



Oregon

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Representative Ken Helm
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November 23, 2022

Representative Helm:

Thank you for your continued interest in the work of the Oregon Public Utility Commission (PUC). Please find below responses to questions contained in your letter of October 5, 2022 that was filed as part of the PUC's UM 2225 proceeding. The implementation of House Bill (HB) 2021 is, like the bill itself, a complex and significant undertaking. Since its passage, the PUC has been working diligently with our stakeholders to identify HB 2021's numerous requirements, as well as implementation priorities and processes required.

To provide proper context for my responses, it is important at the outset to clarify how the PUC implements legislation generally, and to provide more context as to the scope of activities the PUC has undertaken to implement HB 2021 in particular.

Legislative Implementation and HB 2021

As you know, the PUC is an independent state agency charged with regulating Oregon's investor-owned utilities (IOUs). In addition to its traditional rate-making authority, the PUC has been tasked with an increasing number of legislative directives over the past ten years, including five pieces of key legislation passed during the 2021 legislative session.

The PUC implements legislation through various actions, including initiating new investigations and rulemakings, as well as incorporating new directives in existing PUC proceedings and processes. For all these actions, we are guided by statutory requirements and use a public and transparent process with strong stakeholder input. This is reflected in our mission statement, which provides, in part: "We use an inclusive process to evaluate differing viewpoints and visions of the public interest and arrive at balanced, well-reasoned, independent decisions supported by fact and law." Consistent with this open process, as well as its role as a quasi-judicial body, the agency speaks through its orders issued at the conclusion of these processes.

With regard to the bills passed during the 2021 legislative session, the PUC shared its implementation strategy with the legislature, our stakeholders, and the public through various means and documents posted to our website. <https://www.oregon.gov/puc/Pages/Legislative-Activities.aspx>.

For HB 2021, the PUC identified six major work streams for the agency:

- Planning
- Compliance
- Direct Access
- Customer and Community Benefits and Impacts
- Customer Supported Renewables
- Interaction with state and regional policies

Following internal discussions and external engagement, the PUC identified priorities and adopted a multi-pronged approach to begin this work. The PUC focused near-term efforts on work to integrate the HB 2021 greenhouse gas emission reduction targets with existing integrated resource planning and resource acquisition processes, and opened docket UM 2225 to provide guidance to the utilities to help inform the initial Clean Energy Plans (CEPs) expected to be filed in March 2023. This investigation has included a transparent and collaborative scoping process, technical and policy workshops, PUC Staff straw proposals, opportunities for public comment, and PUC public meetings to adopt guidance to the utilities. The PUC also appeared before both the Senate Interim Committee on Energy and Environment (January 11, 2022) and the House Interim Committee on Environment and Natural Resources (June 1, 2022) to update the legislature on these efforts.

The PUC's UM 2225 docket is also being used to address two other near-term priorities. First, the PUC is working with stakeholders on creating planning engagement strategies for the utilities to engage customers and communities in the development of their CEPs while making progress on standing up their Utility Customer Benefits and Impacts Advisory Groups (UCBIAGs). Second, UM 2225 has generated discussions about HB 2021's interaction with state and regional policies, including the renewable portfolio standards, Washington's Clean Energy Transition Act (CETA), and regional market activities.

To address near-term direct access issues related to HB 2021 implementation, the PUC bifurcated docket UM 2024, an existing investigation into direct access issues. Phase 1 is a rulemaking that will address HB 2021 reporting (planning, continual progress, compliance, off ramps), non-bypassability framework, and other competitive matters. Phase 2 will be a contested case to examine HB 2021 considerations not captured in Phase 1 through examination of transition charges, caps, and other issues.

The PUC has also placed priority on addressing the customer supported renewables (green tariffs) portion of HB 2021, given the strong and active interest of several municipalities pre-dating the passage of HB 2021. Through workshops and other processes, PUC Staff has focused on education, transparency, and setting expectations for PUC review of customer supported renewable tariffs. The near-term process will focus on supporting local governments, utilities, and other stakeholders considering the development of these tariffs and will include the publication of a Staff whitepaper describing expectations for the tariff elements and processes in the spring of 2023.

The PUC recognizes that there are many other implementation tasks ahead, and that many stakeholders are eager for the PUC to address them. To date the PUC has prioritized those related to initiating

planning frameworks. Now that initial guidance has been delivered, the PUC can determine the priority, resources, and processes available to address additional open issues, and will communicate those plans with our stakeholders.

PUC Responses

With that context, I now turn to your specific questions about the PUC's work on implementing HB 2021, addressed in the order you present them.

1. THRESHOLD ISSUES

a. Has the Commission determined how many MW will be required of new renewables to meet the 2030, 2035, and 2040 mandates? How many MW per year, and per RFP cycle, will be required to be constructed to meet these milestones?

