



**GREEN ENERGY  
INSTITUTE**  
Lewis & Clark Law School

10015 S.W. Terwilliger Boulevard  
Portland, Oregon 97219  
Phone: (503) 768-6741 Fax: (503) 768-6671  
E-Mail: [ars@lclark.edu](mailto:ars@lclark.edu)

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Colin McConnaha  
Manager, Office of Greenhouse Gas Programs  
Oregon Department of Environmental Quality  
*Via email to [CapandReduce@deq.state.or.us](mailto:CapandReduce@deq.state.or.us)*

**Re: Comments on Cap and Reduce Program Technical Workshop 6—Impacted  
Communities**

Dear Mr. McConnaha:

The Green Energy Institute at Lewis & Clark Law School is a nonprofit energy and climate law and policy institute within Lewis & Clark's top-ranked environmental, natural resources, and energy law program. Our team of attorneys and law students works to design comprehensive legal and policy strategies to address climate change and support a swift transition to a clean and renewable energy system. We appreciate the opportunity to comment on the Department of Environmental Quality's (DEQ) sixth and final Cap and Reduce Program Technical Workshop on Impacted Communities.

Our comments specifically focus on one agenda item raised at the sixth technical workshop: the importance of convening a Rules Advisory Committee (RAC) that includes subject matter experts and community advocates who offer a wide-range of expertise and perspectives. We appreciate that DEQ has established a self-nomination application process for RAC membership, and that the agency aims for the RAC to represent a variety of stakeholder interests. However, DEQ's proposed RAC structure, as well as some of the comments raised at the sixth technical workshop, raised some concerns about the composition of an effective RAC that we think are important to address. Our primary concern is that the proposed RAC membership structure would give greater weight to the interests of regulated entities at the expense of other stakeholders, and while the proposed structure accounts for diverse commercial interests, it does not account for potentially diverse views among non-commercial stakeholder groups. We are also concerned that certain subject matter experts are not included in the proposed RAC membership, and that "at large" positions are unlikely to make up for this omission. Part I of these comments encourages DEQ and the EQC to balance stakeholder representation on the RAC. In addition to balancing diverse industry, NGO, and community perspectives, Part II encourages DEQ and the EQC to invite individuals with expertise in relevant and diverse subject matters to participate in the RAC. To effectively manage potentially diverging views, interests,

and knowledge bases among committee members, Part III encourages DEQ and the EQC to convene a variety of RAC subcommittees to evaluate specific policies and program design options.

### **I. The RAC Should Reflect Broad and Balanced Stakeholder Representation**

As we noted in our June 15, 2020 comments to DEQ, we are concerned that a RAC comprised predominantly of representatives from regulated sectors may disproportionately reflect the views of those with vested interests in delaying decarbonization. Under the RAC structure proposed during the impacted communities workshop, up to 50% of the RAC (10 to 11 members) would represent commercial interests and perspectives, with eight to nine members representing the interests of regulated entities. In contrast, only six to seven members would represent nongovernmental (NGO) interests relating to environmental justice (two to three members), the environment (two members), and public health (two members). To address this imbalanced proposed membership structure, the agency should expand the RAC roster to include additional representatives from organizations that will not be regulated under the program. In doing so, the agency should make an effort to incorporate a diversity of viewpoints from within the NGO community, as well as from community-based groups and tribal governments. Additionally, the agency should consider including representatives from industries that support decarbonization.

First, the process for identifying and selecting RAC members should reflect the overarching purpose of the Governor's executive order to address the urgency of the climate crisis. If the agency allows regulated entities to have a majority voice on the RAC, it risks diluting the ambition of the entire cap and reduce program. To mitigate this risk, the agency should ensure that decarbonization advocates and experts have at least equal representation on the RAC as regulated industries and sectors. For every industry representative appointed to a committee, the agency should appoint at least one representative from an NGO or community group committed to decarbonization.

Second, the agency should respect the diversity of viewpoints within the NGO community, just as it would between regulated industries. For example, an organization devoted to forest conservation may have a different perspective on the best regulatory mechanisms to maximize GHG reductions than an organization focused on reducing the use of fossil fuels. The RAC should reflect the diverse views that exist within the NGO community.

The same principle should also apply for community-based environmental justice organizations and tribal interests, which may have differing perspectives on potential impacts and opportunities within their respective constituencies. RAC membership should represent the diverse interests of Oregon's urban, suburban, and rural impacted communities, including communities of color and indigenous populations.

Finally, if DEQ and/or the EQC choose to have additional commercial interests represented on the RAC, such as representatives from the forestry and agricultural sectors, that will not be subject to regulation under the program, the agency should consider including representatives from industries that develop or deploy technologies that support decarbonization. For example,

renewable energy, energy storage, energy efficiency, and electric and/or alternatively fueled vehicle industries will all play vital roles in decarbonizing Oregon's economy, and representatives from these sectors could provide valuable insights and perspectives on the cap and reduce RAC.

