

MEMO



TO: Chair Marsh and members of the House Interim Committee on Climate Energy and Environment
FROM: Michael Grant, PUC Executive Director
DATE: September 29, 2023
RE: PUC Presentation at HICCEE Committee on September 27, 2023

I am writing to follow-up on two matters that arose during our presentation before the HICCEE on the implementation of HB 2021 and our review of the utilities’ initial Clean Energy Plans (CEPs). As you heard, a few legislators raised concerns about our comments describing the complexities and uncertainties inherent in the CEPs and the PUC’s review of them. The legislators’ concerns were focused on whether PGE and Pacific Power were on track to meet the initial HB 2021 target to reduce baseline emissions by 80 percent by 2030. Legislators also asked questions about whether the PUC’s decision to acknowledge the CEPs are appealable.

First, I would like to clarify that the PUC will be able to provide more definitive information about whether PGE and PacifiCorp are on track to meet the 2030 targets following the conclusion of our pending review of the CEPs. As you are aware, HB 2021 requires PGE and Pacific Power to develop CEPs concurrent with each integrated resource plan (IRP), which are generally filed in two-year cycles. Earlier this year PGE and Pacific Power filed their initial IRPs/CEPs and laid out their current plans for meeting HB 2021’s 2030 emissions reduction requirement.

The PUC is currently analyzing the plans and comments from stakeholders. The analysis and comments show that, while the utilities are making good progress, varied and complex issues and uncertainties exist that highlight the challenges in meeting HB 2021’s ambitious targets. Our review of the initial CEPs will help the utilities, the state, and the PUC focus on the most important actions to successfully implement HB 2021.

The PUC will decide in early 2024 (January for PGE; April for PacifiCorp) whether the utility CEPs met the requirements of HB 2021, including whether—despite continuing uncertainties—they are taking reasonable actions and making continual progress toward the 2030 target. At that time the PUC will be happy to provide updated information to the HICCEE Committee with our initial conclusions on the first CEPs.

Second, I want to correct information I provided regarding whether PUC orders related to the CEPs are appealable. Our governing statutes provide that all *final* orders of the PUC may be appealed. Order reached through an open meeting process are appealed to circuit court, while contested case orders are appealed to the Court of Appeals.

The PUC does not consider its decisions whether to “acknowledge” an IRP to be final orders subject to appeal, as those decisions determine only whether the utilities’ proposed action items are consistent with least-cost planning principles and related guidelines. This acknowledgment provides the utilities with guidance to consider in making resource decisions that, ultimately, rest

with the company. We have repeatedly made clear that a decision to acknowledge or not acknowledge an IRP or RPF action does not constitute ratemaking—the question of whether a specific investment decision ultimately made by a utility in its planning process was prudent will be independently examined by the PUC in a subsequent rate proceeding.

Recent decisions in both the Deschutes and Marion Circuit Courts agreed that a PUC order acknowledging an IRP, as well as other interim decisions related a utility’s request for proposal (RFP) issued to acquire a new resource, are not final orders under the Administrative Procedures Act. These decisions have been appealed to the Court of Appeals.

The PUC has not yet fully examined whether acknowledgment orders on CEPs will be treated like IRP orders. This depends, to some degree, on how the PUC interprets the pre-2030 requirements to demonstrate continual progress. I apologize to you and the committee members for stating that the PUC’s orders on the CEPs would be appealable when, in fact, that remains an open question. We have opened a separate proceeding, docket UM 2273, to consider questions of HB 2021 statutory interpretation that will inform its treatment of CEP orders, and the PUC order issued at the conclusion of UM 2273 will be appealable.

Please let me know if you have any questions or would like additional information.

Best,

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