The PUC has not determined how many MW will be required on a yearly, RFP cycle, or overall basis to meet the HB 2021 clean energy targets for a variety of reasons. Such an analysis assumes the utilities are planning to add renewable resources on a fixed, linear basis for the purposes of solely meeting HB 2021. In reality, resource additions, retirements, and operational changes required to meet HB 2021 are interdependent on numerous factors that must be considered and vetted through a collaborative planning process to determine the right balance of cost, risk, pace of GHG reductions, and community benefits and impacts.

The amount of capacity needed to meet the mandates will depend on the type and location of the new renewables, the evolving mix of generating resources, the integration of various storage technologies, the flexibility of customer load, the development of community-based renewable energy projects and customer supported renewables programs, and many other interrelated factors. Even within a single utility procurement, investment decisions will be based on the best portfolio of specific locations of wind and solar projects, short-and-long-duration storage, the location of available transmission capacity, and updated forecasts of demand and distributed energy and storage resources—not on a pre-determined quantity of renewable energy MW. PUC processes are designed to help ensure that these resources are acquired in an adaptive manner that balances cost, risk, uncertainty, the pace of greenhouse gas emissions reductions, and community benefits and impacts and responds to opportunities and developments outside of the utility and PUC's control.

In short, this question cannot be answered in isolation, and will need to be addressed incrementally through rigorous modeling performed by the utilities and reviewed by PUC Staff and stakeholders in the combined CEP/IRP planning process. For that reason, the PUC is focusing early action on providing guidance to the utilities to inform their initial CEP plans and associated 2023 IRPs. The guidance requires utilities to evaluate the interrelated factors including emerging technologies, building and transportation electrification, fossil resource retirements and operational changes, transmission constraints and future expansion, and regional coordination. The guidance also requires utilities to test different paces of GHG reductions to achieve the mandates and establishes a system of metrics to enable adaptive management of the utility's balance of costs and benefits, including environmental justice considerations. The CEPs will identify a path to compliance and the volume of new renewables and other resources needed to meet the 2030, 2035, and 2040 mandates.

b. What actions, analysis, or determinations has the Commission undertaken to resolve questions about the “binding nature” of HB 2021, and how will those inform further rulemaking priorities, decisions, roadmaps, and implementation?

The PUC has not taken formal action to address any questions about HB 2021’s legal criteria. The PUC generally addresses questions regarding statutory interpretation through rulemaking and contested case processes, and invites legal briefing from parties to help the PUC determine the legislature’s intent when it enacted a statute. We do this by examining the text, context, and pertinent legislative history consistent with the analysis laid out in *State v. Gaines*, 346 Or 160, 171-72 (2009).

The PUC recognizes that various outstanding issues of interpretation related to emissions tracking, accounting, compliance, and consequences for non-compliance are yet to be formally decided, and that many stakeholders are eager for the PUC to address them. The Commissioners supported PUC Staff’s decision to prioritize guidance for initial plans during 2022, but made clear in the its November 1 Public Meeting that they view HB 2021 as binding.

2. OVERSIGHT AND RULEMAKING

a. Please describe the Commission’s view on its responsibility to implement the provisions of HB 2021, including whether the responsibility is mandatory or permissive and whether applicable to all or only portions of the bill.

The PUC will implement the bill according to its terms and consistent with its best efforts to accurately discern legislative intent. Many provisions of HB 2021 provide explicit obligations on the PUC. These mandatory requirements include, among others:

- The PUC *shall* ensure that an electric company demonstrates continual progress and is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at reasonable costs to retail electricity consumers. *See* Section 4(6).
- The PUC *shall* acknowledge the clean energy plan if it finds the plan to be in the public interest and consistent with the clean energy targets. *See* Section 5(2).
- The PUC *shall* provide an exemption to a utility from compliance with the act if the PUC determines that the actual or anticipated cumulative rate impact of compliance exceeds six percent of the utility’s annual revenue requirement for a year. *See* Section 10(4).

Other provisions provide the PUC discretionary authority with implementing the bill. These discretionary provisions include:

- The PUC *may* grant a utility a temporary exemption if compliance impairs the utility’s ability to provide reliable service. *See* Section 9.
- In furtherance of the clean energy targets, the PUC *may* apply a performance incentive for early compliance with one or more of the clean energy targets. *See* Section 12.
- The PUC *may* adopt rules as necessary to implement sections 1 to 15 of HB 2021. *See* Section 14.

If questions arise about the PUC's responsibility to implement any provision of HB 2021, the PUC will resolve those questions through a process described in my response above to your Question 1.b.

b. What is the Commission's plan or process for determining which issues related to HB 2021 will have formal rulemakings for implementation, and when will those rulemakings occur?

