Comments of the Western Power Trading Forum

To the Oregon Joint Carbon Committee

On House Bill 2020

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The Western Power Trading Forum[1](WPTF) appreciates the opportunity to provide comments to the Joint Committee on Carbon reduction on its consideration of House Bill (HB) 2020, containing the Oregon Climate Action Program. WPTF is an organization of power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the west. WPTF has over 80 members participating in power markets within the western states and Canada.

WPTF believes that a multi-sector cap and trade program, linked to that of California and Quebec in the Western Climate Initiative (WCI), would be the most cost-effective and efficient means of achieving Oregon's carbon reduction goals and for this reason, supports adoption of the Oregon Climate Program. However, we wish to see a number of shortcomings in the legislation addressed before the program is finalized:

- The legislation should direct CPO to determine the appropriate point of regulation for electricity imported to Oregon via the Energy Imbalance Market (EIM) through rule-making.
- Electricity generated in the state and exported should not be exempted from the program.
- Additional provisions regarding the use of allowances allocated to the electric sector should be added to maintain competition in wholesale and retail electricity markets.
- Small emission sources should be treated consistently.
- Rules for assigning emissions for imported electricity must be further modified to ensure consistency with other programs to which Oregon might link.
- The 8% limit on the use of offset credits should be maintained and the direct environmental benefits criteria elaborated to provide for factual demonstration of benefits to Oregon.
- The Carbon Policy Office (CPO) should have limited discretion to make modifications to program where needed to enable linkage to occur.
- The Joint Committee should consider keeping critical implementation and enforcement functions at the Department of Environmental Quality initially.

We discuss each of these concerns below. We then recommend specific changes to the bill to address these concerns, following the organizations and headings used in HB 2020.

[1] The views expressed here do not necessarily reflect the views of individual WPTF members.

Discussion

The legislation should direct CPO to determine the appropriate point of regulation for electricity imported to Oregon via the Energy Imbalance Market (EIM) through rule-making.

The bill places the compliance obligation for electricity imports on "Electricity System Manager". An Electricity System Manager is defined as "any entity that, as needed operates or markets electricity generating facilities, or purchases wholesale electricity to manage the load for wholesale or retail electricity customers within a balancing authority area that is at least partially located in Oregon, including but not limited to the following types of entities: a) electric companies, b) electricity service suppliers, c) consumer-owned utilities, d) the Bonneville Power Administration and e) electricity generation and transmission cooperatives."

This definition of Electricity System Manager came out of discussions this summer of a small working group of utilities, the Bonneville Power Administration (BPA) and the CPO. The definition was intended to accommodate the fact that Oregon's balancing authority areas do not align nicely with state borders as they do in California. However, in that working group, it was recognized that further consideration was needed regarding the appropriate point of regulation for imports that occur via the EIM. It is not clear that the definition of Electricity System Manager would allow for assignment of carbon emission and compliance responsibility to Scheduling Coordinators for EIM participating resources, as is done in California's program. Because Oregon and California share wholesale electricity markets, consistent treatment of electricity generators and imports across the states' cap and trade programs will be important to avoid electricity market seams and to minimize emission leakage.

For this reason, WPTF recommends that the legislation direct CPO to develop rules for determining the covered entity for imports that occur through the EIM, and to develop rules for attribution of emissions for EIM imports in its reporting rule-making.

Electricity generated in the state and exported should not be exempted

Section 10 of the draft bill would exempt emissions associated with electricity generated in state and exported and "for which the capital and fuel costs associated with the generation are included in the rates of a multi-state jurisdictional electric company that are charged to the electricity customers in a state other than Oregon." WPTF understands that this exemption is intended to address Pacificorp's portion of its Hermiston facility.

WPTF strongly opposes this exemption because it would undermine the environmental integrity of the program, impair linkage to California and would be unfair to operators of other generating resources in the state that also export power. Further, because the bill provides that Pacificorp would receive an allocation for 100% of forecast emissions associated with serving Oregon load based on its approved Integrated Resource Plan, there is no need to exempt emissions from the facility in order to make Pacificorp whole. Rather,

as long as the output of Pacificorp's portion of the Hermiston facility is considered as serving Oregon load, Pacificorp will receive free allowances for the emissions of the facility, thereby avoiding carbon compliance costs.

