



July 10, 2018

Via Email

Chair Megan Decker
Commissioner Steve Bloom
Commissioner Letha Tawney
Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, Oregon 97301

RE: Senate Bill 978 Comments

Dear Commissioners:

The Northwest and Intermountain Power Producers Coalition (“NIPPC”) submits these comments in response to the Oregon Public Utility Commission (the “Commission” or “OPUC”) notice requesting that stakeholders provide their priorities regarding the Commission’s upcoming Senate Bill (“SB”) 978 report (“Report”) to the Legislature.

The Commission needs to look at the world as it can and should be, and not just as it is today. The Commission’s Report should outline a 21st Century vision of the electricity system and utility regulation rather than just describe the trends challenging the over 100-year old utility business model and regulatory construct. SB 978 offers a matchless opportunity re-shape Oregon energy policy to better reflect the state’s policy priorities starting with decarbonizing the power sector at the least cost and least risk to consumers.

The following comments represent NIPPC’s second set of formal written comments. NIPPC’s April 20 comments, which: 1) summarized of the Commission’s current regulatory responsibilities; 2) explained the public policy objectives promoted and impeded by the current system for regulation of investor owned utilities (“IOUs”); 3) identified the primary obligations and benefits for utilities, cost-of service and direct access customers and the Commission; and 4) described the actions and behaviors the current system encourages from utilities, cost-of-service and direct access customers, and the Commission are not repeated here.¹

¹ NIPPC’s SB 978 Comments (April 20, 2018) (Available at: <https://www.puc.state.or.us/Renewable%20Energy/NIPPC-Comments.pdf>).

NIPPC continues to maintain, however, that the guiding principle of regulatory innovation should address the question: what can regulated monopolies uniquely do? NIPPC believes IOUs serve a central role ensuring reliable, non-discriminatory access to electricity at fair, just, sufficient and reasonable rates. Today, the IOUs' role, which justifies monopoly status should be limited to investment in and operation of the distribution and transmission grid.

The electricity generation sector is no longer a natural monopoly. This reality is recognized in Federal law and most of the country. The IOUs' monopsony entitlement and obsession with owning generation assets, while consistent with the utility shareholders' economic interest, runs contrary to the ratepayer interests. The IOU exercise of their monopolistic prerogatives increases the cost of electricity thwarts innovation and impedes the state's energy policy goals of de-carbonization, diversification of resource ownership and rural economic development.

Oregonians are hamstrung by today's dated approach to utility regulation. Regrettably, prior Commissions failed to fully and fairly implement the Legislature's statutory directives expressed in SB 1149. While other elements of that ground-breaking legislation were adopted,² the law's core vision of a competitive electricity market has not been realized. This Commission in responding to SB 978 can now shift to a regulatory model centered on market competition, choice and innovation.

Twenty years after its passage, SB 1149 is more relevant than ever. For example, the provision of direct access for commercial and industrial customers is of pressing interest. Businesses of all sizes currently in the state, and others considering relocating to Oregon, are eager to avoid cost-of-service rates and to shift to carbon-free electricity sources offered by the market at affordable prices. This change can be achieved without disadvantaging ratepayers.

Returning to the vision set by SB 1149 would set the pace for other needed modification of the status quo regulatory structure. The Commission can get ahead of changes, which have already occurred and are expected to accelerate in the near future. If the Commission fails to adopt a roadmap for the future, it risks being disintermediated by technological changes, economic inventiveness, consumer frustration and piecemeal legislative initiatives. This outcome needs be avoided given the Commission's exceptional expertise and its position to drive de-carbonization of the energy economy at the lowest cost to all power consumers.

² The public purpose charge to fund conservation, renewable energy, low income weatherization, housing and schools has been fully implemented with great success. SB 1149 removed conservation from the utilities and allowed the creation of the Energy Trust of Oregon ("ETO"), which now manages conservation and energy efficiency. This was done because utilities have a financial interest in under investing in conservation. Oregon's approach to conservation, lead by the ETO, may now be the best in the nation.

