

Follow-up questions and responses

From the House Interim Committee on Climate, Energy, & Environment meeting on Monday, September 23, 2024 (11:30 AM – 2:00 PM)

New responses (as of Dec. 12/9/24):

Energy Siting Overview: State and Federal Jurisdiction

Rep B Levy's question: How many times have utilities had to move power lines based on protection of ground squirrels?

Response from Idaho Power: Idaho Power adjusted approximately 5 miles of new road to avoid Category 1 Washington Ground Squirrel habitat in Morrow County, based on transmission line routes/route alternatives presented in the Application for Site Certificate.

Recycling Modernization Act (RMA) Update

Stakeholder questions:

Additional RMA Questions

November 19, 2024

1. What is the total estimated cost to implement the program? According to previous discussions of this concept, it has been said that once the implementation costs are paid the ongoing costs will be much less. What is the estimate of the reductions possible and what is the guarantee that the costs will be decreased?
2. Some of the justifications for this program is "inefficiencies" in our existing systems. What are some examples of those inefficiencies and how will this program address those? With the additional investments what is the return on that investment versus our current system and who benefits from that return?
3. Will existing haulers need to increase rates through this expansion and/or face more competition from new haulers in the same area?
4. What communities are covered by this expansion and what is the calculation for the cost to provide these services versus the benefit? i.e., amount of material recycled versus being disposed of in landfills or other methods?
5. What products are covered, how was the list determined and do markets exist for use of these products if they are returned? If markets do not currently exist what plans are in place to find markets, create new processes or otherwise complete the cycle? Please provide timing for implementation of control of different products based on the availability of markets.
6. Is newsprint covered? If so why given how much is already recycled and the shifting nature of the newspaper industry?

7. Are pulp mills that currently rely on recycled materials and other manufacturers using mostly recycled materials required to pay into the program? What assurances do those have regarding any disruption to the materials they need due to how the materials are gathered and distributed?
8. What are the elements of this program that will ensure the success which is already occurring in many communities is not disrupted by the changes and/or making is seem harder for the public to comply?

Responses from Abby Boudouris (Oregon Department of Environmental Quality, DEQ) and Kim Holmes (Circular Action Alliance) to the questions above are posted on OLIS here:

<https://olis.oregonlegislature.gov/liz/202311/Downloads/CommitteeMeetingDocument/287036>

Previously answered questions (circulated on 11/19/24):

Introduction to Grid-Enhancing Technology (GETs) and Reconductoring for Electric Transmission Lines

Rep. Osborne's questions: He wants more information about GETs from the presenters. He wants to know more about the monitoring system (e.g., is it wireless?), and would like to know if the companies operating GETs become liable for not catching a wildfire if they start.

Responses from Eli Asher on Wednesday, October 2, 2024 4:38 PM:

Representative Osborne,

I'm reaching out regarding your request for additional information following our panel on Monday about GETs and advanced reconductoring. Thank you again for the great questions, and we are happy to have any follow-up conversations with you if we can provide further information or discuss the technology in greater detail. Please see below for additional information, and feel free to reach out with any further questions or comments.

[Overview of Dynamic Line Ratings](#)

[Overview of LineVision's Technology](#)

[Overview of Advanced Reconductoring](#) - this link directs you to several documents that provide you a deeper dive into the technology

With regard to your comment on liability, sensor-based DLR can provide utilities with data (that may include conductor sag, vegetation clearance, or more localized wind speed information) that helps increase visibility into assets and field conditions that the utility can use in their risk assessment for wildfires. As the utility retains control over the grid, it is entirely up to the utility how this data will inform their wildfire risk management approach. LineVision's sensor-based technology does not increase wildfire risk, and while we cannot speak for all GETs providers, LineVision does not make any claim, explicit or implied, that our technology has the ability to catch a wildfire before it starts.

I hope this helps, and again, please don't hesitate to reach back out with any questions.

Climate Protection Program (CPP) Update

Rep. Andersen's questions:

1. Does the CPP involve/include other noteworthy laws the Legislature has enacted? Can you share more information about this overlap/multiple statutes piece?

2. If the program is supposed to drive near-term emissions reductions, how will that work if companies are rewarded with a large supply of compliance instruments at the beginning of the program?

Responses from Aeron Teverbaugh, (Oregon Department of Environmental Quality, DEQ), on Thursday, October 17, 2024:

- 1. Does the CPP involve/include other noteworthy laws the Legislature has enacted? Can you share more information about this overlap/multiple statutes piece?**

The Oregon Legislature has acted twice to provide direction and support for the Climate Protection Program. The Emergency Board voted to allocate funds to DEQ “to be used for rulemaking and other actions with the goal of reducing greenhouse gas emissions across all emission sources, including point sources, natural gas emissions and transportation fuels” in March 2020.¹ That provided the resources to draft the original Climate Protection Program. The adoption of HB 3409 (2023) directly supported the structure of the program by incorporating the Community Climate Investment program element in statute, and providing authority to the Environmental Quality Commission to “establish by rule a fee to be paid by community climate investment entities”. The Legislature specified that funds from those fees “may be used only to pay the costs of administering and overseeing those portions of the Climate Protection Program related to community climate investments.”

