NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION
PROPOSED CHANGES TO SB 1507/ HB 4001
CLEAN ENERGY JOBS BILL

The Northwest & Intermountain Power Producers Coalition ("NIPPC") appreciates this opportunity to provide comments on the proposed Clean Energy Jobs Bill, as set out in both the Senate version (SB 1507) and the house version (HB 4001). NIPPC and its members appreciate the effort and compromise that have gone into the proposed legislation thus far. NIPPC's continued support for this bill is expressly conditioned on modifications in four specific areas:

Maximum flexibility to achieve real carbon reductions at lowest cost

- Retention of the 8 percent offset limit as set forth in SB 1507, rather than the 4 percent limit proposed in HB 4001, along with clarification of the additional circumstances in which offset use may be limited.

Level playing field for all parties

- Equivalence among utilities and electricity service suppliers with respect to treatment of emissions from power generated out of state.
- Assurance that use of consigned allowance revenue by utilities be used in a manner that does not place electricity service suppliers at a competitive disadvantage in attracting commercial and industrial customers.

Recognition of Early Actions taken to invest in GHG reductions

- Credit for independent power producers related to early action payments made to mitigate emissions under the Environmental Facilities Siting Counsel permit process and ORS 469.503.

No double counting or regulation of carbon

- Recognition of carbon pricing and management regulations in other jurisdictions to avoid increased costs and reduced carbon reduction results for Oregon.

Set forth below are limited changes to the existing draft legislation tailored to resolve these concerns. We are willing to consider alternative wording, but NIPPC will not support any proposal that does not resolve these issues.

Also set forth below are additional changes that we believe will significantly improve and/or clarify language in the draft legislation. Most significantly, NIPPC strongly opposes limiting a portion of offset use to a category of offsets that are deemed to provide "direct environmental benefits" to the state for the duration of the program. Reduction of greenhouse gas is, in and of itself, a direct environmental benefit to the state, and should be treated as such. Moreover, this protectionist limitation is poor public policy, creating complex market tiers and raising compliance costs for all parties with no comparable benefit.

The following are NIPPC's specific recommendations:[1]

1. **Modify Section 13(2)(b)(A) and/or 13(2)(b)(B) to ensure equivalence in compliance thresholds for imported power.**

   The current draft legislation contains a 25,000 ton compliance threshold for imported power for some market participants, but not all. This threshold is not present for any of the other WCI markets and creates significant opportunity for gamesmanship. NIPPC believes that all imported power must be subject to compliance as done in California, and proposes specific language below. If this change is not adopted, the same 25,000 ton compliance threshold applicable to electric companies must be applied for competitive electricity service suppliers.

Option A *Apply the 25,000 ton compliance threshold for all imported electricity*

> **13(2)(b)** For the purpose of regulating persons that import, sell, allocate or distribute for use in this state electricity generated outside this state, and unless the commission determines that a method exists for regulating persons described in this paragraph that is more accurate or efficient or that better enables the state to pursue linkage agreements under section 19 of this 2018 Act, the commission shall:
>
> (A) Designate an electric company or a consumer-owned utility as a covered entity if the regulated emissions that are attributable to the generation of electricity for which the electric company or consumer-owned utility is the load serving entity meet or exceed 25,000 metric tons of carbon dioxide equivalent.
> (B) Designate an electricity service supplier as a covered entity for the purpose of addressing regulated emissions attributable ***to electricity imported into the state by such*** electricity service supplier if such emissions ***meet or exceed 25,000 metric tons of carbon dioxide equivalent.***"

Option B *Remove the 25,000 ton compliance threshold for all imported electricity*

> **13(2)(b)** For the purpose of regulating persons that import, sell, allocate or distribute for use in this state electricity generated outside this state, and unless the commission determines that a method exists for regulating persons described in this paragraph that is more accurate or efficient or that better enables the state to pursue linkage agreements under section 19 of this 2018 Act, the commission shall:
>
> (A) Designate an electric company or a consumer-owned utility as a covered entity if the regulated emissions that are attributable to the generation of electricity for which the electric company or consumer-owned utility is the load serving entity ~~meet or exceed 25,000 metric tons of carbon dioxide equivalent~~.

[1] All section references refer to the Senate version of the draft bill, SB 1507.

(B) Designate an electricity service supplier as a covered entity for the purpose of addressing regulated emissions attributable to the electricity service supplier.