Treatment of Pacificorp's portion of its Hermiston facility in this way would not run afoul of Pacificorp Multi-State Protocol (MSP) for cost-allocation. First, the current cost allocation is only in effect through the end of this year. The MSP process to develop the new cost allocation for 2020 and beyond is ongoing and the final cost allocation has not yet been developed, let alone approved by Oregon. Second, that process concerns the allocation of costs across ratepayers in the states where Pacificorp serves customers. It is completely appropriate that the MSP cost allocation that is ultimately developed and approved address the additional costs, both direct and indirect, that Pacificorp will incur due to implementation of the Oregon Climate program, so that those costs are allocated to Pacificorp's Oregon customers. To do so, OPUC should ensure that the final MSP cost allocation take into account and reflect the rules for determining regulated emissions and the point of regulation for electricity imports under the cap and trade program, *not the other way around.* In this regard, WPTF also recommends that ORS 468A.280 be further amended to strike the reference to use of the cost allocation methodology for reporting emissions.

Additional provisions regarding the use of allowances allocated to the electric sector should be added to maintain competition in wholesale and retail electricity markets.

The bill provides that electric companies receive direct allocation of allowances, based on the most recent acknowledged IRP, to help meet compliance obligations associated with emissions to serve the load of retail electricity customers through 2030. WPTF supports the public policy principle of using allowances to mitigate the impact of the program on electricity rate-payers, we wish to ensure that it is done in a way that maintains the competitiveness of the state's wholesale and retail electricity markets. Because allocation of allowances could affect the compliance costs of covered entities under the program, it could alter the competitiveness of entities that receive direct allocation vis-à-vis their competitors who do not. WPTF is concerned that direct allocation of allowances to IOUs could harm the competitiveness of Independent Power Producers (IPPs) and Energy Service Suppliers (ESSs).

WPTF requests that the bill be modified to include a clear principle that IOUs should schedule and dispatch resources in their portfolio in a least cost manner, and that the variable cost for individual resources should include the market value of allowances needed for that resource's compliance under the program. Additionally, CPO and OPUC should ensure that such IOU use of allowance value treats ESS customers equitably. IOUs should also be required to report annually report on the use of allowances, as consumer-owned utilities (COUs) are.

Small sources should be treated consistently

Section 9 sets an annual threshold of 25,000 metric tons of carbon dioxide equivalent for sources of emissions, except for electricity generators. Section 10 would exempt emissions attributable to COUs when the three-year average of emissions for electricity delivered and consumed in the state by the utility is less than 25,000 metric tons.

WPTF supports an emission threshold so as not to overly burden small companies and keep the administrative costs of the program manageable, but believes that the threshold should be applied consistently. To this end, we see no valid reason for not exempting small electricity generators in Oregon. Fossil electricity generators below the 25,000 ton threshold typically are small and serve specific loads, such as hospitals or universities, rather than selling electricity in wholesale markets. We note that California exempts generating resources below this threshold from its program.

With respect to emissions attributable to small COUs, the problem is that the emissions would not necessarily be directly linked to a particular emission source, but rather to imports of wholesale purchased electricity. The California Air Resources Board considered the application of emission threshold under its cap and trade program for electricity imported into the state, but determined that it was not appropriate due to the fact that an emission threshold is not a reasonable proxy of facility size for electricity imports. For this reason, WPTF recommends that if the legislature determines it is necessary to exempt small COUs who purchase non-BPA power[2] from the program, this would be better achieved by setting aside and retiring allowances. Such an approach would achieve the same objective and maintain the environmental integrity of the program.

Rules for assigning emissions for imported electricity must be further modified to ensure consistency with other programs to which Oregon might link.

