

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 UM 2032

4 In the Matter of  
5 PUBLIC UTILITY COMMISSION OF  
6 OREGON,  
7 Investigation into the Treatment of Network  
8 Upgrade Costs for Qualifying Facilities.

**STAFF MOTION FOR LEAVE TO REPLY  
AND REPLY TO NEWSUN ENERGY LLC'S  
MOTION TO ALLOW BRITTANY ANDRUS  
AS A WITNESS**

9 **REQUEST FOR LEAVE TO REPLY**

10 Staff of the Public Utility Commission of Oregon (Staff) asks the Administrative Law  
11 Judge for leave to submit a reply to the Joint Utilities' response to NewSun Energy LLC's  
12 Motion to Allow Brittany Andrus as a Witness. The Oregon Administrative Rules do not  
13 expressly allow for a non-movant to submit a reply to a procedural motion. However, Staff  
14 believes the circumstances warrant the opportunity to submit a reply. Staff is uniquely in a  
15 position to inform the ALJ of the extent to which Brittany Andrus participate in Docket No. UM  
16 2032.

17 To the extent the ALJ decides this is a substantive motion and that a reply is allowed  
18 without request, Staff asks the ALJ to allow eight days for response.

19 Staff e-mailed the parties to this proceeding on December 1, 2020, asking whether any  
20 party objected to Staff's request to file a reply. Portland General Electric, Co., PacifiCorp, and  
21 Idaho Power Company responded to the e-mail on December 2, 2020, stating they did not object.

22 **REPLY**

23 Staff submits this reply in response the Joint Utilities' Response to NewSun Energy  
24 LLC's Motion to Allow Brittany Andrus as a Witness.

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1           **I.       OAR 860-001-0330(2) is not applicable.**

2           Staff disagrees that Ms. Andrus actively participated in Docket No. UM 2032 and that the  
3 prohibition in OAR 860-001-0330(2) applies.

4 OAR 860-001-0330(2) provides:

5           Except with the Commission’s written permission, a former Commission  
6 employee may not appear as a witness on behalf of other parties in contested  
7 case proceedings in which the former employee took an active part on the  
8 Commission’s behalf.

8           The administrative rule applies in a very specific circumstance, in contested case  
9 proceedings in which the former employee took an active part on the Commission’s behalf. The  
10 contested case proceedings for purposes of OAR 860-001-0330(2) is Docket No. UM 2032.  
11 Brittany Andrus did not take an active part in this contested case before leaving the Commission  
12 in November 2019. Accordingly, the prohibition in OAR 860-001-0330(2) does not apply.

13           The Joint Utilities rely on the Commission’s analysis in a 2001 order regarding  
14 participation of a former employee in proceedings before the Commission to argue that Ms.  
15 Andrus’ active participation in related cases should trigger the prohibition in OAR 860-001-  
16 0330(2). The Joint Utilities argue their broad interpretation of OAR 860-001-0330(2) is  
17 supported by the Commission’s conclusion in the 2001 order that the phrase “took an active part  
18 on the Commission’s behalf” should be broadly construed to protect the integrity and perceived  
19 fairness of the Commission proceedings.”<sup>1</sup> The Joint Utilities’ reliance is misplaced.

20           In 2001, the Commission rejected the request of the Industrial Customers of Northwest  
21 Utilities (ICNU) to have a former employee testify on its behalf in a docket the employee had  
22 previously worked on while employed at the OPUC.<sup>2</sup> In that case, ICNU claimed the prohibition  
23 in administrative rule<sup>3</sup> did not apply because the employee had not prepared testimony or Staff’s

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25 <sup>1</sup> Joint Utilities Response to NewSun’s Motion, p. 4.

26 <sup>2</sup> *In re Portland General Company* (Docket No. UE 115), Order No. 01-249 (2001 WL 514388).

<sup>3</sup> The rule at issue has changed slightly since 2001. The current version no longer has the word  
“expert” before witness and uses “contested case proceedings” instead of “major proceedings.”

1 proposed settlement position. The Commission disagreed, stating it would broadly interpret  
2 what activities may constitute active participation for purposes of the rule.<sup>4</sup> The Commission  
3 concluded that the employee at issue had developed an analytical memorandum for the docket at  
4 issue and was preparing testimony in the docket prior to his departure, and that this was  
5 sufficient to show active participation.<sup>5</sup>

6 The Commission did not suggest in its 2001 order that it would broadly interpret the term  
7 “major proceedings” to consider whether the employee’s prior participation as Staff in related or  
8 similar proceedings should exclude the employee from participating in the docket at issue for  
9 another party. The rule at issue in the 2001 order has been changed, and the phrase “major  
10 proceedings” has been changed to “contested case proceedings.” Contested case proceedings is  
11 not an ambiguous term. Accordingly, whether the rule applies depends on whether Ms. Andrus  
12 actively participated in Docket No. UM 2032 prior to leaving the OPUC. Staff does not think  
13 this threshold was met.

