

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1805

NORTHWEST AND INTERMOUNTAIN)	
POWER PRODUCERS COALITION,)	
COMMUNITY RENEWABLE ENERGY)	
ASSOCIATION and RENEWABLE)	
ENERGY COALITION,)	
Complainants,)	
v.)	
PORTLAND GENERAL ELECTRIC)	RESPONSE TO COMPLAINANTS’
COMPANY,)	MOTION TO SET A SCHEDULE OF
Defendant.)	DAYTON SOLAR I LLC,
_____)	STARVATION SOLAR I LLC, TYGH
	VALLEY SOLAR I LLC, WASCO
	SOLAR I LLC, FORT ROCK SOLAR
	I LLC, FORT ROCK SOLAR II LLC,
	ALFALFA SOLAR I LLC, FORT
	ROCK SOLAR IV LLC, HARNEY
	SOLAR I LLC, AND RILEY SOLAR I
	LLC

Dayton Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I LLC, Wasco Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Alfalfa Solar I LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, and Riley Solar I LLC (collectively the “NewSun Solar Projects”) hereby submit their joint response to Complainants’ motion to set a schedule for Portland General Electric Company’s (“PGE”) response to the clarification and rehearing filings before the Public Utility Commission of Oregon (“Commission” or “OPUC”). As explained herein, the NewSun Solar Projects agree that the procedural status of this case should be clarified, and therefore respectfully request a ruling setting a prompt deadline for PGE to respond to the clarification and rehearing filings by both the Complainants and the NewSun Solar Projects and a deadline by which Complainants and the NewSun Solar Projects may file a reply to any new

arguments or evidence.

The NewSun Solar Projects filed their motion for clarification and application for rehearing or reconsideration on September 8, 2017. By statute, the Commission has 60 days to issue an order that substantively grants or denies the clarification or reconsideration, or an order that opens a rehearing for further proceedings. *See* ORS 756.561(1); ORS 183.482(1) (“If agency does not otherwise act, reconsideration shall be deemed denied the 60th day following date the petition is filed . . .”). The 60-day deadline for action (or inaction) on the NewSun Solar Projects’ filing is November 7, 2017. That is less than one month from now. The Commission’s 60-day deadline logically provides the basis for why the rehearing rules only provide 15 days for a response and require the applicant to request the right to file a reply. *See* OAR 860-001-0720(4). In the normal course, the statutory deadline to act (or decide not to act) should also counsel strongly against extensions of time and certainly not allow an open-ended stay of the response deadline.

In instances where the record cannot be fully developed for a substantive decision within 60 days, the Commission occasionally issues an order within the 60-day limit solely to initiate reconsideration or rehearing wherein additional briefing and argument can be developed before issuing a final substantive order on the topic. *See Kootenai Elec. Coop. v. Idaho Power Co.*, OPUC Order No. 13-238 (June 25, 2013) (granting reconsideration within 60 days and stating a new order would be issued to address the merits after further consideration of materials relevant to the matter); *Re Pacific Power and Light Co (dba PacifiCorp)*; *Request for a General Rate Increase*, OPUC Order No. 05-1254 (Dec. 19, 2005) (granting rehearing to allow full briefing of

issues related to Senate Bill 408 on rehearing). However, there is no indication that is the intent in this case with the open-ended extension of time granted to PGE, and it was certainly not PGE's proposal when it asked for that open-ended extension of time. As it stands, there is little time remaining for PGE to file a response to the pending clarification and rehearing filings, and even less time to allow for a reply that the Complainants or the NewSun Solar Projects may need to file to join the arguments if PGE introduces new issues or evidence in its response.

No purpose is being served by the continuing stay of the deadline for PGE to respond to the clarification and rehearing filings. PGE has asserted that it may not need to respond to the NewSun Solar Projects' motion for clarification and application for rehearing and reconsideration if the Commission denies the NewSun Solar Projects' petition to intervene. As noted in previous filings, PGE's objection to intervention has no merit under the facts of this case. Notably, however, there was no delay in the 15-day response to the application for rehearing and reconsideration in the one case PGE cited for the proposition that a rehearing and reconsideration filing cannot be made by a non-party to the proceeding. *See Re PacifiCorp, dba Pacific Power and Light Co. and HCA Management Co., LLC*, OPUC Order No. 08-016 at 1 (Jan. 18, 2008). In that case, the rehearing order explains that the non-parties to the proceeding filed their petition to intervene and rehearing filings on December 12, 2007, and the two existing parties to the proceeding each filed a response to the rehearing filing on December 21, 2007. There was no open-ended stay to wait and see if the petition to intervene would be granted before issuing an order on rehearing within 60 days. Instead, the Commission's rehearing order both denied the petition to intervene and clarified ambiguities in the challenged order. *See id.* at

2-3 & 5. There is simply no logical reason or apparent precedent for any stay of PGE's deadline to respond.

Additionally, the NewSun Solar Projects disagree that PGE's objection to their intervention, even if successful, can nullify their right to request clarification and rehearing of the Commission's Order No. 17-256, for the reasons explained in prior filings. *See NewSun Solar Projects' Reply to PGE's Objection to Intervention* at 7-11 (filed Oct. 2, 2017). If PGE wishes to forego the opportunity to respond to the NewSun Solar Projects' clarification and rehearing filing, that is PGE's own choice. But there is no basis to provide PGE an indefinite stay of the 15-day deadline by which the rules require it to file a response to the NewSun Solar Projects' motion for clarification and application for rehearing or reconsideration.

Furthermore, PGE's objection to the petition to intervene is wholly irrelevant to its deadline to respond in this particular case. As the Complainants note, their own rehearing and reconsideration filing adopted the same arguments made by the NewSun Solar Projects' rehearing and reconsideration filing. Complainants also provided a summary of those arguments in their rehearing and reconsideration filing. Thus, PGE would have to respond to those substantive arguments regardless of whether the NewSun Solar Projects' petition to intervene is granted and regardless of whether PGE captions its response as a "Response to Complainants" or a "Response to Complainants and the NewSun Solar Projects." The current stay therefore rests solely on PGE's completely meaningless procedural objection.

Accordingly, the NewSun Solar Projects respectfully request that Administrative Law Judge Allan Arlow establish a prompt deadline for PGE's responses to the clarification and

rehearing filings by both the Complainants and the NewSun Solar Projects and a deadline for replies to be filed in the event that PGE introduces new arguments or evidence.

Dated: October 9, 2017.

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