In addition to establishing the cap and trade program, HB2020 also revises existing statues to enable implementation of the program, including reporting requirements. WPTF has significant concerns with the language retained in section 53 of the Amended ORS 468.280. Much of this language, particularly that in subparagraph 6 of the amended text, is fundamentally inconsistent with reporting rules adopted under California's Mandatory Reporting Regulation pertaining to electricity imports. We are concerned that if this language remains, it would limit CPO's ability to develop appropriate reporting requirements and hinder program linkage. In particular, we would highlight:

- The provision that restricts information on facility fuel type and emission to facilities owned and operated by an electric company. California's specified source rules require that electricity importers report information on fuel type and emissions where known by the importer in accordance with specified source rules; and

[2] This presumes that all emissions associated with BPA non-federal purchases on behalf of Oregon customer load would be attributed to BPA, rather than the COUs.

- The provision that allows a multijurisdictional electric company to rely upon a cost allocation methodology approved by OPUC. As we noted above, MSP cost allocation should take into account the rules for determining regulated emissions and associated compliance costs resulting from this program - not the other way around.

We therefore recommend changes to the language in this section to enable CPO to develop appropriate reporting requirements, taking into account the need to align with California rules as closely as possible, while accommodating the unique circumstance of Oregon's electric sector.

The mechanism for distribution of allowances from the allowance price containment reserve should be deferred to rule-making

WPTF supports inclusion of an allowance price containment reserve, but notes that California's program uses a reserve sale, rather than an auction, to distribute allowances from the reserve. Rather than set up a potential conflict between the two programs, WPTF suggests instead that the bill be silent on the mechanism for distribution of reserve allowances and instead allow CPO to determine this via rule making.

The 8% limit on the use of offset credits should be maintained and the direct environmental benefits criteria elaborated to provide for factual demonstration of benefits to Oregon.

The bill allows use of offset credits for up to 8% of a covered entities compliance obligation, however this quantity may be reduced if a covered entity is located in an impacted community or non-attainment area for air quality standards. 4% of offsets must be from projects that yield direct environment benefits to Oregon. WPTF support 8% use of offsets as important for containing compliance costs but requests expanding the direct environmental benefits language to provide that out-of-state projects will be judged based on factual information demonstrating the project is beneficial to the Oregon environment. The regulation should state that environmental impacts of offset projects on watersheds, wildlife and air quality are "regional" in nature. Projects providing benefits within a defined geographical region should be recognized as eligible for direct environmental benefits treatment in Oregon.

CPO should have some discretion to make modifications if necessary to enable linkage.

Linkage of the program to that of the other WCI jurisdictions (California and Quebec) will be important to keep program compliance costs as low as possible and to enable Oregon to rely on the existing WCI infrastructure for administration of the allowance tracking system and auctions. WPTF understands that some provisions in the legislation are key to engendering broad support for its adoption and does not suggest that CPO should have authority to modify key components of the program. However, formal discussion of program linkage with the WCI jurisdictions cannot occur until Oregon has adopted the program, as a result, we are concerned that full consideration of elements that might be critical for linkage is not possible at this time. To ensure that linkage is not unnecessarily

delayed, it will be important for CPO to have some discretion to make modifications to the program to enable linkage, without the need to come back for legislative authorization. This discretion may be particularly important in the event that the Bonneville Power Administration (BPA) does not receive authority to participate in the cap and trade program. In this case, it will be important for CPO to develop an alternative method to account for emissions associated with BPA's non-federal purchases in order to maintain the environmental integrity of program caps, which the other WCI jurisdictions will consider critical for linkage.

The Joint Committee should consider keeping critical implementation and enforcement functions at DEQ initially.

HB2020 would also establish a CPO as a new office and make it responsible for coordinating climate actions across state agencies, as well as for implementing and enforcing the Climate Action Program. All administrative functions related to climate, including reporting, that are currently under DEQ would be transferred to the CPO.