Therefore, with the eyes of the Legislature upon it, the Commission needs to take this opportunity to describe a reconfigured utility system that meets Oregon's future needs. The Commission's Report should make substantive recommendations for administrative and legislative changes that will enable Oregonians to live and conduct business in an energy economy that is more innovative, cleaner, and cost effective.

Specifically, NIPPC urges the Commission to craft a Report to the Legislature which:

- Describes the current energy regulatory model in Oregon, including its obligations and benefits to stakeholders, regulatory incentives, and the primary public policy objectives that are advanced by the Commission's actions under the current regulatory model;
- Summarizes all of the changes to the regulatory model proposed by participating stakeholders;
- Explains which stakeholders' specific recommendations can be achieved through administrative action and what those actions would be, or if new statutory authority is needed, and what kinds of legislative changes would be required;
- Proposes changes to the existing regulatory system and incentives that benefit customers and the public generally, including plans to administratively implement these changes and make recommendations to the Legislature to implement any changes to the regulatory system to meet the current and future challenges in the energy economy.

1. The Market, Subject to Commission Oversight and a Utility Backstop, Should Meet the Utilities' Future Generation Requirements

NIPPC's primary recommendation is to remove the perverse incentive of the IOUs to build and own generation resources. The Commission can achieve this with or without legislative action, in directing the IOUs to rely upon the market to meet long-term power requirements. Such a policy would lower capital costs to ratepayers by tapping into robust competition amongst independent power producers ("IPPs") and the unprecedented innovation in renewable generation, storage and distributed generation they bring to the power sector. Repositioning the utilities' role in resource acquisition as called for in the original SB 978³ will do more than protect ratepayer interests, it will economically and rapidly advance Oregon's move to a decarbonized energy economy.

³ SB 978, available at:
<https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB978/Introduced>.

In a “market first” future, the Commission would continue to review and acknowledge the IOUs’ least cost and least risk plans, allowing the IOUs to retain ownership of their existing generation assets. The Commission would then oversee competitive procurements where IPPs exclusively compete against one another to ensure that ratepayers obtain the best deal.⁴ Only in extraordinary circumstances could the IOUs petition the Commission to endorse their acquisition of capacity—either to maintain system reliability in exigent circumstances or secure a “deal” if a resource is well below market value.

Simply put, with Carty⁵ as “Exhibit One,” it is time to end the utilities’ monopoly over generation capacity, and allow a competitive market to provide these services at lower cost and less risk.

2. Commercial and Industrial Customers Should Be Allowed the Freedom to Choose Their Power Supplier to Increase Renewable Acquisitions and Lower Power Costs for All Customers

The Commission’s Report should outline how the benefits of direct access can be achieved either through administrative action or, where required, legislative initiative. NIPPC does not believe additional statutory changes are necessary and the Commission only needs to fully implement existing law; however, NIPPC would support legislative changes if the Commission concludes that current law is inadequate to allow commercial and industrial customers to exercise true retail choice.

SB 1149 sought to provide commercial and industrial consumers with market access in order to boost economic competitiveness leading to increased investment and commensurate job creation. The Oregon Legislature found that “all Oregon retail electricity consumers should be provided fair, non-discriminatory access to competitive electricity options,”⁶ and that “retail electricity consumers that want and have the technical capability should be allowed, either on their own or through aggregation, to take advantage of competitive electricity markets as soon as is practicable.” NIPPC does not believe “as soon as practicable” should take two decades to effectuate.

⁴ History has demonstrated that fair competition cannot occur when the utility has an economic interest in selecting its own generation assets.

⁵ Despite strong opposition from industrial customers and independent power producers, PGE selected Carty, a utility owned resource, instead of lower cost and less risky non-utility owned generation. Carty is at least \$150 million over budget, and PGE will surely seek to recover those amounts, *plus a return*, if PGE cannot recover the overage from the original contractor’s insurance companies.