As you know, HB 2021 is a significant and complex piece of legislation that the PUC will be implementing for the next 20 years and beyond. As noted, following HB 2021's passage, the PUC identified priorities for near-term actions based on a review of the bill's provisions, existing PUC processes, and agency and stakeholder resources. These decisions, which included what rulemakings should be initiated, were made with the awareness of the need to balance this work with work implementing other new legislation, as well as our on-going significant work regulating the utilities and responding to regulatory filings, including general rate proceedings, utility resource planning and procurement, and other quasi-judicial and quasi-legislative activities.¹

Now that the PUC has provided guidance to the utilities to inform their CEPs, the PUC will begin internal discussions to revisit our earlier priority determinations, including those related to agency rulemaking. PUC Staff has already begun the informal stages of a rulemaking to establish initial procedural rules, and the PUC will be evaluating what other issues to address through rulemaking or contested case proceedings. When we shared our implementation strategy with our stakeholders, we acknowledged that our implementation plans will be reexamined and updated based on stakeholder input and other information that may require a reprioritization of PUC action and allocation of resources.

c. When does the Commission expect to issue new final rules governing CEP requirements?

On October 11, 2022, PUC Staff circulated draft rules that codify the CEP filing and review process. See [PUC Staff's Draft CEP Rules](#). Public comments on the draft rules were received November 3. On December 13, 2022, the PUC Staff will recommend the Commissioners open a rulemaking process to adopt final rules.

For other CEP requirements, see answers to your questions 1.b and 2.b above.

3. COMPLIANCE CONSIDERATIONS

a. How does the Commission plan to enforce the 2030, 2035 and 2040 emissions reductions mandates and other bill elements, and when does the Commission plan to have final rules in place governing the enforcement mechanism and remedies for non-compliance?

b. Does the Commission believe it is prevented from imposing financial or other penalties for a utility's failure to comply under HB 2021?

¹ Although HB 2021 became effective in September 2021, we were not able to begin recruiting for new analysts to until early 2022 due to state hiring processes, and have had difficulty since being able to attract qualified candidates in a very tight labor market.

c. Will there be consequences, risks, or financial penalties for electric companies for failing to meet emission standards in Section 3 of HB 2021 and, if so, what is the timeline for identification of those elements?

In its Order No. 22-206, the PUC adopted Staff's recommendation to take no action at this time with regard to compliance penalties. As explained in the Staff's Public Meeting Memo:

"The Joint Advocates contemplate the requirement for the CEP to demonstrate 'continual progress' and suggest that the CEP should be more detailed about the interim and early steps to meeting the requirements, instead of focusing on a "just in time" compliance obligation. In light of this, they recommend that the Commission determine now that the CEP will be a binding document with known compliance penalties so that they can be incorporated into planning.

"RNW provides a different perspective, stating that:

The statute intentionally does not include a compliance mechanism. Instead, the statutory framework builds on the existing regulatory structure whereby a utility develops an IRP subject to Commission acknowledgement, followed by an RFP to acquire resources aligned with needs identified in the IRP subject to Commission acknowledgement, all of which ultimately informs a rate case whereby the Commission determines what expenses undertaken by a utility are recoverable in rates.

"Staff agrees with RNW that compliance penalties are not contemplated in the HB 2021 regulatory framework. We take the HB 2021 targets and utility accountability seriously and note that utilities' CEPs are required to plan to comply with the targets and requirement for continual progress, which will be explored in the Roadmap Acknowledgement work stream. Staff does not believe that there is a meaningful way to incorporate the cost of noncompliance into modeling in a compliant CEP given these requirements. In addition, the process to establish reasonable, defensible compliance penalties in advance of information about the utility compliance strategies from a CEP would take a considerable amount of process and divert focus away from setting meaningful expectations for robust engagement and decarbonization planning. Staff also commits to discuss the suggestion to make the CEP, and presumably the annual goals for utility actions, binding in some form in the Roadmap Acknowledgement work stream." Order No. 22-206, Appendix A at 15.

At this time, the PUC has made no determinations about what proceedings might be required to address enforcement mechanisms and remedies for non-compliance.

With regard to your specific question about the PUC's authority to impose penalties for a utility's failure to comply with the emission reduction mandates, I note that, although HB 2021 does not explicitly provide a specific enforcement action, the PUC has broad regulatory powers over the utilities subject to its jurisdiction and may act accordingly. Under ORS 756.040 the PUC "is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction." In addition, ORS 756.990(2) authorizes the PUC to impose a civil penalty up to \$10,000 for each violation of a statute administered by the PUC, or for failure to comply with a valid rule or order of the PUC.

4. CONTINUAL PROGRESS

a. Please explain how the Commission plans to implement or is implementing the requirement for continual progress and, if so, when the Commission plans to have rules in place enforcing this continual progress requirement.