WPTF is concerned about the ability of a new office to develop the staff resources and institutional capacity to effectively administer and implement a program with the complexity of the Oregon Climate Action Program within the short 2-year time frame until the program goes into effect, particularly in light of the fact that intensive rule-making will also need to occur during this time. We therefore recommend that the legislature consider establishing the CPO to lead and coordinate policy, but continue to rely upon DEQ for program implementation, including reporting and enforcement for some period. As CPO is fully staffed and as Oregon gains experience with cap and trade, all functions for program implementation could be transferred from DEQ to CPO.

Section-by-Section Comments

Section 8. Definitions

WPTF supports the definition of Electricity System Manager (12) but believes that it would be clearer with the addition of a comma after "wholesale electricity". This would clarify that operation and marketing of generating facilities, or purchase of wholesale electricity is not sufficient to qualify an entity an Electricity System Manager, but that the entity must do so to manage wholesale or retail load. Thus, an entity that operate generation and sells electricity to another entity via a power purchase agreement would not be considered an Electricity System Manager.

> (12) "Electric system manager" includes any entity that, as needed, operates or markets electricity generating facilities, or purchases wholesale electricity, to manage the load for wholesale or retail electricity customers within a balancing authority area that is at least partially located in Oregon, including but not limited to the following types of entities: (a) Electric companies. (b) Electricity service suppliers. (c) Consumer-owned utilities. (d) The Bonneville Power Administration. (e) Electric generation and transmission cooperatives.

SECTION 9. Adoption of program; general provisions.

In keeping with our comments discussed above, WPTF recommends the following changes to paragraph 2, regarding covered entities:

> (2) Subject to section 10 of this 2019 Act, the office shall designate persons as covered entities as follows: (a) Except as provided in paragraph (b) of this subsection, the office shall designate a person in control of one or more air contamination sources 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 sources meet or exceed 25,000 metric tons of carbon dioxide equivalent.
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> (b) For the purpose of regulating anthropogenic emissions of greenhouse gasses attributable to the generation of electricity in this state, the office shall designate a person in control of one or more air contamination sources for which a permit is issued pursuant to ORS 468.065, 468A.040 or 468A.155 as a covered entity if the industry description and code under the North American Industry Classification System that is listed in the permit for the air contamination sources is fossil fuel electric power generation, ~~regardless of whether the annual regulated emissions attributable to the air contamination sources meet or exceed 25,000 metric tons of carbon dioxide equivalent~~.
>
> (c) The office shall designate an electric system manager as a covered entity for the

purpose of addressing annual regulated emissions from outside this state that are attributable to the generation of electricity that the electric system manager schedules for delivery and consumption in this state, including wholesale market purchases for which the energy source for the electricity is not known, and accounting for transmission and distribution line losses.

(c bis) The Director shall determine by rule the appropriate persons whom shall be designated as covered entities with respect to regulated emissions attributable to generation of electricity outside of the state that is imported into the state via the Energy Imbalance Market.

SECTION 10. Exemptions and exclusions.

WPTF urges the Joint Committee to strike subparagraphs 2(c) and (e) of this section.

(2) The office shall exclude from regulated emissions under sections 8 to 26 of this 2019 Act:

(a) Methane emissions from a landfill that are demonstrated to have been recaptured and used for the generation of renewable energy including but not limited to electricity, transportation fuels or heat.

(b) Greenhouse gas emissions from the direct combustion of municipal solid waste to generate renewable energy including but not limited to electricity, transportation fuels or heat.

~~(c) Greenhouse gas emissions attributable to an air contamination source described in section 9 (2)(b) of this 2019 Act that are attributable to the generation in this state of electricity that is: (A) Delivered to and consumed in another state, accounting for transmission and distribution line losses; and (B) For which the capital and fuel costs associated with the generation are included in the rates of a multistate jurisdictional electric company that are charged to the electricity customers in a state other than Oregon.~~

(d) Greenhouse gas emissions from the combustion of fuel that is demonstrated to have been used as aviation fuel or as fuel in watercraft or railroad locomotives.

