

## State utility regulators were silenced by governor on big energy bill



From the Desk of  
Senator Ted Ferrioli

A bill moving through the Legislature would force Oregon's biggest utilities to abandon coal-fired plants by 2030 and move to 50 percent renewable power by 2040. (*Jamie Francis:Staff, 2013*)

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By Ted Sickinger | The Oregonian/OregonLive

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State utility regulators say they were shut out when it came time to craft one of the most [far-reaching pieces of energy legislation](#) the state has ever seen.

And when members of the Oregon Public Utility Commission tried to voice their concerns publicly, the governor's office muzzled them, according to internal emails and texts obtained by The Oregonian/Oregon Live through a public records request.

The candid communications between commissioners, their staff and the governor's office provide an inside view of why regulators think the anti-coal, pro-renewable energy bill sailing through a short session of the Legislature is a sweet deal for utilities, bad for consumers and ineffective for the environment.

They indicate that the polite conversations about the bill taking place in public hearings belied strong concerns beneath the surface. And they suggest that while Gov. Kate Brown may be taking no public position on the bill, her staff has worked behind the scenes to ease its passage.

"This bill is absolute crap... a shell game that will result in no actual emissions reductions and higher rates for Oregon customers," John Savage, the longest-serving PUC commissioner, told

a fellow utility regulator from Montana in a Jan. 6 email. "And then the utilities get to stuff our decisions they didn't like down our throats."

He added in a followup: "And the governor's office thinks we have the gall to even critique the damn thing and are questioning who we are and what we do."

The governor's office said Tuesday that the PUC was initially urged to wait for an actual bill draft before commenting, but then encouraged to **actively engage in the public process**.

There is little record of that encouragement in the emails, however, and little evidence the commission received the message.

House Bill 4036, which backers have dubbed the Clean Electricity and Coal Transition Plan, passed out of the Oregon House Monday on a 39 to 20 vote, and is now headed for the Senate.

The legislation's main provisions would have the ratepayers of the state's two largest utilities, Portland General Electric and Pacific Power, stop paying for electricity generated at out-of-state coal-fired power plants by 2030. It would also mandate that utilities serve half their customers' demand with renewable energy by 2040.

The bill would effectively have Oregon ratepayers abandon coal plants they helped pay for - some before the end of their useful lives - then ensure utilities don't replace coal with natural gas. The overriding aim is to reduce the state's greenhouse gas emissions.

The bill was crafted in closed-door meetings between utilities, environmental groups and renewable-energy advocates. Those discussions came after environmental groups failed to move a "Coal To Clean" bill through the Legislature in 2015, then started gathering signatures to put their agenda on the ballot this November. Utilities say they entered the discussions to craft a more flexible and affordable compromise to the ballot measures, which environmental groups have agreed to drop if HB 4036 passes.

The discussions gathered momentum last November. And while the commission wasn't a party to them, it quickly got wind of the substance. Commission chair Susan Ackerman told her chief policy adviser, Jason Eisdorfer, in a Dec. 1 email that she "hated everything about both the ballot measures and what I am hearing about the discussions the utilities are having" with the environmental groups.

The commission wasn't the only player shut out. Consumer-owned utilities, independent power producers and industrial ratepayers weren't at the table, either. The state's main residential ratepayer advocate, the Citizen's Utility Board, was invited and signed off on the deal, an endorsement the bill's backers have loudly touted.

But the board's close ties with environmental and renewable groups, and its routine support of their agenda, has many questioning its ability to serve as an independent arbiter. Ackerman told Eisdorfer that because of the "financial heft" of those groups, she "did not think CUB was in a position to represent consumers."

Ackerman hoped the utility commission could play that role, and that the governor would publicly insist on an inclusionary process to craft an emissions-reduction plan for the 2017 Legislature. She asked for a 15-minute meeting with the governor in early December, and the commissioners started circulating talking points for such a meeting.

Chief among them: That the plan "could be very expensive to consumers," but do little to reduce global-warming emissions because the out-of-state coal plants would continue running, while Oregon ratepayers would be forced to buy more expensive replacement power.

The talking points said ratepayers deserved more emissions-reductions bang for their buck, and suggested the more sustainable and cost effective policy would be a **carbon tax or carbon cap-and-trade plan** – an approach Oregon utilities don't support.

"Just accepting what the utilities and the (environmental groups) negotiate is very seductive. But it is not the right policy and not in the public interest," the memo said.

Ackerman repeated her request for a meeting with the governor in mid-December, but didn't get one. Instead, she and Eisdorfer met Dec. 16 with the governor's energy policy advisor, Ruchi Sadhir, and chief of staff, Kristen Leonard. At that meeting, they reiterated their concerns.

The following week, the commission met with the parties to the negotiations and learned the full extent of the deal. They were shocked to learn that it included what they felt was a goody bag of pro-utility provisions that "would virtually eliminate any potential competition from consumer-owned utilities and competitive energy service suppliers," and change or revisit policies set by the commission, "to the potential detriment of customers."