HB 2021 requires the PUC to "ensure that an electric company demonstrates continual progress * * * and is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at reasonable costs to retail electricity consumers." In [Order No. 22-390](#), the PUC concluded that this is best achieved by updating the IRP guidance with additional HB 2021 criteria. The current IRP guidance requires utilities to select a portfolio of resources that best balances expected costs and associated risks and uncertainties for the utility and its customers. PUC Staff proposes to add to the balance the pace of greenhouse gas emissions reductions and community impacts and benefits. As noted, in Order No. 22-390, Staff will bring to the Commission a recommendation to formally modify the IRP guidelines for PGE and Pacific Power to add these two elements to the balance and to require the utilities to demonstrate year-over-year emissions reductions.

5. DIRECT BENEFITS

a. Please explain how the Commission plans to implement Section 2 of HB 2021 and if/when the Commission plans to have rules in place governing that section.

As you are aware, the legislature, in enacting HB 2021, included Section 2 to express the policy of the state on certain matters related to the bill. This legislative declaration is a policy statement and does not constitute statutory law. Such a statement of policy "by its terms, imposes no requirement that the agency do anything." *Pharma v. Oregon Dep't of Hum. Servs. ex rel. Off. of Med. Assistance Programs*, 199 Or. App. 199, 208 (2005) (citation omitted). See also *Northwest Natural Gas Co. v. PUC*, 195 Or.App. 547, 556 (2004).

For that reason, Section 2 contains no operative law for the PUC to implement. Section 2, however, does help inform the PUC as to legislative intent, and the PUC is implementing the operative portions of the bill consistent with that policy.

6. OTHER ISSUES

a. What other creative actions is the Commission considering to facilitate Oregon's success in achieving HB 2021's requirements and targets, both in terms of emission standards in Section 3 of HB 2021 and other state policies?

At the time that HB 2021 passed, the PUC was engaged in a range of efforts to modernize its analytical frameworks to adapt to changing market and policy drivers. This includes efforts such as PURPA contract and compensation reform, an investigation into standard capacity valuation practices, generator interconnection reform, COVID-focused energy burden relief programs, distribution system planning, performance metrics for the treatment of renewable and resiliency-focused investments, and more.

Following the 2021 legislative session, the PUC has made a point to focus its analytical and policy frameworks on readiness for the types of investments and benefits driven by these policies. For example, the PUC's interconnection reform effort prioritized issues that would ensure that the interconnection process would be ready for resiliency projects, community-based renewable energy projects, and projects with a high fossil fuel offset potential based on the priorities of HB 2021 and HB 3141. In addition, the PUC has prioritized its PURPA avoided cost investigation to address issues that will send clear signals about QF configurations with high reliability and fossil fuel offset values.

The PUC has undertaken many additional investigations to address challenges with climate change and the clean energy transition. Maintaining reliability in the utility system and affordable customer rates will become increasingly challenging as the utilities make continual progress toward the HB 2021 clean energy targets. To address these challenges, utilities are now required to develop distribution system plans demonstrating grid investments that support electrification load growth, maximally utilize existing infrastructure, and leverage customer investments for grid benefit. In addition, the PUC Commissioners have been active in helping to stand up several regional entities that leverage regional resources for economic and reliability benefit including: (1) Western Resource Adequacy Program to ensure there is enough capacity in the region to meet customer demand; (2) NorthernGrid to jointly forecast the region's transmission needs; and (3) Western Energy Imbalance Market to dispatch generating resources across the West most economically to serve load. Furthermore, the PUC is investigating additional resource adequacy standards entities serving Oregon electric load and considering best practices for determining the capacity value that new resources bring to the grid to ensure reliability as the resource mix evolves (see [Docket UM 2011](#)).

The PUC is undertaking this work with extra effort to engage community voices and equity concepts to help ensure this energy transition provides value for all. To achieve our mission, the PUC must (1) consider the impacts of our decision-making on all utility customers, especially those in traditionally underserved communities such as communities of color, rural communities, tribal nations, and low-income customers, and (2) perform our regulatory oversight through a process that encourages meaningful participation from diverse perspectives and equitably balances interests of customers and communities, utilities, and other industry stakeholders.

Part of this effort involves implementing HB 2475 (2021), which provides the PUC new authority to set differentiated rates for low income and energy burdened customers and expands funding opportunities for participation in PUC proceedings. The PUC has adopted interim differential rates for five of the six energy utilities, and is working with Idaho Power on options to provide interim low income relief to its Oregon customers. Working with the utilities and stakeholders, the PUC has also negotiated interim intervenor funding agreements to provide funding to support participation in PUC proceedings.

Please let me know if you have further questions.

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