Environmental and Natural Resources Law Center

A Synthesis of Fall 2022 Energy Conferences in Oregon

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Our communities are in the midst of an unprecedented environmental transformation. A 2021 report from the Intergovernmental Panel on Climate Change characterized this moment as "a code red for humanity."[1] Locally, Oregonians now routinely battle droughts, floods, and devastating forest fires. How we respond to climate change, both globally and locally, will define the future habitability of our planet. In addressing these challenges, one issue of major importance is how we produce and consume energy. The use of energy represents, by far, the largest source of greenhouse gas (GHG) emissions from human activities. About two-thirds of GHG emissions are linked to burning fossil fuels for energy to be used for heating, electricity, transport, and industry.[2] Because the energy sector is a major contributor of GHG emissions, it needs to be part of the solution.

In March 2020, Governor Brown signed Executive Order 20-04, directing Oregon governmental agencies to reduce and regulate GHG emissions toward meeting reduction goals of at least forty-five percent below 1990 emissions levels by 2035, and at least eighty percent below 1990 levels by 2050.[3] This has helped to redefine Oregon energy standards of efficiency, building codes, and transportation. Oregon's efforts to restructure the energy sector were bolstered on August 16, 2022, when President Joe Biden signed into law the Inflation Reduction Act (IRA). To date, this represents the most aggressive Congressional action taken on tackling the climate crisis, including $369 billion in direct funding for the reduction of U.S. GHG emissions and adaptation to the impacts of climate change.[4] In the wake of such substantial legislation, energy stakeholders from the Oregon Department of Environmental Quality to investor-owned utilities like Northwest Natural Gas are working to ensure that the new regulations issued are workable, and that funding is correctly leveraged to achieve the legislative aims.

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[1] United Nations Intergovernmental Panel on Climate Change (Aug. 9, 2021), https://www.ipcc.ch/reports/
[2] European Environment Agency (Aug. 29, 2017), https://www.eea.europa.eu/signals/signals-2017/articles/energy-and-climate-change#:~:text=Climate%20change%20can%20alter%20our,for%20heating%20in%20the%20winter.
[3] Reducing Greenhouse Gas Emission (Nov. 12, 2022), https://www.oregon.gov/energy/energy-oregon/Pages/Greenhouse-Gases.aspx
[4] Congressional Research Service, *Inflation Reduction Act of 2022 (IRA): Provisions Related to Climate Change* (Oct. 3, 2022) https://crsreports.congress.gov/product/pdf/R/R47262

To better understand this evolving and complex issue and its impact on Oregonians, the Energy Law and Policy Project Fellows attended a series of energy-related conferences:

- The Foundation for Natural Resources and Energy Law | West Virginia v. EPA - *Major Questions and the Future of Climate Change Regulation Webinar*
- Sustainable Northwest | Making Energy Work for Rural Oregon: *Quarterly Webinar*
- University of Oregon School of Law | O'Connell Conference: *Navigating Climate Action & Administrative Authority in the Wake of the Major Questions Doctrine*
- Oregon Citizens' Utility Board | CUB Conference 2022: *Energy Policy for the People*
- Northwest Energy Coalition | Fall Conference: *Delivering Community Clean Energy - Influx of Funding for Clean Energy Transformation*

This memorandum aims to synthesize, combine, and distribute the innovative solutions developing across Oregon. First, this memorandum describes the important role of environmental justice as the energy sector is redefined. Second, it will provide an overview of resources available for energy projects, including new opportunities from the IRA and existing programs in Oregon.

Environmental Justice

One meaningful and recurring theme of the fall conferences was environmental justice. Definitions vary, but the U.S. EPA defines environmental justice as "fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies."[5] As noted, tackling climate change will require fundamental transformations in every aspect of our society. Environmental justice seeks to center those transformations around equitable and meaningful involvement of all people in order to alleviate disproportionate negative environmental consequences resulting from government policies.

As such, in January 2021, President Biden announced the Justice40 Initiative. The aims of Justice40 are to 1) ensure that forty percent of the overall benefits of relevant federal investments flow to disadvantaged communities, and 2) track performance toward that goal through the establishment of an Environmental Justice Scorecard.[6] The passage of the IRA represents the first time President Biden's environmental justice agenda has been expressly included in a federal statute. The IRA directs billions of dollars to communities based on various

[5] United States Environmental Protection Agency (Sept. 6, 2022) https://www.epa.gov/environmentaljustice/learn-about-environmental-justice

[6] Executive Order 14008 of January 27, 2021, § 223, 86 Fed. Reg. 7619, 7632 (Feb. 1, 2021).

environmental justice criteria, including income, energy burden, and demographics. Over the last year, the Biden Administration has already made available tens of billions of dollars in funding opportunities to deliver on the Justice40 Initiative.[7] A new compilation from the White House Office of Management and Budget provides a snapshot of at least $29 billion of these opportunities. Subsequently, the focus and funding for environmental justice has become an important issue for communities to unpack.[8]

The intersection of environmental justice and energy policy in Oregon was a primary theme of this year's CUB Conference. Advocates and regulators are reconsidering traditional methods of energy regulation and considering how new systems can be tailored to better meet the needs and advance the interests of environmental justice communities. For example, the keynote speaker Oriana Magnera encouraged a rethinking of the traditional "least-cost, least-risk" decision-making standard for large-scale utility procurement. Where the energy system of the twentieth century was top-down, the energy systems of the twenty-first century must be driven from the bottom up. Historically and today, utilities and regulators center the "customer" as a user of electrons distinguished solely by its status as residential, commercial, or industrial.