⁶ Under SB 1149, only commercial and industrial customers have direct access to independent electricity service suppliers and residential customers can select a portfolio rate options (green power, time of use rates, etc.).

The Commission's Report should address the pursuit of direct access driven by commercial and industrial businesses seeking to lower costs and carbon emissions. This Commission can correct for lost time by facing down the utilities' undue exercise of market power, which is patently in conflict with state law (SB 1149).

Independently owned energy companies (electricity service suppliers) are also currently prevented from fully bringing their creativity and innovation into the energy economy, which drives up costs and reduces service quality. The frequently cited analogy has real merit: few envisioned a world of smart phones prior to the forced divestiture of Ma Bell. Thankfully, Americans are generations removed from "choices" that were limited to a gray, black or pink landline phone. It was innovation, freed from obsolete monopoly regulation, which opened a world of new possibilities. A restructured energy economy, which unleashes competition, will surely yield similar results.

The Report should explain that direct access benefits all customers by allowing the state to retain existing industries, attract new businesses, and strengthen wholesale power markets, which drive down power costs for all customers. It allows customers who have goals to secure carbon-free resources above and beyond the existing renewable portfolio standard if that is a corporate objective, thereby advancing meaningful and lower cost de-carbonization. Now is the time to facilitate progress, which the Commission needs to pursue promptly.

3. The Commission Should Protect Qualifying Facilities

The Oregon Commission has generally adopted fair and balanced policies to manage the role of qualifying facilities ("QFs") under the Public Utility Regulatory Policies Act ("PURPA"). These policies brought modest levels of non-utility renewable energy development at no additional cost to ratepayers. Regrettably, the Commission has undermined its own policy by allowing PacifiCorp to nearly completely escape its obligation to purchase power under PURPA. Portland General Electric Company ("PGE") has aggravated the situation by aggressively deploying abusive tactics to stonewall IPP generation. Except for small projects, the Commission's goal should be to make PURPA irrelevant by fostering a truly competitive market. Unless and until that becomes a reality, PURPA will be a primary route by which competitive power options are foisted upon the IOUs.

NIPPC recommends the Commission's Report begin by honestly taking stock of how, despite its oversight, utilities have successfully prevented Oregon from achieving the legislative policy of creating a "settled and uniform institutional climate for" and to "increase the marketability of" Oregon Qualifying Facilities ("QFs").⁷

⁷

ORS 758.515.

The Commission should also implement the 8% community renewables mandate, which was not implemented when it was only a “goal” and has been ignored now that it is a mandate.⁸ In terms of legislative changes, the Commission should at a minimum recommend that the current statutory goals supporting the development of QFs be turned into mandates.

NIPPC recognizes that the process of setting rates for retail and PURPA is more art than science. The overall result, rather than each step of the process, reflects on how successful a regulatory agency is at implementing the law. Oregon’s process for setting PURPA avoided costs is broken, as illustrated by dozens of QFs seeking Commission protection from PGE’s efforts to put its competitors out of business. Similarly, there is no reasonable rate setting methodology that can justify PacifiCorp setting its avoided cost rates so low as to keep QFs from selling its power, while at the same time the company seeks to acquire over 1,000 megawatts of new wind generation and associated new transmission to wheel its new wind capacity to its load. PURPA rates should reflect the obvious economic reality where the all-in costs of Wyoming wind plus new transmission are more expensive than eastern Oregon solar or irrigation districts’ small hydro.

4. A Northwest Regional Transmission Organization Should Be Created

The Northwest is in dire need of a regional transmission organization. The success of the Energy Imbalance Market suggests that the region is ready to take the next step towards a modern regulatory framework for transmission access. The Commission has long advocated for the creation of an independent regional transmission organization to optimize transmission service and investment, better integrate renewables and lower costs to consumers. What is not readily recognized is how utilities like PacifiCorp and PGE use the status quo to discriminate against IPPs in the competitive procurement process and prevent QFs from wheeling power to load.

