

Good Morning Chair Lively, Vice-Chairs Gamba and Levy:

My name is Marie Barlow, and I am an attorney appearing in a representative capacity on behalf of NewSun Energy.

My practice is primarily before the Oregon Public Utility Commission (PUC), but I also do work at the federal level before the Federal Energy Regulatory Commission and before the Bonneville Power Administration. I have also done some prior work before other state utility commissions and I spent 9 years serving in some capacity on the Oregon Administrative Law section of the Oregon State Bar and through that work, gained experience related to Oregon administrative law practices for agencies other than the PUC.

I am here to present the basic motivations behind and elements of HB 2985, which amends procedures related to the PUC.

This bill is targeted at addressing one key issue, which is that PUC orders often leave issues raised and briefed by parties unaddressed. Sometimes the Order will include a summary of the issue, but the Order does not always meaningfully wrestle with the issue, resolve the disagreement or even state why the Commission has declined to consider it.

I think the PUC is engaging on some of the most meaningful issues facing this state, including climate change, electricity rates, and competition. And I like appearing before that Commission and advocating for good policy. But it can be a really exhausting process to engage in and a dissatisfying result to submit testimony and briefing on an issue and not have that addressed in the Order itself.

One thing that I've seen other agencies do either at the state or federal level, is that they issue more particularized findings of fact and conclusions of law.

And some agencies organize all comments submitted by stakeholders by topic and describe whether and/or how the comment was resolved or addressed in the Order.

The Federal Energy Regulatory Commission is an agency that does this. In a proceeding to set a nationwide policy, my client submitted a comment on an issue we thought would undermine a key goal of their policy—and we were the only entity to submit comment on that issue. There were thousands of pages of comments submitted by entities all across the US, so this is an issue that could have easily gotten lost in the shuffle. But since this agency addresses each comment submitted in its orders, our comment was discussed in the order and in that instance, my client's recommendation was adopted. However, even if it was not adopted, the order would tell us why the agency declined to adopt that change, usually due to some other competing policy objective.

The PUC does not always do that.

The Oregon Administrative Procedures Act (APA) is the law that generally applies to all state agencies and governs the procedures through which the agencies must conduct their business: this generally includes processes like rulemakings, contested cases, and other proceedings. The definition of Agency is broad and intended to encompass all boards, commissions, departments, or divisions authorized to make rules or issue orders.

This includes the PUC.

However, while the PUC is subject to the majority of the APA, there is a provision that carves the PUC out of a number of provisions and has its own statute governing those processes. The bill would delete that carve out and the comparable PUC-specific provisions and therefore subject the PUC to the same administrative process as all agencies in Oregon.

Many of these provisions are very similar or include only slight deviations to process and would therefore result in an inconsequential change to the PUC's process. So, in large part, this bill is a technical fix.

One provision in particular drew our attention, which is the provision in ORS 183.470 that states that "findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order." The PUC's statute has a comparable provision that requires findings of fact and conclusions of law, but that does not specifically require that those findings be made as to "each contested issue of fact." Therefore, the goal of this legislation is aimed at getting the PUC to issue Orders that meaningfully wrestle with each issue raised in the proceedings before it.

Now to clarify, I recently learned that there is some disagreement about whether and to what extent this bill as drafted would change the PUC's current practices. We are reviewing this analysis and will be exploring what type of an amendment might be necessary to ensure a result that addresses the underlying concern.

That concludes my prepared remarks and I'm happy to answer any questions.