Comments of the Northwest & Intermountain Power Producers Coalition to the Oregon House Committee on Energy and Environment on House Bill 2021

April 8, 2021

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

I submit these comments as the executive director of the Northwest & Intermountain Power Producers Coalition (NIPPC). NIPPC represents independent power producers, developers, and marketers across the Pacific Northwest. NIPPC represents about 5,000 megawatts of operating generation and an equal amount under development. This includes much of the clean energy that now serves Oregon.

I am pleased to testify to the extensive improvements in the -5 amendment to HB 2021. Two weeks ago, I testified to this committee that while NIPPC is committed to supporting ambitious, achievable, and fair policies to decarbonize the Northwest, we were highly concerned that the -1 amendment has significant problems. In particular, it includes a set of provisions that, in NIPPC's view, would be deeply anti-competitive.

In the intervening time, a broad group of stakeholders, including NIPPC, spent many hours reaching agreement on changes that we suggested to the bill that are reflected in the -5 amendment. These changes ensure the bill is fair to all market participants, still ambitious in meeting the climate challenge, and achievable in maintaining a reliable grid. These changes will allow Oregon to attract more investments in clean energy projects, dramatically reduce emissions from the power sector, and match the carbon and clean energy commitments made by other Western states.

There are many ways to decarbonize the grid. The emissions standard approach taken in this bill represents one way that NIPPC believes can function well. While alternative approaches, like a more aggressive renewable portfolio standard, could also work, I submit to this committee that now, nearly halfway through this session, HB 2021 is the bill the Legislature should focus on. It has received sustained attention and diverse input from across the power sector— advocates for environmental justice, climate action, and residential and small commercial consumers; regulated utilities; competitive power suppliers; natural gas plant operators; and renewable energy developers.

All of these policy advocates made sometimes difficult compromises that they sought out in order to present a proposal that represents our common interests. That proposal in the -5 amendment is not perfect. It is not what any of us would have written all by

ourselves. But the fact that we had to come together to present this proposal is at least one good mark of legitimacy. I can say with confidence that the changes we have worked out are a dramatic improvement compared to when I last provided comments on behalf of NIPPC two weeks ago.

The -5 amendment would maintain competition in the power sector without tilting the playing field toward utilities or their retail competitors. Unlike the -1 amendment, it would maintain in existing law the general responsibility of the utility commission to mitigate the market power of the incumbent monopolies. It would apply its emissions targets, compliance requirements, reliability safety valve, and cost cap fairly to both utilities and electricity service suppliers.

The new “green tariff” authorized in the bill, for residents and small businesses in cities and counties, would no longer override the existing program for large customers in Oregon.

The bill would also hold harmless an important source of renewable energy—qualifying facilities (QFs) under the Public Utility Regulatory Policies Act (PURPA)—that the previous version would have harmed with respect to the receipt of an avoided cost rate reflective of the QFs’ non-emitting qualities. In the appendix to these comments, I have included a longer discussion of this technical PURPA issue.

While NIPPC in general does not support bans on specific fuel types, the bill would now make an important exception for carbon capture and sequestration from the siting ban on new fossil fuel plants.

Finally, NIPPC looks forward to a refinement of the labor standards in the bill which at this time are not a provision that NIPPC supports without further changes. In particular, if public works prevailing wages are to be applied to privately financed renewable energy projects in Oregon, that application should include appropriate mitigating criteria, especially for renewable projects that rely on local businesses for some services and labor in rural areas.

In conclusion, NIPPC appreciates the significant progress made through input from a cross-section of Oregonians to help revise this bill and unleash clean energy development of all kinds in Oregon while simultaneously treating competitors in the power sector fairly. NIPPC would be pleased to provide further feedback on the legislation as legislators continue to evaluate it.

Sincerely,

Spencer Gray
Executive Director

Appendix: Comments on Section 8(4) of -5 Amendment

NIPPC helped negotiated and supports the new Section 8(4) because it maintains the status quo for a qualifying facility (QF) under the Public Utility Regulatory Policies Act (PURPA) to have the option to sell energy and capacity and be paid based on the costs of a renewable energy resource that is used to comply with this Act. Section 8(4) is not intended to change Oregon's PURPA implementation, and is only intended to ensure that a QF has the same options it does today once Pacific Power and Portland General Electric Company (PGE) have met their final targets in Oregon's Renewable Portfolio Standard (RPS). The comments here provide further background and details on NIPPC's understanding of this provision.