~~(e) Greenhouse gas emissions attributable to a consumer-owned utility if the three-year average of the annual greenhouse gas emissions attributable to electricity that is scheduled, by the consumer-owned utility or by an electric generation and transmission cooperative, for the consumer-owned utility to deliver for consumption in this state is less than 25,000 metric tons of carbon dioxide equivalent.~~

SECTION 15. Direct distribution of allowances for electric companies.

To ensure that the allocation of allowances to electric companies does not competitively disadvantage independent power producers or energy service providers, WPTF recommends the following modifications to section 15.

The Director of the Carbon Policy Office shall, in consultation with the Public Utility Commission, adopt rules for allocating allowances for direct distribution at no cost to covered entities that are electric companies for the exclusive benefit of ratepayers, and to maintain and support competition within the wholesale and retail electricity markets

(1) Rules adopted under this section must

(a) Ensure that that each electric company receiving a direct distribution of allowances include the market value of allowances needed for compliance of resources in their portfolio in scheduling and dispatch;

(b) Allow for an electric company to use allowances directly distributed under this section to meet compliance obligations associated with generation of electricity to serve the load of the electric company's retail electricity consumers in Oregon, subject to the approval and oversight of the Public Utility Commission.

(c) Require each electric company receiving a direct distribution of allowances to submit a report to the Office on an annual basis on the use of allowances allocated to it and any proceeds from the sale of such allowances.

(d) Ensure that the allocation of allowances to electric utilities does not create a cost advantage between retail electricity consumers using a cost-of-service rate and those served through direct access.

(e) The rules must include provisions necessary to implement direct distributions of allowances to electric companies as follows: (1) For the purpose of aligning the effects of sections 8 to 26 of this 2019 Act with the trajectory of emissions reductions by electric companies resulting from the requirements of ORS 469A.005 to 469A.210 and 757.518, the direct distribution to an electric company during calendar year 2021 and for each calendar year until and including 2030 must represent an amount equal to 100 percent of the 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. For purposes of this subsection, forecast 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 January 1, 2021. (2) Beginning in 2031 and for each following year until and including 2050, the direct distribution to an electric company under this section must decline from the amount of allowances allocated to the electric company in 2030 by a constant amount proportionate to the decline in the amount of allowances available in annual allowance budgets pursuant to section 9 (1)(b) of this 2019 Act.

SECTION 21. Auctions.

WPTF recommends the following modification to subparagraph 5(c) and 7 of this section.

(1) Except as provided in subsection (7) of this section, auctions of allowances are open to registered entities.
(2) The Carbon Policy Office shall hold auctions at least annually.
(3) The office may engage: (a) A qualified, independent auction administrator to administer auctions; or (b) A qualified financial services administrator to conduct financial transactions related to the auction.
(4) The office shall issue notice for an upcoming auction prior to the auction.
(5) The office shall:
(a) Set an auction floor price for 2021 and a schedule for the floor price to increase by a fixed percentage over inflation each calendar year.
(b) Set an allowance price containment reserve floor price for 2021 and a schedule for the allowance price containment reserve floor price to increase by a fixed percentage over inflation each calendar year.
(c) Set a hard price ceiling for 2021 and a schedule for the hard price ceiling to increase by a fixed percentage over inflation each calendar year, and adopt rules for making an unlimited amount of allowances available ~~for auction~~ upon exceedance of the hard price ceiling.
(d) Take actions to minimize the potential for market manipulation and to guard against bidder collusion, including but not limited to specifying as holding limits the maximum number of allowances that may be held for use or trade by a registered entity at any time.
(6) In setting the auction floor price, allowance price containment reserve ~~floor~~ price and hard price ceiling and adopting rules as required by subsection (5) of this section, the office shall consider:
(a) Prevailing prices for carbon in other jurisdictions; and
(b) Setting price requirements in a manner that enables the state to pursue linkage agreements pursuant to section 24 of this 2019 Act with other jurisdictions.
(7) ~~Reserve auctions~~ Sales of allowances from the allowance price

containment reserve shall be conducted separately from the auction of other allowances for the purpose of addressing high costs of compliance instruments. Allowances unsold from the reserve ~~auction~~ must be made available again at future reserve sales ~~auctions~~. General market participants may not ~~participatein~~ purchase reserve allowances ~~auctions~~.