Moving forward, speakers from the CUB Conference argued, it will be critical to see customers not just as consumers of electrons, but as human beings and families and small business owners that require energy to thrive. For example, utilities and regulators could consider a broader range of impacts on low-income residential customers facing shut-offs. The risk of losing access to electricity does not just mean loss of lights and temperature control. Food spoilage, inability to charge smartphones, and increased barriers to education access are problems customers face that are not considered when energy consumption is framed as electrons delivered to a building. Energy-burdened households risk more than just these impacts; a speaker highlighted the loss of quality time spent with family and children due to working a second or third job to pay energy bills. These are crucial considerations in the pursuit of environmental justice and just, equitable energy systems.

In 2021, the Oregon state legislature passed into law House Bill (HB) 2475. Among other things, the law created a new pool of funding available for a newly eligible category of advocates to participate in Oregon Public Utility Commission (OPUC) proceedings: groups that consist of,

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[7] White House Fact Sheet (May 23, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-biden-harris-administration-holds-justice40-week-of-action-to-highlight-historic-investments-in-overburdened-and-underserved-communities/

[8] *Id.*

represent, or advocate for low-income residential customers and customers from environmental justice communities. Low-income residential customers is not defined in HB 2475, but environmental justice communities means "communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including but not limited to seniors, youth and persons with disabilities."[9]

The OPUC is tasked with creating rules for implementing the new funding provisions of HB 2475, and the OPUC must approve funding agreements between utilities and advocates.[10] To make funding immediately available, advocacy groups, utilities, and the OPUC created an interim funding agreement for 2022. In the summer and fall of 2022, those same stakeholders negotiated a long term funding agreement and draft rules to be presented to the Commission for a rulemaking at the end of 2022. Final rules and a long term funding agreement are expected by the end of 2022 or early 2023. One priority of the rules and agreement drafting process was to make the funding process accessible to new groups that have not previously participated in OPUC proceedings. That goal is a challenge because the types of groups now eligible for these funds are not all necessarily known yet; the category of eligible advocate groups will continue to develop.

Funding for low-income residential and environmental justice communities advocates for participating in OPUC processes will be available soon. There are many other resources currently available for energy projects in Oregon, some of which are highlighted below.

Available Resources

Presenters at the Sustainable Northwest: Making Energy Work for Rural Oregon Quarterly Webinar discussed several new and recently available resources for energy projects in Oregon. The Oregon Solar and Storage Industries Association (OSSIA) reviewed new and extended economic opportunities made possible by the IRA. The Resource Assistance for Rural Environments Program and the Energy Trust of Oregon also presented on resources available across Oregon.

[9] HB 2475 Section 1, codified at Or. Rev. Stat. § 756.010(5).
[10] Or. Rev. Stat. § 757.072(2)(b), (d).

Investment and Production Tax Credits

The Oregon Solar and Storage Industries Association (OSSIA) is a trade association founded in 1981 to promote clean, renewable, solar technologies, and works to ensure universal access to solar energy to all of Oregon.[11] OSSIA explained how rebate and tax credit provisions in IRA can be used to finance renewable energy projects and to electrify homes.

For residential projects, the IRA provides $4.3 billion to state energy offices to establish rebates for a variety of home energy upgrades.[12] If the project achieves energy savings of at least thirty-five percent, rebates for home energy retrofits are available up to the lesser amount of eight thousand dollars per home, or eighty percent of project cost.[13] Investment Tax Credits (ITCs) have been extended and lifted to thirty percent for solar energy production, with the step-down beginning in 2033.[14] The step-down means that the tax credit will be reduced to twenty-six percent for 2033, twenty-two percent for 2034, and to zero percent in 2035 if not extended.[15] Depending on other factors, such as energy production and location, ITCs can be as high as fifty percent.[16]

For utility-scale, commercial, industrial, non-profit, and governmental projects, ITCs have also been extended and lifted to thirty percent for projects that become operational or start construction by the end of 2024.[17] Additionally, solar energy producers can now apply for ITCs or Production Tax Credits (PTCs) which is currently valued at $0.026 per kilowatt-hour (kWh) for 2022 and rises with inflation.[18] The PTC is transitioning to a "tech neutral" structure, allowing solar energy producers to apply for the credit now and other renewable energy providers to apply in 2024.[19] Both credits come with potential adders for meeting certain domestic content requirements, locating in energy communities, or allocating credits for being on qualified low-income property.[20]