"We have to talk," Eisdorfer wrote to Sadhir on the day of the meeting. "Things went from bad to worse. Met with group today and it did not go well at all. A letter is coming from the chair."

The letter, however, was never sent. Sadhir asked Ackerman to hold off sending anything until Leonard, the chief of staff, could talk to her. And, Ackerman said, Leonard was not returning her calls and emails.

Meanwhile, Ackerman asked Bob Jenks, the executive director of CUB, why he thought the legislation was in the public interest.

Jenks responded with the lengthy email Dec. 30 describing the legislation as the lesser of two evils compared to the ballot measure. He said it would settle the anti-coal issue – a sentiment that polls well in Oregon – freeing the Legislature to adopt a broader carbon-emissions policy in the future.

But he had reservations about the 50 percent renewables mandate, as it might encourage utilities to build expensive renewable resources they didn't need while ignoring available opportunities to purchase hydropower under long-term contracts.

Jenks said leaders of the environmental and climate groups weren't able to separate good ideas from bad, and "the utilities are willing to accept unhelpful ideas" as long as they can lock in rate impacts. Ultimately, he said CUB was able to fend off a series of bad policy proposals and end up with a relatively clean bill that gave the public what it wanted while minimizing harmful consequences.

"I may feel this is in the public interest and is better than the likely alternative," Jenks wrote, "but I don't feel good about it, and I really hate the process that led to this. CUB's role in the process is open to criticism. We need to examine it ourselves and we will."

Lacking traction with the governor's office, commissioners and their staff dove into their own analysis of the proposed bill language, a copy of which they received Jan. 4. "We need to present our own list of fixes that we can offer the legislature," Ackerman told Savage and Eisdorfer.

The commission staff rushed to develop a point-by-point matrix describing the bill's main provisions, the way it changed current policy law or policy and specific problems and potential fixes they perceived.

Two days later, when supporters issued a press release describing their historic agreement, the commission was ready to publicly outline its own position. Ackerman e-mailed a list of talking points to the third commissioner, Stephen Bloom, and he cautioned that she might get some pushback from the governor's office.

"They don't get to tell us what to say," she retorted. But when she emailed the same list to the governor's office, the response was quick:

"Please hold off providing comment until we discuss further here," Sadhir replied. "Thanks!"

Savage was livid. "Well, it looks like we're going to be silenced on the whole thing," he wrote in an email to a former PUC commissioner. "I put together a list of talking points for a talk with the Oregonian but we were told we couldn't talk."

"We are getting steam rolled," Bloom later told Eisdorfer.

In the end, the Public Utility Commission provided no public comment. Ackerman told The Oregonian/OregonLive on Jan. 6 that she didn't have permission from the governor's office to speak about the bill.

The governor's office declined to address questions at the time about the PUC's enforced silence. Brown's office, though, issued a statement that said charting a course to greenhouse gas reductions would require compromise. "Let's do it in the Oregon way, by working together," it said.

Sadhir wrote back to Ackerman later that evening, however. She said the governor's office wanted to "continue to encourage agency expertise to inform the legislative process in coordination with our office ... to provide executive branch perspective on bills." But she said the bill was only a proposal for which the bill hadn't been released, and more discussion was warranted.

"Thank you for your early perspectives on this proposal's written provisions... The concerns you raise are appreciated and should be analyzed further."

Ackerman forwarded the email to the commissioners and Eisdorfer, saying she knew Sadhir was only doing her job. "But this is quite a load of (expletive)," she wrote. "An email made for FOIA request and CYA."

Indeed, the governor's office, when asked this week about its seemingly consistent efforts to downplay and silence the PUC's concerns, referred to exactly this email.

"As the records indicate, an initial request to wait for an actual bill draft was followed shortly thereafter by encouragement to actively engage in the public process, which the PUC clearly did without any objection from the Governor's Office."

The commission did eventually hold its own, hurried-up public meeting on Jan. 29 to grill the utilities on the plan's specifics. That was five days before the beginning of the legislative session, however, and the utilities had not responded to the detailed information requests issued by the commission. In the end, the hearing was largely a walk through of the high-level power points the utilities' lobbyists had prepared for the occasion.

A similar script played out when Eisdorfer testified for the PUC at the crowded public hearings on the bill in the House Committee on Energy and the Environment. He started out by noting that the PUC didn't support or oppose the bill. He offered specific input on weaknesses in the legislation, which was sometimes over the head of the committee members. And it had little impact on the bill.

"This is complicated stuff and we were left out of the process on purpose," Eisdorfer said last week. It involves "significant changes changes to regulatory construct in Oregon, and they never ultimately bothered to talk to us."

It's unclear whether the PUC's concerns will hold more sway in the Senate, where the co-sponsor of the bill and chair of the committee where it will be heard is Sen. Lee Beyer, D-Springfield, the former chair of the Oregon Public Utility Commission.

- Ted Sickinger

tsickinger@oregonian.com

503-221-8505; @tedsickinger