(8) The proceeds of an auction shall be transferred to the State Treasurer to be deposited in the Auction Proceeds Distribution Fund established under section 22 of this 2019 Act.

SECTION 53. (Amendments to ORS 468A.280)

WPTF recommends the following changes to the amended text:

(1) As used in this section:

(a) "Air contamination source" has the meaning given that term in ORS 468A.005.

(b) "Greenhouse gas" has the meaning given that term in section 8 of this 2019 Act.

(2) The Director of the Carbon Policy Office by rule may require registration and reporting of information necessary to determine greenhouse gas emissions by:

(a) A person in control of an air contamination source of any class for which registration and reporting is required under ORS 468A.050.

(b) A person considered an Electricity System Manager as defined in section 8 of this 2019 Act;

(a) ~~A person who imports, sells, allocates or distributes electricity for use in this state~~ Any other person designated as a covered entity with respect to regulated emissions attributable to generation of electricity outside of the state that is imported into the state via the Energy Imbalance Market

(3) A person required to register and report under subsection (2) of this section shall register with the Carbon Policy Office and make reports containing information that the director by rule may require that is relevant to determining and verifying greenhouse gas emissions. The director may by rule require the person to provide an audit by an independent and disinterested party to verify that the greenhouse gas emissions information reported by the person is true and accurate.

(4) Rules adopted by the director under this section for electricity that is imported, sold, allocated or distributed for use in this state may require reporting of information necessary to determine greenhouse gas emissions from generating facilities used to produce the electricity and related electricity transmission line losses.

(5)(a) The director shall allow consumer-owned utilities, as defined in ORS 757.270, to comply with reporting requirements imposed under this section by the submission of a report prepared by a third party. A report submitted under this

paragraph may include information for more than one consumer-owned utility, but must include all information required by the director for each individual utility.

(b) For the purpose of determining greenhouse gas emissions related to electricity purchased from the Bonneville Power Administration by a consumer-owned utility, as defined in ORS 757.270, the director may require only that the utility report:

(A) The number of megawatt-hours of electricity purchased by the utility from the Bonneville Power Administration, segregated by the types of contracts entered into by the utility with the Bonneville Power Administration; and

(B) The percentage of each fuel or energy type used to produce electricity purchased under each type of contract.

(6)(a) Rules adopted by the director pursuant to this section for electricity that is purchased, imported, sold, allocated or distributed for use in this state by an electric company, as defined in ORS 757.600, must ~~be limited to~~ include the reporting of:

(A) The generating facility fuel type and greenhouse gas emissions emitted from generating facilities owned or operated by the electric company;

(B) The megawatt-hours of electricity generated by the electric company for use in this state;

(C) Greenhouse gas emissions emitted from transmission equipment owned or operated by the electric company;

(D) The number of megawatt-hours of electricity purchased by the electric company for use in this state, including information, if known, on:

(i) The seller of the electricity to the electric company; and

(ii) The original generating facility and fuel type or types~~, where known~~; and

(E) An estimate of the amount of greenhouse gas emissions attributable to:

(i) ~~Electricity purchases made by a particular seller to the electric company;~~

~~(ii)~~ Electricity purchases from an unknown origin or from a seller who is unable to identify the original generating facility fuel type or types;

(iii) Electricity purchases for which a renewable energy certificate under ORS 469A.130 has been issued but subsequently transferred or sold to a person other than the electric company;

(iv) Electricity transmitted for others by the electric company; and

(v) Total energy losses from electricity transmission and distribution equipment owned or operated by the electric company.

(b) ~~Pursuant to paragraph (a) of this subsection, a multijurisdictional electric company may rely upon a cost allocation methodology approved by the Public Utility Commission for reporting emissions allocated in this state.~~