The Legislature has also enacted significant climate programs that complement the CPP. One such example is the highly successful Clean Fuels Program. The Legislature gave the EQC authority to adopt a Low Carbon Fuel Standard to reduce greenhouse gas emissions from Oregon’s transportation fuels. Transportation is Oregon’s largest sector GHG emissions and also the largest source of emissions covered by the CPP. The electricity sector is Oregon’s largest sector of emissions not covered by CPP. The Legislature has directed Oregon’s largest electricity utilities to reduce emissions from the power they serve Oregonians down to 0 by 2040. The pairing of these two programs sets the majority of Oregon’s carbon footprint under enforceable and declining limits. The continuing support of the Oregon Climate Action Commission also complements the CPP. HB 3409 (2023) expanded the Climate Action Commission and requires it to periodically evaluate the state’s greenhouse gas emissions reduction goals and timeline.

- 2. If the program is supposed to drive near-term emissions reductions, how will that work if companies are rewarded with a large supply of compliance instruments at the beginning of the program?**

The established limit on greenhouse gas emissions from the regulated fossil fuels declines annually on a preestablished path towards milestones in 2035 and 2050. By 2035 limits will have declined by 50% and by 2050 they will represent a 90% reduction. Because compliance instruments in Oregon are finite, becoming increasingly scarce, companies are incented to make early actions to reduce their emissions. This incentive arises not just because of the scarcity but because the program allows companies to save, or “bank,” the compliance instruments for use in future years.

¹ March 9, 2020 Emergency Board meeting. <https://olis.oregonlegislature.gov/liz/20191/Committees/EB/2020-03-09-10-00/Agenda>

We saw emissions reductions during 2022 and 2023, the first two years in which the prior CPP was in effect. During those first two years, regulated parties collectively (if not every company individually) reduced their emissions significantly below what was required over that timeframe. DEQ's latest proposed rules recognize those early reductions by distributing additional compliance instruments to fuel suppliers to reflect the instruments those companies would have been able to save for later use under the previous program. While there may be sufficient instruments at the outset of the re-adopted program to continue business in the initial years making relatively modest reductions, there is still an incentive to make early actions to shore up medium- and long-term compliance strategies for the businesses.

Rep. Owens's questions:

1. What happens to fuel suppliers under this rule who buy community climate investment credits or compliance instruments if the program is invalidated again? Do they get their money back?
2. What assurance is DEQ giving to the regulated community that their investment will be honored?
3. Did anyone make a transaction or significant investment like this under the prior program? If so, how were they treated?
4. I understand the compliance instruments will be more expensive than other states. Is it accurate that the costs to utilities, suppliers, and ultimately customers will be higher than Washington and California? Follow-up: Why did DEQ design a different program than established programs like CA and WA?
5. The program will generate several billion dollars. Without legislative oversight, what are the mechanisms to ensure appropriate and effective use of those funds?

Responses from Aeron Teverbaugh, DEQ on Thursday, October 17, 2024 1:05 PM

From: TEVERBAUGH Aeron * DEQ <Aeron.Teverbaugh@deq.oregon.gov>

Sent: Thursday, October 17, 2024 1:05 PM

To: Pischke Erin <Erin.Pischke@oregonlegislature.gov>

Subject: RE: request: Climate Protection Program Questions

- 1. What happens to fuel suppliers under this rule who buy community climate investment credits or compliance instruments if the program is invalidated again? Do they get their money back?**

When the program was invalidated by the Court of Appeals, all elements of the program were voided. One element of the proposed CPP rules is to allot liquid fuel suppliers with additional credits to reflect what they would have been able to save for future compliance periods.

Regarding trades of compliance instruments between regulated parties, the proposed program is designed to minimize DEQ's role to only a tracking function and to not have DEQ engage in excessive oversight and regulation of such transactions between private business entities. DEQ is confident that such parties are capable of negotiating contracts that include appropriate conditions to determine the

contracting parties' relationship should the program again be invalidated in a court challenge. To the extent such conditions are not included in a contract to trade credits, that would be the choice of the contracting parties involved in the trade.

As previously demonstrated, if rules are completely invalidated by a court, no element of the invalidated rules, such as CCI credits and compliance instruments, would survive the ruling.

2. What assurance is DEQ giving to the regulated community that their investment will be honored?

DEQ recognizes the importance of regulatory certainty for regulated parties as they craft long-term compliance strategies that work for their businesses. This is especially true for long-term, market-based programs like the CPP. To the extent it is under the agency's control, it will continue to defend the program from lawsuits, but cannot foretell future court actions and the impact they may have on the regulated community.