In the Northwest, there is often sufficient available transmission from a reliability and electrical engineering perspective, but an outdated contract path transmission reservation system artificially constrains the operation of the transmission grid. The contract path system locks in existing patterns of generation dispatch ensuring market access for the traditional generation resources while blocking access of cheap, clean new generation. Having to move renewable energy generation from the sunny, windy and hydroelectric rich parts of the region to loads often requires transmission rights across multiple providers; these “rate pancakes” increase the cost of new resources. An independent regional transmission organization would mitigate many of these obstacles.

While Oregon has limited ability to influence transmission decisions due in part to the Bonneville Power Administration’s control of 75% of the region’s transmission and the Federal Energy Regulatory Commission overarching authority over transmission

⁸ ORS 469A.210.

policy, it needs to amplify its voice. The Commission can prevent the utilities from deploying their transmission assets (whether on their own or on Bonneville's grid) to restrict competition. The Commission can also exert pressure and provide incentives for utilities to create or join an independent regional transmission organization. The Commission's Report to the Legislature should clearly identify the need for a regional transmission organization and recommend administrative and legislative changes that would lay the groundwork for truly open and optimized transmission access.

5. Equity and Justice

The traditional regulatory model brought electrification and non-discriminatory access to Oregon, but not all voices have been involved in regulatory discussions and decision making. Electric service has been a powerful tool to promote equity and prosperity justice for all consumers whatever their economic status or residency. The present moment brings the prospect of genuine competition and innovation, which would benefit all ratepayers. Meanwhile, standing pat carries risks in harming the environment and reducing equity and social justice.

NIPPC recognizes regulatory and economic changes create risks, and that some customer groups are better positioned to benefit from a transition to a less carbon intensive, more efficient and innovative energy economy. Special care must be taken to ensure that all customers benefit from industry changes, including economically disadvantaged and other underserved communities. NIPPC does not presume to know the best ways to address the concerns highlighted by the SB 978 equity and social justice stakeholders, but more voices need to be heard and acknowledged and their interests protected. Some immediate changes NIPPC could support include providing the Commission more authority to better serve compromised customer groups and at-risk communities; the ability to approve low-income tariffs; and more inclusive pathways to receive intervenor funding so that social equity and environmental justice perspectives are better represented in the regulatory process.

The Commission's goal must be for all customers to benefit from change, and to break out of the mindset that ensuring adequate protection for all customers means that we should be afraid of innovative regulation that can enhance and diversify the energy economy of the next century. For example, PacifiCorp's remaining cost-of-service customers can be adequately protected if more than 5% of eligible large non-residential customers are provided a meaningful opportunity to select direct access.⁹ All customers can and should benefit from innovation in regulation and development.

⁹ Oregon commercial and industrial customers are eligible for direct access. Only 4.7% of the PacifiCorp's eligible customers are on direct access and only 17% of PGE's eligible customers are on direct access.

https://www.puc.state.or.us/electric_restruc/statrpt/2017/June_2017_Status_Report.pdf

6. The Commission's Mission Statement and Goals Should Be Expanded

NIPPC is convinced the Commission's existing statutory authority is expansive enough to advance innovation across the broad energy economy, including utility competitors, the wholesale market, and the environment. However, if the Commission concludes otherwise, then it should make recommendations to change its enabling statutes. The late 19th Century model was created for a time when state regulatory authority was focused on encouraging capital investment, marshaling low prices, and supporting utilities so they could deliver reliable service. This model is not well suited to the modern world. With utility shareholder interest diverging from ratepayer needs and plentiful capital available to IPPs, the Commission is on the spot. The SB 978 process has highlighted how Commission decisions impact economic development, whether Oregon meets its carbon reduction goals and ratepayers pay more for electricity than necessary. The Commission's regulatory footprint has dramatically expanded to encompass whole industries and areas of energy law and policy that did not exist more than 100 years ago.