## **II. Diverse Perspectives and Expertise are Critical to the RAC's Success**

Cap and reduce program rules should ultimately reflect evidence-based and outcome-driven decisionmaking that is informed by diverse perspectives and addresses community needs and challenges. To achieve these objectives, the RAC should also include members with diverse and relevant subject matter expertise. The RAC should include members with expertise in the following areas:

- law and policy, including knowledge and understanding of state and federal air quality laws, administrative law, constitutional law, energy law and regulation, greenhouse gas regulation, and cap and trade policy;
- economics, including knowledge and understanding of carbon markets, the social cost of carbon and climate-focused cost-benefit analyses;
- climate science, including knowledge and understanding of Oregon-specific impacts;
- sociology and behavioral economics, including knowledge and understanding of individual and commercial behavioral responses to economic pressures;
- deep decarbonization modeling and scenario analysis;
- carbon sequestration, including knowledge and understanding of forest and land use practices and sequestration potentials;
- environmental justice and equity;
- transportation, including knowledge and understanding of transportation electrification technologies and market trends and projections;
- zero-emissions technologies, including knowledge and understanding of renewable energy, energy storage, power-to-gas, and vehicle electrification technologies; and
- sustainable building and construction, including knowledge and understanding of energy efficiency products and practices.

## **III. RAC Structure and Process Should Ensure Critical Issues Receive Adequate Attention and Discussion**

We recognize that the RAC structure we are proposing through these comments would create a very large membership roster and a potentially unwieldy committee structure. However, we feel that the economy-wide scope and implications of the cap and reduce program justify convening a RAC that reflects a broad diversity of interests, expertise, and perspectives. To allow for this broad representation while also preserving the functionality and effectiveness of the RAC process, we encourage DEQ and the EQC to consider using a plenary and subcommittee structure for the cap and reduce RAC. Specifically, we urge the agency to convene a central or plenary advisory committee that is tasked with reviewing and synthesizing discussions, findings, and recommendations produced by several subcommittees focused on discrete policy considerations and program design elements.

The central RAC's membership should represent the diverse expertise and perspectives and reflect the balanced viewpoints we described in Parts I and II. Members of the central RAC should then have the option of participating in one or more subcommittees. While subcommittee members should possess expertise relevant to the subcommittee's specific focus area, the agency should aim to achieve the same level of balanced representation as the central RAC. The agency should encourage RAC members to serve on at least one subcommittee, and should consider allowing members to serve on additional subcommittees with subject areas outside the RAC individuals' respective areas of expertise or interest. This structure could help prevent RAC members from being pigeonholed or marginalized due to their specific interests or views.

From a procedural standpoint, the agency should direct subcommittees to keep and submit detailed meeting minutes so the central RAC can be confident each subcommittee is functioning effectively and fairly considering diverse views.

#### **IV. Conclusion**

We appreciate that DEQ has chosen to solicit applications from stakeholders who wish to serve on the cap and reduce RAC. The individuals who serve on the RAC will have an opportunity to make valuable contributions to the design of a program that will have significant implications for Oregon's energy, transportation and industrial sectors. In addition to reducing Oregon's climate impacts, the cap and reduce program has the potential to spur economic transformation, create jobs in sustainable industries, and address the needs of historically underserved and underrepresented communities. The RAC's recommendations will presumably influence the scope and design of the program, and therefore will help determine whether the program will succeed in achieving meaningful GHG emissions reductions in a just and equitable manner.

The productiveness and effectiveness of the RAC will ultimately depend on the diverse expertise, viewpoints, and contributions of the committee members. DEQ and the EQC have an opportunity to build a RAC that recognizes the urgency of the climate crisis and is committed to achieving the objectives of the Governor's executive order. Convening a RAC that reflects diverse subject matter expertise and diverse perspectives will help enable the committee to produce meaningful, effective, and ambitious recommendations. In contrast, a RAC comprised primarily of regulated industries would inevitably produce recommendations that aim to weaken the scope and stringency of the program. We strongly encourage DEQ and the EQC to reconsider the proposed RAC membership parameters and instead convene an advisory committee that includes diverse representation from impacted communities, NGOs, and subject matter experts. At a bear minimum, it is imperative that the agency aim to balance representation by those who aim to build an effective regulatory program with those who aim to stymy progress and retain business-as-usual dynamics.

We appreciate your consideration of our comments.

Sincerely,

Amelia Schlusser

*Staff Attorney*

*The Green Energy Institute at Lewis & Clark Law School*

Carra Sahler

*Staff Attorney*

*The Green Energy Institute at Lewis & Clark Law School*