

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1728**

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

Application to Update Schedule 201  
Qualifying Facility Information

RESPONSE OF NEWSUN ENERGY  
TO PORTLAND GENERAL  
ELECTRIC COMPANY’S MOTION  
FOR MODIFIED PROTECTIVE  
ORDER

**I. INTRODUCTION**

Pursuant to OAR 860-001-0080(3)(d), NewSun Energy LLC (“NewSun”) hereby submits this response to Portland General Electric Company’s (“PGE’s”) motion for a modified protective order (“MPO”) filed on April 8, 2024. NewSun reiterates concerns it has expressed in other dockets regarding utility over designation of material as highly protected and reserves the right to challenge PGE’s designations in this docket. For example, NewSun disputes that the effective load carrying capacity (“ELCC”) values used as inputs to calculate PURPA avoided costs is highly protected commercially sensitive information.

To facilitate parties having adequate time to review PGE’s claims of privilege and its rationale for designating certain material as highly protected, NewSun requests and recommends that the same change be made to this MPO as was made to PGE’s proposed MPO in Docket No. UM 2274. Under Paragraph 11, challenging parties should be

allowed 15 days to file a written reply.<sup>1</sup> This request is warranted and reasonable because challenging parties are at a significant disadvantage in a dispute over the designation of highly protected material because they have likely not seen the data itself, will not have an opportunity to know the crux of PGE’s arguments until PGE files its formal response, and because challenging parties are only entitled one opportunity to respond to PGE.

## II. RESPONSE

Under Paragraph 11, a challenging party is permitted 5 business days to file a written reply to PGE’s legal and factual basis for designating the disputed information as highly confidential. PGE bears the burden of proving that its designation is appropriate and is also entitled to file a sur-reply. Under the Commission’s rules for substantive motions, the party that does not bear the burden of persuasion is provided 15 days to review and respond to the motion.<sup>2</sup> Given that the challenging party does not bear the burden of persuasion and only gets one opportunity to respond to PGE’s legal and factual basis, the challenging party should be entitled at least the same amount of time to respond. As such, NewSun recommends the following change to Paragraph 11:

The challenging party may file a written reply to any response within ~~five business-fifteen~~ **calendar** days of service of a response. The designating party may file a sur-reply within three business days of service of a reply. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of service of the last filing.

---

<sup>1</sup> *In re Portland Gen. Elec. Co., 2023 All-Source Request for Proposals*, Docket No. UM 2274, Order No. 24-083 (Mar. 25, 2024).

<sup>2</sup> OAR 860-001-0420(4).

### III. CONCLUSION

NewSun remains concerned that PGE overs designates material as highly protected, and therefore recommends that additional response time be provided for parties who challenge that designation.

Dated this 9<sup>th</sup> day of April 2024.

Respectfully submitted,

NEWSUN ENERGY LLC



Marie P. Barlow  
In-House Counsel, Regulatory & Policy Affairs  
NewSun Energy LLC  
550 NW Franklin Ave., Ste. 408  
Bend, OR 97703  
(503) 420-7734  
mbarlow@newsunenergy.net