



November 17, 2017

The Honorable Michael Dembrow
Chair, Senate Environment and
Natural Resources Committee

The Honorable Ken Helm Chair,
House Energy and Environment
Committee

State Capitol Building, Room 453
900 Court Street, NE Salem, OR
97301

Dear Representative Helm and Senator Dembrow:

Thank you for the opportunity to provide additional comments on the proposed Oregon Clean Energy Jobs Bill, SB 1070, and the potential for an Oregon cap-and-invest program. In addition to our prior comments during the work group process, Blue Planet Energy Law, LLC recommends the following changes to the text of SB 1070. These changes are made in consultation with stakeholders in the independent power producer industry, electricity service suppliers, and others, but do not reflect the position of any specific entity other than Blue Planet Energy Law. We ask that these comments be added to the record for each of the four Clean Energy Jobs Work Groups.

1. ***Modify Section 6(1) to clarify that the primary purpose of the Act is to measurably reduce greenhouse gas emissions, with the supporting goals to promote adaptation and resilience by this state's communities and economy in the face of climate.*** This change is necessary to make it clear that the overarching goal of the program is reduction of greenhouse gas emissions.

The Legislative Assembly finds and declares that the purposes of sections 6 to 20 of this 2017 Act are ***(a)*** to reduce greenhouse gas emissions consistent with the statewide greenhouse gas emissions levels established under section 4 of this 2017 Act ***and, where consistent with Section (a) hereto, (b)*** to promote adaptation and resilience by this state's communities and economy in the face of climate change.

2. ***Modify Section 8(1)(c) to include within the Greenhouse Gas Cap and Investment Program Oversight Committee one member with experience in carbon markets and one member representing the interests of the largest in-state emitters.*** This change is necessary to provide allow membership for constituencies that have significant interests in committee work and can contribute necessary information to the committee.

- (c) The Governor shall appoint:
 - (A) One member who represents the office of the Governor;
 - (B) One member who represents impacted communities;
 - (C) One member who represents the interests of labor organizations;
 - (D) One member who represents environmental organizations;
 - (E) One member who represents covered entities;
 - (F) One member with expertise in climate science; and
 - (G) One member who represents the interests of business sectors impacted by climate change.
 - (H) One member who represents the largest in-state emitters.*
 - (I) One member with experience in carbon markets.*

3. ***Modify Section 9 by adding a new definition of Affiliated Source.*** This change (along with the proposed change to Section 10(1) below) is necessary to prevent artificial segmentation of industrial loads below the 25,000 MTCe threshold.

“Affiliated Source” means a means any Source sharing a common ownership in excess of 50 percent.

4. ***Modify Section 10(1)(a) to clarify that all in-state and out-of-state electric generation will be subject to the program whether or not the individual generation facility is below the 25,000 MTCe threshold, and that Affiliate Sources will be treated as a single source for determination of the 25,000 MTCe threshold.*** These changes are necessary to maintain consistency with other regional power markets and prevent artificial segmentation of industrial loads or generation facilities below the 25,000 MTCe threshold.

10(1)(a) Identify sources subject to the carbon pollution market. In adopting rules under this subsection, the commission may not require a source *other than (1) a source as defined under Section 9(21)(b)* to be subject to the carbon pollution market unless or until the annual verified greenhouse gas emissions reported under ORS 468A.050 or 468A.280 attributable to that source *and any Affiliate Source* meet or exceed 25,000 metric tons of carbon dioxide or carbon dioxide equivalent.

5. **Modify Section 10(1)(d) to delete the obligation that any allowances distributed through directly be distributed “at no cost.”** This change is necessary to allow the regulator the flexibility to distribute allowances at a discounted cost if deemed appropriate.

(d) Establish a market for allowances and criteria for the distribution of allowances either directly [~~at no cost~~] or through an auction administered by the Department of Environmental Quality pursuant to section 11 of this 2017 Act.

6. **Modify Section 10(1)(d)(B) to delete the obligation that any allowances distributed to electric companies or gas companies be done “at no cost.”** This change is necessary to allow the regulator the flexibility to distribute allowances free or a at a discounted cost if deemed appropriate.

(B) Shall distribute to electric companies and natural gas utilities, directly [~~and free of charge~~], allowances to be consigned to the state for auction under section 11 of this 2017 Act;

7. **Modify Section 10(1)(d) to add a new Subsection D authorizing the Department of Environmental Quality to distribute allowances to independent power producers (B) to delete the obligation that any allowances distributed to electric companies or gas companies be done “at no cost.”** This change is necessary to allow the regulator the flexibility to distribute allowances free or a at a discounted cost to power producers if deemed appropriate, including to independent power producers that have already paid to mitigate some or all of their carbon emissions pursuant to ORS Section 469.503.