2. **Modify Section 16(2), Allocation of Allowances, to allow distribution to Independent Power Producers to reflect carbon payments made under ORS 469.503 and add a definition of Independent Power Producer**

Independent Power Producers that have already paid to mitigate a portion of their carbon emissions under existing state law should not be required to pay a second time, which would be inconsistent with the provisions of Section 19(1)(b)(A) directing that the program be implemented in a manner that avoids double counting of emissions. The simplest mechanism to achieve this goal is to provide independent power producers that previously paid to reduce emissions with a proportionate allocation of allowances. A definition of independent power producer should be added as well, specifying that. ***""Independent Power Producer" means an entity generating electricity in Oregon that is not an electric company or a consumer-owned utility."***

SECTION 16. Allocation of allowances.
(***)
(2) The Environmental Quality Commission shall, in consultation with the Public Utility Commission, adopt rules for distributing allowances to covered entities that are electric companies, ***Independent Power Producers***, and natural gas utilities. Rules adopted under this subsection must:

(a) Require the department to allocate allowances for direct distribution at no cost to electric companies and, except as provided for in paragraph (b) of this subsection, require the electric companies to consign all directly distributed allowances to the state to be auctioned pursuant to section 18 of this 2018 Act;

(b) Taking into consideration the interaction of sections 12 to 19 of this 2018 Act with the provisions of ORS 469A.005 to 469A.210 and 757.518, allow an electric company to surrender as compliance instruments a portion of the allowances directly distributed to the electric company under paragraph (a) of this subsection that reflects greenhouse gas emissions from coal-fired resources in the electric company's allocation of electricity;

(c)) Taking into consideration the interaction of sections 12 to 19 of this 2018 Act with the provisions of ORS 469.503, allocate allowances to independent power companies in an amount equal to the percentage of carbon mitigation

paid for by the independent power companies as part of the Environmental Facilities Siting Counsel permit process.

3. Modify Section 25(4)(a) to specify that utilities must use auction proceeds in a manner that does not competitively harm electricity service suppliers.

Electricity service suppliers are in direct competition with utilities for sale of power to commercial and industrial customers pursuant to existing Direct Access regulations. Any use of auction proceeds should be done in a manner that does not tilt the competitive playing field in an unintended manner:

> Section 25(4)(a) An electric company or natural gas utility shall prioritize the use of auction proceeds for bill assistance, weatherization and energy efficiency measures. Except as provided in paragraph (b) of this sub- section, auction proceeds returned to customers as bill assistance***, weatherization and energy efficiency measures*** must be returned in a nonvolumetric manner that does ***not discriminate against customers purchasing power through the Direct Access program set out in ORS Chapter 757*****.**

4. Delete Section 16.2(b) and require utilities to consign all allowances.

Senate Bill SB 44 includes a provision allowing utility companies to retain and use free allowances and use them for their own account with no auction consignment obligation for electricity generated from coal (the "Coal Allocation"). NIPPC submits that this is poor policy for a variety of reasons.

- NIPPC understands (but has not independently verified) that the Coal Allocation represents approximately thirty percent of PGE's compliance obligation and ninety percent of Pacific Power's compliance obligation. Together, that is a very significant portion of the total proposed cap and trade marketplace. Eliminating such a large portion of compliance from market participation will harm the integrity of the market as a whole and substantially reduce program revenues.

- Data from other markets shows that providing utilities with free allowances without any consignment obligation provides windfall profits to the utilities and significantly undermines the function of the cap and trade market. This was one of the fundamental flaws in the early years of the European Union Emissions Trading System and has been well-documented. We encourage Oregon to learn from the past experience in this regard.

To resolve this issue, Section 16(2)(b) should be deleted as follows:

SECTION 16. Allocation of allowances.
(***)
(2) The Environmental Quality Commission shall, in consultation with the Public Utility Commission, adopt rules for distributing allowances to covered entities that are electric companies, ***Independent Power Producers***, and natural gas utilities. Rules adopted under this subsection must:

(a) Require the department to allocate allowances for direct distribution at no cost to electric companies and, except as provided for in paragraph (b) of this subsection, require the electric companies to consign all directly distributed allowances to the state to be auctioned pursuant to section 18 of this 2018 Act;

~~(b) Taking into consideration the interaction of sections 12 to 19 of this 2018 Act with the provisions of ORS 469A.005 to 469A.210 and 757.518, allow an electric company to surrender as compliance instruments a portion of the allowances directly distributed to the electric company under paragraph (a) of this subsection that reflects greenhouse gas emissions from coal-fired resources in the electric company's allocation of electricity;~~

5. Modify Section 17 to remove or sunset the "Direct Environmental Benefit" requirement.

As noted above, NIPPC supports the current eight percent limit on offset use set forth in draft Senate Bill and strongly opposes the four percent limit included in the draft House bill. NIPPC also believes the Direct Environmental Benefit requirement for a portion of offsets is ill-advised and should be removed or sunset:

Option A: *Remove the Direct Environmental Benefit requirement*:

SECTION 17. Offset projects. (1) Offset projects: (a) Must be located in the United States or in a jurisdiction with which the Environmental Quality Commission has entered into a linkage agreement pursuant to section 19 of this 2018 Act;

(b) Must not be otherwise required by law; and

(c) Must result in greenhouse gas emissions reductions or removals that:

(A) Are real, permanent, quantifiable, verifiable and enforceable; and

(B) Are in addition to greenhouse gas emissions reductions or removals otherwise required by law and any other greenhouse gas emissions reductions or removals that would otherwise occur.

