From:	Phil Carver
To:	JCCR Exhibits
Subject:	Two proposed amendments to HB 2020
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Below are two proposed amendments to HB 2020 as introduced. An explanation is provided with each proposed amendment. I am the same Philip Carver who submitted written testimony on HB 2020 on Feb. 21, 2019 and oral testimony on Feb. 18. As noted then I have extensive professional experience in matters related to HB 2020

Proposed amendments to HB 2020 (as introduced)

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PROPOSED AMENDMENT #1

Page 8, lines 40-44

Delete all of

[(b) For purposes of determining the compliance obligation for a covered entity that is an electric system manager, electricity scheduled by the electric system manager that is generated from a renewable energy resource and acquired without acquiring the renewable energy certificate associated with the electricity shall be considered to have the emissions attributes of the underlying renewable energy resource.]

Substitute:

(b) The rules adopted in Sec 9 for determining the compliance obligation for a covered entity that is an electric system manager shall ensure to the maximum possible extent that the greenhouse gas emission characteristics of each megawatt-hour electricity used for compliance are used no more than once to comply with any governmental regulation regarding greenhouse gas emissions or for any voluntary claim regarding such emissions from consumption or use of that megawatt-hour. A megawatt-hour of zero or low-emissions electricity that is renewable may also be used for compliance with a renewable generation requirement for the U.S. or in this or any other U.S. state or Canadian province, such as provided in ORS 469A. The director should seek to prevent double-counting of zero or low-emission megawatt-hours through coordination with other states and provinces that are part of the Western Electricity Coordinating Council, or its successor organization, or are part of any coordinated enforcement or allowance trading under Sections 7 through 26 of 2019 Act.

Explanation:

There is potentially serious problem with the use of "REC-less" renewable energy for compliance with HB2020. The problem is that the zero-emission attribute of a MWh of renewable power could be sold twice for different purposes. That would be fraud.

There is no problem with the apparent intent of Sec. 8(4)(b) as introduced that would allow a renewable energy certificate (REC) to be used for renewable portfolio standard (RPS) compliance

and also allow for the use of the zero-emission attribute of that MWh for cap and trade compliance. California allows a REC to be used for RPS and the zero-emission character to be used for CA cap-and-trade compliance. Compliance with Oregon RPS under ORS 469A should be structured in the same way. It seems likely that that California and Oregon will be able to work out a tracking system to assure that the emission attribute from a MWh of renewable power is not used for compliance in both OR and CA.

The problem is if the RECs from a resource build pre-2021 were presold for the period after Jan. 1, 2021. These RECs are a registered financial instrument with WREGIS that, by the rules of WREGIS, contain **all** the attributes of the renewable energy, including any emissions attributes. People and organizations buy these RECs to offset their carbon emissions. This is one of the major reasons these RECs have substantial market value.

Note that the ability of the Office of Carbon Policy to retire allowances under Sec. 14 (2) for "the reserve for voluntary renewable electricity generated" to prevent double-counting related to voluntary REC purchases would apply only to MWhs associated with "generating facilities that begin operations on or after January 1, 2021." In no way can the Office retire allowances to cover voluntary REC purchases from generating facilities that began operations before January 1, 2021. **And in any case** it could not prevent the owner of such a resource from benefiting from fraudulently double-selling the zero-carbon attribute to the voluntary buyer of the REC and to the entity that uses the same MWh of renewable energy for compliance with Oregon cap-and-trade. The entity using the MWh of zero-emission renewable power could, of course, be the owner of the resource, if that entity had a compliance obligation under Oregon's cap-and-trade. This action would also be fraud.

What HB 2020 as introduced would do is allow the owners of these resources to sell this zero-emission attribute twice -- Once to a voluntary REC buyer and again to a regulated entity for compliance with Oregon's cap-and -trade system. In this case the State of Oregon would facilitate a clear case of premeditated fraud. The same environmental attribute of a MWh will have been used by two different entities for different purposes. The National Association of Attorneys General and the U.S. Commerce Department have written guidelines and rules, respectively, to prevent this kind of fraud.

Proposed Amendment #1 clarifies the text of HB 2020 while retaining the apparent intent to allow the same MWh of renewable power to be used for compliance with both the HB 2020 and ORS 469A.

PROPOSED AMENDMENT #2

Pages 11 and 12

Lines 41-45 and lines 1-5

calendar year 2021 and for each calendar year until and including 2030 must represent an amount equal to 100 percent of the forecasted electric company~~'s forecast~~ emissions

associated with the generation of electricity to serve the load of the electric company's retail electricity consumers in Oregon for the calendar year for which the allowances are directly distributed, *as approved by the Public Utility Commision*. For purposes of this subsection, the forecast of emissions must be ~~based on information contained in the most recent integrated resource plan filed by the electric company and acknowledged by order by the Public Utility Commission or in any updates to the integrated resource plan filed by the electric company with the commission, as of~~ approved before January 1, 2021~~.~~

Explanation:

As drafted the language of Sec. 15(1) would not provide any oversight by the Public Utility Commission regarding the forecast of emissions used to provide free allowances to each electric company. It would simply use the "electric company's forecast." The electric companies have a fundamental conflict of interest for producing a high forecast that provides them more free allowances. The current integrated resource plan (IRP) process uses multiple forecasts of electricity sales and emissions. No single forecast has primacy. The low, medium and high forecasts are all used to develop a resilient and robust action plan for the IRP. The Commission does not acknowledge any specific forecast. It only acknowledges the electric company's action plan, as amended by the Commission.

The proposed amendment #2 clarifies that the emission forecast used to allocate free allowances to each electric company is the Commission's not the company's. It requires, as does the text of HB 2020 as introduced, that the decision about the amount of free allowances be finalized by Jan. 1, 2021.

In contrast to the text as introduced, proposed amendment #2 does not put any constraints on the Commission approval process other than the Jan. 1, 2021 deadline. If the Commission chooses it could use the IRP process to specify an emissions forecast.

With this amendment the Commission could determine that a different process would better address this issue. For example the current IRP process is not a contested case. Parties cannot cross-examine witnesses, as is common in cases that set utility rates. The Commission might want to use a contested case process at the conclusion of an IRP process to better determine factual elements related to the forecast of emissions. Proposed amendment #2 would allow that.