



March 23, 2021

**Via Electronic Submission**

Oregon State Legislature  
House Committee On Energy and Environment  
900 Court St. NE  
Salem, OR 97301

**Re: HB 2021, Proposed -1 and -4 Amendments  
Comments of Marie Phillips Barlow, In-House Counsel, Regulatory and  
Policy Affairs**

Dear Chair Marsh, Vice-Chair Brock Smith, Vice-Chair Helm, and Members of the Committee:

NewSun Energy LLC (NewSun) submits this written testimony on the proposed -1 and -4 amendments to HB 2021.<sup>1</sup> The amendments create significant ambiguity, barriers to stakeholder involvement and transparency, and complexities, if not impossibilities, in implementation and enforcement. As a participant in many Public Utility Commission (PUC) of Oregon proceedings, NewSun strongly favor laws that create a clear and enforceable path forward in black and white. Grey areas in the law favor the large monopoly investor-owned utilities, lead to significant additional process in rulemakings or ultimately in litigation and will impede successful decarbonization of the grid in a timely manner.

NewSun agrees with Dr. Charles Teplin of RMI, who presented to this committee on March 17, 2021, that the most impactful actions we can take from a climate perspective are the ones we can take now. The next decade is the most important in decarbonization. NewSun strongly supports legislation that will make progress to decarbonize the electricity grid in this next decade. The HB 2021 proposed -1 amendment leaves too much guesswork and ambiguity to effectively move the needle.

Below are a number of the concerns NewSun identified, however the concerns detailed herein should not be viewed as exhaustive. The ambiguities identified will likely lead to extensive rulemaking processes at the agency level in order to clarify next steps or to extensive litigation. The loopholes will likely mean that effective decarbonization is not enforceable or will give monopoly investor-owned utilities a free pass to acquire their own resources, while not sending an effective market signal to spur competition. NewSun looks forward to continuing to work with this committee and other stakeholders in crafting an effective policy.

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<sup>1</sup> At the time of these comments there is no -2 amendment, and while the -3 is posted, these comments do not pertain to that amendment. The -4 appears substantially similar to the -2 amendment.

1. **Ambiguous Agency Authority:** The conflicting provisions regarding which agency has the ultimate authority to determine whether a company is in compliance creates ambiguity and additional process to clarify agency roles. (See Section 5(1)(c) and Section 7). The current renewable portfolio standard (RPS) requires the PUC to determine compliance. ORS 469A.170.
2. **No Compliance Reports:** The absence of a provision directing when or how frequently the agency determines compliance—i.e., annually, biannually, or only in the year of the milestone—creates additional ambiguity to clarify and also makes enforcement difficult. Note that the current RPS requires annual compliance reports. ORS 469A.170.
3. **No Enforceability:** The 100% by 2040 milestone is nearly impossible to enforce because even if it is technically feasible, in the public interest, and does not adversely affect reliability, the electricity providers are only required to “seek” to provide 100% non-emitting electricity. (Section 3(1)).
4. **No Penalties:** The absence of required penalties and an enforcement mechanism creates a big loophole. For example, if a utility failed to meet a standard, where would someone (and who can) bring an enforcement action? Determination of this likely frustrates or delays implementation and complicates and adds litigation risk in the future, leading to further delay, remedial action, and climate progress.
5. **Utilities Can Claim Emissions Credit When RECs Sold Elsewhere:** The provision that allows an electricity provider to claim emissions reductions from facilities even if they have not acquired the renewable energy certificate creates a loophole where a utility may be able to claim emissions reductions benefits from facilities when it has not paid for those environmental attributes. (Section 6).
6. **Unnecessary Process:** The reliability pause provision appears to create another burdensome process for something that is already done in typical resource planning processes before the PUC—the utilities planning for resource acquisitions while taking into account future projections of reliability requirements. (Section 8). This issue not addressed by this provision that is more likely to occur, is where current reliability metrics do not foresee a reliability issue as has occurred in California and Texas this last year.
7. **Non-binding Cost Cap Proposal:** The cost cap procedure creates a loophole that may permit a utility to avoid the cost cap by making a proposal for alternative rate or accounting treatment in the cost-cap proceeding but is not held to that commitment in a later rate case. (Section 9). The current RPS cost cap process has already been implemented and used for many years,
8. **Lack of Ability to Seek Reconsideration:** Any determination made in the cost cap proceeding appears as though it may prohibit any further reconsideration by the PUC, a process commonly employed upon issuance of a final order before an appeal is sought. (Section 9).

9. **Cost of Existing Programs Included in Cost Cap:** The costs considered as part of the cost cap also include numerous preexisting obligations which cannot reasonably be related to implementation of this new law such as community solar, net metering, and the mandatory purchase obligation under the Public Utility Regulatory Policies Act. (Section 9). These additional costs proposed to be included in the -1 amendment could likely trigger an early “out” under the cost cap, however, before allowing for such an out, policy-makers should be informed about what that means and get numbers. The -4 amendment removes this language and instead appears to leave this determination to the PUC’s discretion. That may further delay implementation due to the potential need for a PUC rule-making. The current RPS details which costs are included such as the costs for new generating resources, financing costs, and transmission and substation costs. ORS 469A.100.
10. **Ambiguous “Other” Information Used in Clean Energy Plan:** It also may allow some utilities to base their clean energy plan on some “other” information other than its Integrated Resource Plan, which creates a huge amount of ambiguity, impedes stakeholder involvement, and does not even define what this “other” information might be. (Section 4(3)(a)). This section applies to “multistate jurisdictional” electric companies, which is not defined but would seem to apply to two out of the three investor-owned utilities operating in Oregon (PacifiCorp and Idaho Power) who operate in more than one state.
11. **Non-Mandatory Annual Targets:** By not including annual targets in the statute, but instead requiring that those be developed in the clean energy plan, delays the time by which those annual targets are made public, and turns them into a “goal” rather than an enforceable requirement. Therefore, those annual targets will not send a clear signal to the market.

These ambiguities and loopholes will make implementation and enforcement extremely difficult and will impede progress towards decarbonization. The new process required to implement the proposed -1 or -4 amendments will delay climate action through rulemakings and litigation over the meaning of ambiguities and create a low-bar for monopoly investor-owned utilities to exploit loopholes. For example, when will we find out if utilities plan or will build any renewables at all? Or will they just recount hydro without making grid greener. We do not know based on the legislation, nor do we have clarity on how that will be determined, what happens if it is disagreed later, or even where that question would be resolved.

However, this effort does not need to recreate the wheel. It can build upon and strengthen preexisting statutes that are known and already working towards decarbonization in this state. NewSun looks forward to continuing to engage on this important topic and is available to discuss further.

Sincerely,

  
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