(d) May distribute to Independent power producers, directly, allowances to be consigned to the state for auction under section 11 of this 2017 Act;

8. **Modify Section 10(1)(d)(g)(2) to reflect provide the Commission flexibility provide allowances at a reduced cost to prevent leakage, rather than requiring they be free of charge.**

(~~D~~E) [~~Shall~~] *May*, in order to address leakage and as determined necessary by the commission pursuant to subsection (2) of this section, distribute allowances directly and free of charge *or at a reduced cost* to covered entities that include, but are not limited to, covered entities that are part of an emissions-intensive, trade-exposed industry;

9. *Modify Section 10(2) to reflect provide the Commission flexibility provide allowances at a reduced cost to prevent leakage, rather than requiring they be free of charge.*

The commission shall hire or contract with a third party organization to provide data and analysis identifying leakage risk from specific covered entities including, but not limited to, covered entities that are part of an emissions-intensive, trade-exposed industry. The commission shall use the data and analysis provided by a third party organization under this section to determine the number of allowances to be distributed directly and free of charge *or at a reduced cost* under subsection (1)(d) of this section. No less than once every five years, the commission shall:

10. *Modify Section 10(2)(b) to reflect provide the Commission flexibility provide allowances at a reduced cost to prevent leakage, rather than requiring they be free of charge.*

(b) Adjust the number of allowances distributed directly and free of charge *or at a reduced cost* under subsection (1)(d) of this section as necessary to reflect the updated data and analysis

11. *Modify Section 10(3)(c) to (1) allow groups of covered entities to aggregate their allotment of offset credits, and (2) to specify that limitations on use of offsets is appropriate in air non-containment areas.* The first change is will allow entities to more efficiently utilize offsets to reduce compliance costs and produce real & verifiable greenhouse gas reduction without going beyond the overall proposed eight percent cap. The second change is necessary to ensure that limitations on use of offsets can occur in areas that are not meeting express air quality standards. The existing language in draft SB 1070 is overly broad, and could be interpreted to limit use of offsets in *all* circumstances. For example, under the existing language, a source located within a rural Oregon community with few households would almost by definition be located in an impacted community.

(c) Standards adopted under this subsection must require that offset credits constitute a quantity that may be no more than eight percent of the total quantity of compliance instruments submitted by a covered entity *(or group of covered entities aggregating their offset credit limits)* to meet the entity's compliance obligation *(or group of covered entities)* for a compliance period. Standards adopted under this subsection may place additional restrictions on the number of offset credits that may be used by a covered entity that is an air contamination source as defined in ORS 468A.005 if the building, premises or other property in, at or on which the air contamination source is located, or the facility, equipment or

other property by which greenhouse gas emissions are caused or from which the greenhouse gas emissions come, is geographically located in an impacted community *that is within an Air Quality Non-Attainment Area and a population density in excess of 20 people per square mile.*

12. Modify Section 13(1)(b) and 13(1)(c) to allow for bill assistance to all distribution customers of utilities whether or not they purchase power from the utility or from a competitive electricity service supplier. This provision is necessary to allow for continued development of a competitive retail power market as required by ORS Chapter 757 and the Direct Access requirements set forth therein.

(b) Bill assistance for energy intensive *commercial and industrial distribution* customers *whether or not such customers purchase power or gas from the utility or third party*, that, at the time the bill assistance is received, are not covered entities receiving allowances distributed directly and free of charge *or at a reduced cost* to address leakage as allowed under section 10 of this 2017 Act;

(c) Nonvolumetric, on-bill climate credits applied annually or semiannually to residential customers or small business *distribution* customers with 50 employees or less; or.

13. Modify Section 13(2)(b) specify that the priority for use of proceeds by utilities from allocation of allowances shall be to reduce leakage and maximize greenhouse gas reductions, and to the extent possible benefit low income residential customers.

(b) Develop rules that prioritize uses of the proceeds that *reduce leakage, maximize greenhouse gas reductions and to the extent possible* benefit low-income residential customers.

14. Modify Section 16(2)(a) to specify that least fifty percent of the moneys from the cap and invest program must be distributed to fund projects that are identified as expected to result in the largest reduction in greenhouse gas emissions within the first three years of funding of the grant.

(2)(a) Moneys must be distributed through the grant program developed under this section such that, of the moneys deposited in or credited to the Oregon Climate Investments Fund each biennium:

(A) At least fifty percent of the moneys must be distributed to fund projects that are identified as expected to result in the largest reduction in greenhouse gas emissions within the first three years of funding of the grant,

*(B) At least 50 percent of the **remaining** moneys are distributed to projects or programs that are geographically located in impacted communities; and*

~~(B)~~ *(C) At least 40 percent of the **remaining** moneys are distributed to projects or programs that are geographically located in economically distressed areas, with an emphasis placed on projects or programs that support job creation and job education and training opportunities. (b) Impacted communities and **economically distressed areas may be, but need not be,** considered mutually exclusive for purposes of this subsection. (c) The commission shall consult with the Environmental Justice Task Force, the Oregon Health Authority, other state agencies, local agencies and local officials in adopting by rule a methodology for designating impacted communities for purposes of this subsection.*

Thank you again for the opportunity to participate in this process. We look forward to continuing to work with you, and the Oregon legislature, to move this legislation forward and help Oregon reduce its greenhouse gas emissions and grow the economy.

Sincerely,



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