



Testimony of the Northwest Intermountain Power Producers Coalition, Renewable Energy Coalition and Community Renewable Energy Association

**In Support of HB 2855 Expanding the Powers of the
Oregon Public Utilities Commission**

House Energy and Environment Committee

March 28, 2019

NIPPC, REC and CREA appreciate the opportunity to jointly submit these comments in support of HB 2855. HB 2855 provides policy level guidance to the Oregon Public Utility Commission (OPUC) instructing them to consider important state policy priorities as it conducts its primary responsibility as an economic regulator of Oregon’s investor-owned utility monopolies. HB 2855 calls on the OPUC as it is “deciding or deliberating toward a decision” to consider these broad public policy and social values:

- Social Equity
- Environmental Justice
- Environmental Enhancement
- Greenhouse Gas Reductions
- Consumer Choice
- Diversity of Ownership of Electricity Generation
- Fulfillment of Oregon’s Energy and Climate Policies
- Health of the State’s Economy

In addition, HB 2855 instructs the Commission to promote two overarching principles captured in SB 978: first, “stimulating and promoting innovation and competition” and, second, “allowing and fostering broad participation in the regulatory process.”

Over the years previous legislatures have passed a variety of laws on these topics which intersect with the energy industry generally and the actions of the OPUC specifically. These include (but are not necessarily limited to) Oregon’s version of the Public Utility Regulatory Policies Act in 1983, SB 1149 in 1999 (creating the Energy Trust of Oregon and retail direct

access), SB 838 in 2007 (the Renewable Portfolio Standard), SB 1547 in 2016 (Coal to clean, expansion of the RPS, improving utility competitive bidding to have diversity of ownership, community solar and transportation electrification) and SB 978 in 2018 (review of the utility business model). We believe that the OPUC is the most important regulatory agency that impacts energy issues and it should continue to play a vital role in Oregon's energy sector achieving the legislature's policy direction. However, based on our observations, the OPUC is at times reluctant to incorporate these broader considerations in their deliberations and decisions. Historically, at times this reluctance may reflect an individual OPUC commissioner's more narrow view of Commission's role as "just" and economic regulator. At other times commissioners have seemed open to taking in Oregon's broader policy objectives into account but perceive themselves limited from doing so citing a 1992 Attorney General's memorandum that Oregon laws inhibit their ability to do so. We believe memorandum is antiquated and unnecessarily restrictive.

Given that the OPUC regulates all the natural gas utilities and associated natural gas consumption in the state, combined with their regulation over approximately two thirds of the state's electric consumers and loads, their decisions impact the range of issues enumerated above.

We believe that the PUC already has the statutory authority to consider broader public policies, but it has chosen not to do so.

The Commission is primarily responsible for:

Ensuring that regulated utilities offer safe, reliable and non-discriminatory energy service at fair, just and reasonable rates that provide utilities an opportunity earn a reasonable rate of return.

CREA, REC and NIPPC believe that Oregon law directs the Commission to consider environmental impacts when making decisions. PURPA mandates the Commission to implement policies to encourage renewable energy for the benefit of all Oregonians.¹ The Legislature has also found that community based renewable energy projects are "an essential elements of this state's energy future" and directed the Commission adopt rules and policies to ensure that at least 8% of the aggregate electrical capacity of all electric companies include community-based projects.² The Commission considers environmental issues like the cost of carbon in integrated resource plans and how to best meet renewable portfolio standard requirements, but has been hesitant to consider broader environmental factors as part of its public interest inquiry. The new cap and invest bill will likely provide the Commission with even greater tools to protect the environment from existential threat of climate change.

¹ ORS 758.515.

² ORS 469A.210.

The bill makes it clear that the Commission can explicitly consider the environment by stating that the Commission shall develop and implement policies and rules that encourage environmental justice, the enhancement of the environment, greenhouse gas emissions reductions, and the fulfillment of this state’s energy and climate goals.

CREA, REC and NIPPC also believe that Oregon law also allows the Commission to consider social equity. The Commission generally sets rate on a “cost basis”, and has concluded that it cannot require utilities to accomplish societal objectives that are outside the scope of utility regulation and that impose costs that the Legislature has not required utilities and their customers to bear. Specifically, the Commission has determined that it cannot consider rate discounts without additional statutory authority. We disagree, and believe that part of “fair, just and reasonable rates” includes considering social equity, which includes ensuring that those most vulnerable in our communities can pay their utility bills.

This bill makes it clear that the Commission can consider social equity issues, and provides the PUC with the statutory authority that it says it needs to address social equity.

CREA, REC and NIPPC also believe that the Commission’s responsibilities also extend beyond its core regulatory responsibilities to include competition, environmental regulation and broader energy policy. Regarding to competitive markets and independent power producers, we add that the Commission is also responsible for:

Promoting the development of competitive market and providing customer market choices by stimulating competition, alleviating monopoly market power, functionally separating or divesting utility generation assets, providing retail consumers with access to competitive electricity options,³ promoting the development of a diverse array of permanently sustainable,⁴ non-utility owned and community based energy resources,⁵ and increasing the marketability and creating a uniform institutional climate for independent power producers.⁶

As the citations above demonstrate, the Commission has responsibilities related to competitive markets and non-utility power providers that are specifically enumerated in Oregon law. This should be no surprise, as the Commission is the most important state agency regulating the energy sector. This bill merely makes explicitly clear in the PUC’s mission statement that it

³ ORS 757.646(1); Senate Bill 1149 Recitals.

⁴ ORS 469.010(2)(a).

⁵ ORS 469A.210; ORS 758.515.

⁶ ORS 758.515.

needs to consider its existing statutory responsibilities related to customer choice and competition.

The PUC, again, however has exercised caution and consider customer choice, competition and diversity of generation ownership as part of its mission. This bill makes it clear that its responsibilities under SB 1149 and other statutes are given full effect.

This bill essentially grants the OPUC legislative “permission” to incorporate these broader policies into their deliberations and decisions without usurping the OPUC’s authorities or providing overly prescriptive direction. The legislation reflects changing nature of the energy industry, the nexus between energy issues and the increased emphasis on climate and social equity considerations, and by doing so articulates legislative expectations for the OPUC without compromising its independence or removing its central responsibility as an economic regulator.

The parties to these comments participated extensively in the process the legislature directed the OPUC to undertake in addressing these emerging issues and the role the OPUC plays in them. We believe that a clear majority of the participants in that process were supportive of broadening the OPUC’s scope in just these areas. Unfortunately, for whatever reason the utilities expressed reluctance for these ambitious reforms, which resulted in the Commission’s report to the legislature to be a bit timid.

The passage of HB 2855, we believe, would provide the OPUC with the appropriate level of guidance to increase the level of comfort in the role and authorities in helping achieve the legislatures policy objectives in the areas of climate and the environment, and social justice issues, while recognizing contemporary consumer behavior and desires for choice and the changing economics and technology in today’s energy industry.

We urge the committee to adopt SB 2855.