DEQ is committed to working with future CCI third parties to assure that when companies opt to fund CCIs the funds are being used to achieve the stated objectives of the CCI program. DEQ has proposed that companies' investments in CCIs will be used for directly reducing emissions in Oregon to benefit communities across the state. DEQ has proposed that these investments be prioritized to be in and for the benefit of Oregon's environmental justice communities.²

It is also worth noting in the context of this question, that the proposed new program rules contain an explicit provision recognizing the significant emissions reductions achieved by companies regulated under the previous CPP. This provision provides a one-time initial distribution of additional compliance instruments to regulated fuel suppliers in an amount equal to the reductions those companies collectively achieved beyond what was required by the emissions caps in what was to have been the first compliance period (2022-2024) under the earlier CPP.

3. Did anyone make a transaction or significant investment like this under the prior program? If so, how were they treated?

There was an exchange of instruments between two regulated fuel suppliers. DEQ was not a party to the contract entered into between those two private parties to make that trade. Under the invalidated CPP, DEQ did not intercede in contracting matters between private business entities trading credits. Regulated parties were free to negotiate whatever conditions the parties deemed appropriate to include in such contracts to protect their interests from potential future events that could impact the program. The parties were required to report to DEQ on the price the instruments were exchanged for. Both parties reported to DEQ that no costs were associated with that trade.

At the time the Court of Appeals issued its decision invalidating the prior program, DEQ was still developing a contract with a provisional CCI third party. Thus, there was not yet a third party to which regulated fuel suppliers could have provided funds.

² The proposed rules define "Environmental justice communities" as "communities of color, communities experiencing lower incomes, communities experiencing health inequalities, tribal communities, rural communities, remote communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities."

4. I understand the compliance instruments will be more expensive than other states. Is it accurate that the costs to utilities, suppliers, and ultimately customers will be higher than Washington and California?

Compliance instruments in the proposed program would all be distributed by DEQ for free to regulated fuel suppliers. This is different than programs in Washington and California in which a small portion of their instruments are distributed for free and a significant portion are sold at state-run auctions. Thus, DEQ expects that compliance costs may be lower, particularly at the outset of the new CPP.

DEQ is proposing additional credits (CCIs) that CPP-regulated businesses could voluntarily acquire at a set price. Each credit allows an additional ton of emissions. The current proposal is to start at \$129 per credit. The cost per ton for these additional voluntary compliance instruments is higher than the auction prices in neighboring states. However, if a company chooses to obtain additional compliance instruments through CCIs it would only be paying that amount for a small portion of their compliance strategies. DEQ is proposing no company could use more than 15% of “Community Climate Investment” credits to meet their compliance obligations during the first compliance period.

For comparison, a hypothetical a company with 100,000 tons of obligations would likely pay less in OR than WA. In WA, that company could pay around \$30/ton (at current auction rates) potentially for all 100,000 tons at a cost of \$3,000,000. In Oregon, even if the entity uses the maximum allowable CCIs at 15%, it would cost just under \$2,000,000. The remaining 85% of its compliance obligations would be covered by instruments it received from DEQ for free. DEQ anticipates few companies will use the maximum allowed CCIs and thus the contrast could be sharper still in many, if not, most cases.

Follow up: Why did DEQ design a different program than established programs like CA and WA?

The programs were established under different legislative authority. DEQ has proposed a program within the existing authority the Legislature has given to the Environmental Quality Commission. That authority does not extend to selling (or auctioning) permits to emit air contaminants such as greenhouse gases. Since DEQ does not have authority to auction compliance instruments, DEQ is proposing to distribute all compliance instruments for free.

Other differences are a product of the unique stakeholder landscapes in each state which provided distinct input to the respective agencies designing the state programs. For example, the proposed CCI component of the rules is a product of extensive input from Oregon stakeholders including many community-based organizations that engaged in the prior rulemaking and continued to engage in this year’s rulemaking.

5. The program will generate several billion dollars. Without legislative oversight, what are the mechanisms to ensure appropriate and effective use of those funds?

DEQ has not estimated how much funding regulated fuel suppliers will opt to provide future CCI third parties. That is, in part, because regulated companies may choose to either reduce emissions directly or purchase excess permits from other regulated entities, or invest in CCIs. Those are business decisions entirely up to regulated companies. We do not know how many companies may utilize the voluntary CCI program as part of their compliance plans. While there have been speculations, DEQ has not seen any estimate of billions of dollars flowing into CCIs.

When fully implemented, DEQ believes auditing and oversight of all CCI funds is critical. This accountability and oversight was also prioritized by the Legislature in HB 3409 (2023) by authorizing EQC

to adopt fees on CCI third parties to pay for “administering and overseeing those portions of the climate protection program related to community climate investments.” DEQ’s proposed rules include that fee, and the agency intends to hire several dedicated FTE to administer and oversee CCI investments and their accompanying carbon reductions.

The proposed rules require significant oversight by DEQ. CCI entities will need to report out on investments they make. Requirements include that investments overall achieve 1:1 emissions reductions; this means that for each CCI credit issued, that subsequent investments overall achieve at least one ton of GHG emission reduction. Any CCI entity must regularly report to DEQ, and in turn the DEQ will report to the Environmental Quality Commission. This level of oversight is made possible by the fee authority the Legislature provided EQC and the resources that will provide the agency.