(2)(a) A total of no more than eight percent of a covered entity's compliance obligation may be met by surrendering offset credits. ~~A total of no more than four percent of a covered entity's compliance obligation may be met by surrendering offset credits that are sourced from offset projects that do not provide direct environmental benefits in this state~~.

Option B: *Sunset the Direct Environmental Benefit requirement*:

SECTION 17. Offset projects. (1) Offset projects: (a) Must be located in the United States or in a jurisdiction with which the Environmental Quality Commission has entered into a linkage agreement pursuant to section 19 of this 2018 Act;

(b) Must not be otherwise required by law; and

(c) Must result in greenhouse gas emissions reductions or removals that:

(A) Are real, permanent, quantifiable, verifiable and enforceable; and

(B) Are in addition to greenhouse gas emissions reductions or removals otherwise required by law and any other greenhouse gas emissions reductions or removals that would otherwise occur.

(2)(a) A total of no more than eight percent of a covered entity's compliance obligation may be met by surrendering offset credits. A total of no more than four percent of a covered entity's compliance obligation may be met by surrendering offset credits that are sourced from offset projects that do not provide direct environmental benefits in this state ***for the period 2021 through 2025***.

6. Clarify Section 17(2) with respect to limitations on offset use.

The reference in Section 17(2)(b)(A)(ii) to an air contamination source individually exceeding air quality standards is imprecise and should be clarified to apply in the event of violations to existing regulations. In addition, the restrictions set forth in Section 17(2)(b)(B) are completely redundant to the initial restrictions set forth in Section 17(2)(b)(A) and should be deleted:

17(2)(b)(A) The commission may by rule adopt additional restrictions on the number of offset credits that may be surrendered by a covered entity that is an air contamination source that is geographically located in an impacted community if:

(i) The geographic area within which the air contamination source is located is also a nonattainment area or an attainment area projected by the Department of Environmental Quality to exceed air quality standards within five years and the air contamination source substantially contributes to or causes the nonattainment or projected nonattainment of air quality standards; or

The air contamination source is ~~individually causing an exceedance of air quality standards~~ ***in violation of existing air emission regulations.***

~~3 (B) Additional restrictions adopted under this paragraph may include, but need not be limited to, restrictions that prohibit an air contamination source described in this paragraph from surrendering offset credits to meet a compliance obligation.~~

7. **Clarify the definition of Air Contaminants in Section 1 to include anthropomorphic greenhouse gas emissions**:

Section 1(2) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, ***anthropomorphic greenhouse gas emission*** or any combination thereof.

8. **Clarify the definition of "Direct Environmental Benefits in the State" to include reduction of greenhouse gas.**

(11) "Direct environmental benefits in this state" means: (a) A reduction in or avoidance of emissions of any air contaminant in this state. [~~other than a greenhouse gas;~~]

9. **Clarify Section 13(2)(a) to apply to prevent air contamination sources from artificially segmenting sources of air emissions to limit compliance:**

13(2) (a) The commission shall designate a person in control of ***one or more*** [~~an~~] air contamination source for which a permit is issued pursuant to ORS 468.065, 468A.040 or 468A.155 as a covered entity if the annual regulated emissions attributable to the air contamination source*s* meet or exceed 25,000 metric tons of carbon dioxide equivalent.

10. **Clarify Section 19 to ensure the program takes into account carbon pricing from other jurisdictions whether market or tax-based.**

SECTION 19. Linkage with market-based compliance mechanisms in other jurisdictions. (1) In adopting and implementing rules undersections 12 to 19 of this 2018 Act, the Environmental Quality Commission and the Department of Environmental Quality shall:

(a) Consider market-based compliance mechanisms designed to reduce greenhouse gas emissions in other jurisdictions; and

(b) Implement the program established under sections 12 to 19 of this 2018 Act in a manner that:

(A) Avoids double counting of emissions, or emissions reductions ***(including market or tax payments made in other jurisdictions)***

and

(B) Enables the state to pursue linkage agreements pursuant to this section with other jurisdictions.