Under PURPA, a QF is paid based on the "avoided cost," which is the incremental cost to an electric utility of the electric energy and/or capacity which, but for the purchase from the QF, the utility would generate itself or purchase from another source. States have some flexibility under the federal law in calculating avoided costs that are used to pay a QF for the net output of electricity generated. This flexibility also exists under the Oregon PURPA. Oregon bases prices, at least in part, on the costs of each utility's next major planned resource acquisition. Historically, this has been a coal or gas plant.

In 2011, the Oregon Public Utility Commission (OPUC) ordered PGE and Pacific Power to each develop a separate avoided cost price for renewable resources for PGE and Pacific Power. These two Oregon utilities have historically been subject to the RPS obligations to procure renewable energy, while Oregon's third investor-owned electric utility, Idaho Power Company, has not. The OPUC recognized that under PURPA, when a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement. The OPUC quoted the Federal Energy Regulatory Commission (FERC), which had made the same finding previously. Now in Oregon, a QF has the opportunity to sell its net output and its Renewable Energy Certificates (RECs) to either PGE or Pacific Power, and be paid an avoided cost rate based on the costs of renewable generation resources, because those RECs help the utilities comply with the state's RPS, or the option to retain ownership of its RECs and be paid an avoided cost rate based on the costs of a traditional (non-renewable) resource.

NIPPC believes that PURPA would require a renewable rate option if a utility was acquiring a renewable resource to comply with the new proposed law in HB 2021. However, NIPPC was concerned that moving from an RPS to an emissions-based standard could result in some stakeholders making arguments that Pacific Power's and PGE's renewable avoided cost rate options should be eliminated once the utilities' 50% RPS obligations were satisfied.

Section 8(4) would ensure that there is no gap in Pacific Power and PGE continuing to offer a renewable avoided cost rate. It would require the OPUC to develop such a rate based on resources acquired to comply with this legislation no sooner than two years

before PGE or Pacific Power will meet their 50% RPS obligations under ORS 469A.052(h), and it must conclude no later than the calendar year identified in the utility's acknowledged Integrated Resource Plan (IRP) that shows that PGE or Pacific Power will likely meet or exceed the 50% RPS obligation.

The language "reflect the characteristics of generators that contribute to compliance with [this 2021 act]" was specifically used because it is based upon the language that the OPUC and FERC used when the renewable rate was adopted. Again, the intention in Section 8(4) is to require that a renewable rate be offered and maintain that status quo. It is important to note that the amendment includes no other statutorily mandated changes to how the OPUC sets avoided cost rates consistent with the federal and Oregon PURPA statutes. Therefore, the purpose of this subsection is to ensure that there is no gap for a renewable QF to be eligible for a renewable rate (either through the RPS or this new legislation).

To use an example to illustrate this, assume that the utilities are planning on acquiring renewable resources in their IRPs for purposes of complying with the RPS. The OPUC currently describes this scenario as a utility being "renewable resource deficient."

Assume that the utility IRP shows that the final 2040 targets in ORS 469A.052(h) will be met in 2030. A QF will be eligible to contract or otherwise commit to enter into a contract until at least December 31, 2029, under which the QF would sell power for the duration of their legal obligation under a renewable RPS rate.

Under these assumed facts and Section 8(4), the Commission will initiate a process to establish the calculation of renewable rates compliant with the requirements of this legislation no earlier than January 1, 2028, which it will complete no later than December 31, 2029.

For QF contracts entered into on and after January 1, 2030, a renewable QF will then be eligible to sell power under a rate set consistent with Section 8(4).

For practical purposes, the RPS and clean energy target (i.e., the targets established in HB 2021) rates may be the same if the utility is planning on using the same non-emitting resource for both its RPS and clean energy target purposes, but Section 8(4) leaves that determination to the OPUC (as long as its decisions are consistent with the federal and state PURPA laws).

The law does not address Idaho Power Company because Idaho Power Company is not currently subject to Oregon's RPS. It is NIPPC's view that if Idaho Power is acquiring renewable resources to meet the requirements of HB 2021 or other reasons, then Idaho Power Company must offer a renewable avoided cost rate. However, that issue is not addressed in Section 8(4) and leaves that determination to the OPUC (as long as its decisions are consistent with the federal and state PURPA laws).