Again, the Commission can either lead a holistic conception of its mission statement or react to events and more piecemeal direction from the Legislature. There have been numerous statutes passed that require the Commission to consider and protect the wholesale and retail markets, protect small scale and community based renewable resources, allow natural gas utilities to invest and profit from emission reductions, allow above market and non-cost effective transportation electrification investments, ensure that low income communities benefits from community solar, etc. If the Commission does not act now to establish itself as the forum for thoughtful development of regulatory policy, then the legislature will continue to propose and pass ad-hoc legislation directed to the Commission and its activities. While that is the job of a legislature, the Commission's work can be frustrated when legislative changes do not include a Commission input. SB 978 gives the Commission the opportunity to be heard first.

Specifically, NIPPC recommends the Commission's mission be expanded to include an explicit commitment to environmental protection beginning with carbon reduction, and enhancement of a healthy economy by driving the cost of power and associated emissions as low as possible. The Commission should be enabled to achieve these goals by stimulating innovation and promoting competition.

7. The Commission's Regulatory Powers Should Be Expanded

While NIPPC believes additional statutory authority is unnecessary, to remove any doubt, the Commission should request additional direction to ensure adequate competition in the electricity generation sector, promote innovation, and implement direct

access. Specific legislation the Commission should support, if it does not believe it has the statutory authority now includes:

- Expanding the Commission mission statement;
- Preventing utility ownership of new generation assets;
- Requiring utilities to join an independent regional transmission organization or system operator;
- Requiring utilities to allow third-party providers to use their generation, transmission and distribution assets to ensure that the least cost and least risk resources are acquired;¹⁰
- Regulating carbon emissions by electric utilities;
- Ensuring that wholesale and retail competition in the electricity sector is achieved;
- More fully implementing direct access, including ensuring that the utilities no longer acquire or plan on serving direct access customers and new loads that have never been served;
- Creating a statutory requirement, rather than a policy or goal, to increase the marketability of QFs and to create a uniform institutional climate for QF development, including specific protections for QFs to prevent utility abuses; and
- Increasing equity, potentially through low income tariffs, and intervenor funding for equity and social justice organizations.

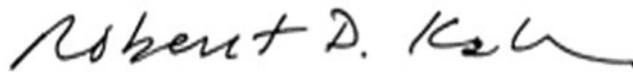
8. Conclusion

NIPPC appreciates the opportunity to submit written comments to help shape the Commission's Report. The Commission, after superbly managing the SB 978 stakeholder process, will most certainly capture stakeholders' positions in its Report. Next, regardless of whether the Commission supports or opposes any specific recommendations, the Commission should definitively explain whether they can be achieved through administrative processes or if new statutory authority is required.

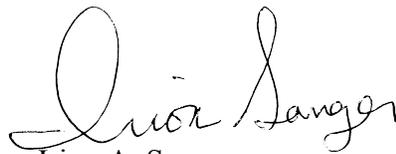
¹⁰ This is consistent with the Commission's current regulatory authority. The Oregon Legislature has already explicitly granted electricity service suppliers with the statutory right to access and use the utilities' distribution and transmission system. ORS 757.632 and 757.637. Congress has also explicitly granted independent power producers non-discriminatory access to back up power and interconnections, and (without explicit statutory authority) the Federal Energy Regulatory Commission requires utilities to provide equal non-discriminatory access to the IOUs transmission assets.

Finally, the Commission should think big and be bold. The current regulatory model that worked well for its time, but must now adapt to a new world so that the energy economy can less expensively achieve state and federal goals related to power supply, environmental and climate goals, equity, reliability, accessibility and affordability. It is time to rely upon innovation and competition in the power sector. The notion that the Commission's regulatory regime exists to simulate competition could not be more inadequate. The Commission needs to seize this golden opportunity and lay out a vision for how to do its job better for the benefit of Oregonians and the environment that makes the state so special.

Sincerely,

A handwritten signature in black ink that reads "Robert D. Kahn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert Kahn

A handwritten signature in black ink that reads "Irion A. Sanger". The signature is cursive and somewhat stylized, with a large initial 'I'.

Irion A. Sanger

cc: Jason Eisdorfer
Julie Peacock