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[11] https://www.orssia.org/who-we-are
[12] Solar Energy Industries Association: Inflation Reduction Act: Solar Energy and Energy Storage Provisions Summary https://www.seia.org/sites/default/files/2022-08/Inflation%20Reduction%20Act%20Summary%20PDF%20FINAL.pdf
[13] IRA § 13302
[14] Solar Energy Industries Association: Inflation Reduction Act: Solar Energy and Energy Storage Provisions Summary
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *Id*.; IRA §§ 13101-13102
[20] *Id*.

An important caveat is the solar right-of-way restrictions on Department of Interior lands. Right-of-ways for solar and wind projects can only be issued if an oil and gas lease sale has been held on the same parcel in the previous 120 days, and certain acreage thresholds have been offered to oil and gas projects in the previous year.[21]

Resource Assistance for Rural Environments Program

The Resource Assistance for Rural Environments (RARE) Program is an Americorps graduate level service-learning program affiliated with the University of Oregon.[22] The program provides support to rural communities in the form of temporary employee appointments for project-oriented work. Primary topics of work include community and economic development, environmental and sustainability planning, and food systems.[23] Placements are for eleven months, and examples of recent placements include Rogue Climate, Pendleton Development Alliance, and South Wasco Alliance.[24] RARE often works closely with the Oregon Department of Energy (ODOE) to access federal grants for renewable energy development assistance and the Rural and Agricultural Energy Audit Program.[25]

Working Together Grants

Working Together Grants are a new type of grant available from Energy Trust of Oregon. Energy Trust is a nonprofit that invests in energy efficiency and renewable energy programs to support energy utility customers.[26] Energy Trust was created by the state legislature in 1999, is overseen by the OPUC, and is funded by the public purpose charge on the customers in the Energy Trust service area.[27] The service area includes the customers of the five primary investor-owned utilities in Oregon: Portland General Electric, PacifiCorp, Northwest Natural, Avista, and Cascade.

Working Together Grants provide up to $10,000 per organization, with a total of $150,000 in available funds. The second application cycle took place in October 2022. Moving forward, Energy Trust has identified a goal of increasing applicants from rural communities. Applicants

[21] IRA § 50265
[22] *Resource Assistance for Rural Environments,* University of Oregon, https://rare.uoregon.edu/ (Dec. 19, 2022).
[23] *Id.*
[24] *Id.*
[25] *Rural and Agricultural Energy Audit Program,* Oregon Department of Energy, https://www.oregon.gov/energy/save-energy/Pages/Rural-Energy-Audit-Program.aspx (Dec. 19, 2022).
[26] *Energy Trust of Oregon*, https://www.energytrust.org/about/explore-energy-trust/mission-approach/history/ (Dec. 19, 2022).
[27] *Id.*

from Oregon and some parts of Washington are eligible for the grant. To apply for the grant, nonprofits must: serve customers in the Energy Trust service area; serve communities of color, communities with low or moderate incomes, and rural communities; and identify how the applicant meets the grant's purpose.

The purpose of Working Together Grants is to extend the reach of Energy Trust programs and resources to a broader and more diverse range of customers. For example, grants can be used to increase customer awareness about clean energy solutions and events, increase customer participation in Energy Trust programs, and increase an organization's capacity to engage with customers about Energy Trust programs.[28]

Looking Ahead

Given the recent passage of the IRA and its large amount of funding for energy transformation, a degree of uncertainty remains. Though the IRA has allocated resources, agencies with dispersal authority must follow standard public processes and develop specific rules and regulations for fund eligibility. Inevitably, local energy leaders are still unpacking complex bureaucratic processes to access allocated resources.

Additionally, such a monumental shift in energy policy will not go unchallenged in the courts. Several weeks prior to the passage of the IRA, the Supreme Court restricted the ability of the EPA to fight climate change, reasoning that Congress had never granted the agency the broad authority to shift the U.S. from burning fossil fuels.[29]

However, in passing the IRA, legislators were careful to craft language that would explicitly give the EPA the authority to regulate GHG and to use its power to push the adoption of wind, solar and other renewable energy sources.[30] While implementation and legal challenges across all levels of jurisdiction are sure to follow, there is no denying the monumental importance of this moment. As communities continue implementing new energy solutions, the Energy Law and Policy Project is excited to analyze this unprecedented and vital energy transformation.

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[28] *Id.*

[29] *West Virginia v. Environmental Protection Agency*, 597 U.S. ___ (2022).

[30] Lisa Friedman, *Democrats Designed the Climate Law to be a Game Changer*, NY Times (Aug. 22, 2022), https://www.nytimes.com/2022/08/22/climate/epa-supreme-court-pollution.html