple: leave the treatment of new public utilities as it is under the current ORS 469A. This would entail striking the changes proposed to 469A.055(5) in Section 5 (page 7, lines 8-15), and eliminating the changes to 469A.060(3) in Section 6 (page 7, lines 35-44).

These simple amendments will ensure Klamath and other Oregon communities in the future will not have our right to independent public power undermined by a back-room, insider deal.

Thank you again for your consideration.

Sincerely,
Art Martin
for KIPP