14 The Docket Summary for Docket No. UM 2032 reflects that this docket opened in July  
15 2019, based on the Staff recommendation in a Public Meeting Memorandum submitted by  
16 Division Administrator JP Batmale.<sup>6</sup> Brittany Andrus was included on the service list for this  
17 docket after it opened. Brittany Andrus left the Agency in November 2019 and was removed  
18 from the service list on January 8, 2020. The prehearing conference for this docket was  
19 eventually held on February 7, 2020. The Docket Summary shows no activity in this docket  
20 between July 2019 and February 7, 2020, other than petitions to intervene, an order allowing  
21 intervention, and a motion to certify the case as eligible for intervenor funding.

22 In fact, it was not until May 2020, at which point Ms. Andrus had been away from the  
23 Commission for six months, that a scope for UM 2032 was established. It was not until October  
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25 <sup>4</sup> Order No. 01-249.

26 <sup>5</sup> Order No. 01-549.

<sup>6</sup> Order No. 19-254.

1 2020, nearly a year after Ms. Andrus left the Commission, that Staff provided substantive  
2 discussion of the issues of this investigation through its first round of testimony.

3 In sum, between July when this docket opened and November when Ms. Andrus left the  
4 OPUC, Staff did not actively work on this docket. Instead, it was only after Ms. Andrus left that  
5 Staff met to discuss the scope of the docket and its position. Because Ms. Andrus did not  
6 actively participate in UM 2032, OAR 860-01-0330(2) does not apply.

7 **II. Even if OAR 860-001-applies to these circumstances, Ms. Andrus should still be**  
8 **allowed to testify.**

9 Assuming OAR 860-001-0330 applies even when the employee’s former “active  
10 participation” is in a different docket or dockets, Ms. Andrus still should still be allowed to  
11 participate in this docket. The Joint Utilities argue that, because Ms. Andrus participated in  
12 Docket Nos. UM 2000 and UM 1930, she took an active role in the UM 2032 proceeding on the  
13 Commission’s behalf. The Joint Utilities state that, had the investigation into Network Upgrade  
14 costs proceeded under Docket No. UM 2000, there would be no question as to Ms. Andrus’  
15 participation.<sup>7</sup>

16 In Docket No. UM 2000, Ms. Andrus served as a member of the team that worked to  
17 identify and prioritize PURPA implementation issues to be addressed by the Commission. Ms.  
18 Andrus helped identify that the treatment of Network Upgrades for QFs in Oregon is a priority  
19 issue for parties.<sup>8</sup> This is the extent to which Ms. Andrus took a role in UM 2000 on behalf of  
20 the Commission. It was not until May 2020, at which point Ms. Andrus had been away from the  
21 Commission for six months, that a scope for UM 2032 was established. It was not until October  
22 2020, nearly a year after Ms. Andrus left the Commission, that Staff provided substantive  
23 discussion of the issues of this investigation through its first round of testimony.

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26 <sup>7</sup> See Docket No. UM 2032, Joint Utilities’ Response to NewSun’s Motion, p. 6.

<sup>8</sup> See Docket No. UM 2000, Commission Order No. 19-254, July 31, 2019, Appendix A.

1 Further, the Joint Utilities suggest that Docket No. UM 1930 should be considered the  
2 same proceeding as Docket No. UM 2032 because the Community Solar Program (CSP) interim  
3 interconnection solutions, “examine the very same questions currently being examined in docket  
4 UM 2032.”<sup>9</sup> Staff disagrees with this characterization of Docket No. UM 1930, which is a  
5 docket related to the implementation of CSP. Ms. Andrus engaged in internal discussion with  
6 the Staff leading Docket No. UM 1930, who were working to understand the causes of the  
7 complete stagnation of PacifiCorp’s interconnection queue and identify very near-term  
8 opportunities to overcome this major barrier for CSP generators, so that CSP could launch in  
9 January 2020. Opening an investigation into Network Upgrades for QFs was under consideration  
10 well in advance of Staff’s efforts to identify CSP interim solutions.

11 The Commission adopted Staff’s recommendation to open an investigation to Network  
12 Upgrades for QFs in July 2019, which is well before Staff’s proposal for interim CSP  
13 interconnection were adopted October 2020. This does not show a predisposition to a specific  
14 outcome in UM 2032. It suggests that Staff highlighted for the Commission that there was an  
15 opportunity to leverage UM 1930’s interim solutions for CSP generators to gain insights into the  
16 risks and benefits of issues that were already slated to be examined in a separate docket (UM  
17 2032.)

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19 DATED this 2<sup>nd</sup> day of December 2020.

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Respectfully submitted,

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ELLEN F. ROSENBLUM  
Attorney General

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*/s/ Stephanie Andrus*

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Sr. Assistant Attorney General  
Of Attorneys for Staff of the Public Utility  
Commission of Oregon

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<sup>9</sup> Joint Utilities’ Response to NewSun’s Motion, p. 7.