

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2032

In the matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into the Treatment of Network
Upgrade Costs for Qualifying Facilities

NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS COALITION,
RENEWABLE ENERGY COALITION,
AND COMMUNITY RENEWABLE
ENERGY ASSOCIATION’S RESPONSE
IN SUPPORT OF NEWSUN ENERGY
LLC’S MOTION TO COMPEL
DISCOVERY

INTRODUCTION AND SUMMARY

Pursuant to OAR 860-001-0420 and Administrative Law Judge Traci Kirkpatrick’s ruling dated June 8, 2021, the Northwest & Intermountain Power Producers Coalition (“NIPPC”), the Renewable Energy Coalition (“REC”), and the Community Renewable Energy Association (“CREA”) (together referred to as the “Interconnection Customer Coalition”) hereby respectfully submits this Response In Support of NewSun Energy LLC’s (“NewSun”) Motion to Compel Discovery in this proceeding before the Public Utility Commission of Oregon (the “Commission” or “OPUC”).

NewSun’s Motion to Compel explains that the PacifiCorp, Portland General Electric Company (“PGE”), and Idaho Power Company (“Idaho Power”) (collectively, the “Joint Utilities”) have refused to produce information and materials relevant to the issue before the Commission in this proceeding. Specifically, each of the Joint Utilities have refused to produce certain information and materials that are relevant to the question of what types of benefits

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accrue to transmission system from qualifying facility (“QF”)-driven network upgrades, Federal Energy Regulatory Commission (“FERC”)-jurisdictional network upgrades or other upgrades required for load service or otherwise, as well as related information regarding any similarities and differences between QFs and non-QFs related to differential treatment of refund policies for network upgrades. As NewSun explains, the Joint Utilities’ objections to producing such information and materials contradict the same utilities own successful arguments earlier in this docket that the questions at hand are intensely factual and thus necessitate a contested case. Although the Interconnection Customer Coalition did not itself propound the discover requests at issue, the requested material would also inform our position in this matter and enable us to more completely build a record for the Commission’s consideration.

In sum, NewSun’s requested discovery is relevant, and the Commission should therefore compel its production.

ARGUMENT

The Commission’s rules require parties to produce information and material in discovery that is relevant to the issues in dispute,¹ and the Commission’s adjudicatory function depends on the regulated utilities producing such material to enable other parties to adequately build a record for the Commission’s resolution of such issues. If a utility successfully withholds pertinent material in discovery the record provided for the Commission’s determination of the disputed issues will be compromised and likely incomplete. Additionally, if the utility even just delays

¹ OAR 860-001-0000(1); ORCP 36B(1); *see also* OAR 860-001-0450(1)(a) (relevant evidence is “evidence tending to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence.”).

prompt production of such relevant material, it will run up the litigation costs for non-utility parties who must engage in negotiations and discovery disputes, such as that at issue in the instant Motion to Compel. Yet, where parties have been unable to adequately build a record, the Commission has specifically instructed that parties should have filed a motion to compel discovery to bring such discovery issues to the Commission’s attention.² However, the Commission has also explained that it “expect[s] utilities to error on the side of producing too much information in response to data requests rather than too little.”³ Under these standards, the Commission should compel production of the discovery requested by NewSun in this case.

The discovery requested is unquestionably relevant to the issue before the Commission in this phase of the case. The first question at issue in this phase of the proceeding is: Who should be required to pay for Network Upgrades necessary to interconnect the QF to the host utility?⁴ As NewSun’s Motion to Compel explains, the requested discovery seeks to ascertain whether or how other users and beneficiaries “benefit” from transmission system upgrades.⁵ Such information is highly relevant to determining the policy question of who should ultimately pay for network upgrade costs. If NewSun and the Interconnection Customer Coalition can present evidence that other users of the transmission system besides the interconnecting QF commonly benefit from network upgrades, the Commission will be more likely to conclude in Phase I of

² *Re Portland General’s Electric Co.*, Docket No. UE 196, Order No. 09-046 at 8 (Feb. 5, 2009) (“If CUB believed that PGE was withholding information, it should have filed a motion to compel. We do not monitor discovery requests, and do not know if a party is having difficulty obtaining information unless that party files a motion to compel with the Commission.”).

³ *Id.*

⁴ Docket No. UM 2032, ALJ Ruling at 2 (May 22, 2020) (adopting Staff’s proposed issues).

⁵ *NewSun’s Motion to Compel* at 5.

this docket that the interconnecting QF should not be solely responsible for funding such upgrades. It is hard to imagine information and materials that could be more relevant.

The Joint Utilities’ objections to producing the requested discovery are without merit. For example, as one grounds of objection, the Joint Utilities engage in an inappropriate shell game by asserting that the requested data requests are relevant to Phase II of this proceeding.⁶ Under the procedural order establishing the issues, there will be no Phase II if the Commission determines that the interconnecting QF should be solely responsible for the cost of network upgrades. The issue in Phase II – if it occurs – is as follows: “*If the answer to Issue No. 1 is that users and beneficiaries of Network Upgrades (which typically are primarily utility customers) should pay for the Network Upgrades necessary to interconnect the QF to the host utility, how should that policy be implemented?*”⁷ The Joint Utilities’ cannot delay production of material relevant to Phase I just because the Joint Utilities may believe the material to also be relevant to Phase II. The Commission should reject that objection.

⁶ See *NewSun’s Motion to Compel* at Attachment A at 2 (PGE’s supplemental response to NewSun Data Request No. 9, asserting: “PGE also objects that the information requested relates to an issue that PGE understands is outside the scope of Phase I and may be addressed in Phase II.”); *id.* at Attachment A at 6 (same for NewSun Data Request No. 10 to PGE); *id.* at Attachment A at 11 (same for PacifiCorp’s Supplemental Response to NewSun Data No. 1.10); *id.* at Attachment A at 27 (same for PacifiCorp’s Supplemental Response to NewSun Data Request No. 1.11); *id.* at Attachment A at 32 (same for PacifiCorp’s Supplemental Response to NewSun Data Request No. 1.19).

⁷ Docket No. UM 2032, ALJ Ruling at 2 (May 22, 2020) (emphasis added).

The Joint Utilities' position is also contradictory to their own assertions earlier in these proceedings that a contested case process is needed to resolve the issue at hand.⁸ The Commission granted the Joint Utilities the right to a contested case over the objection of the Interconnection Customer Coalition, and it is now too late for the Joint Utilities to claim as a defense to discovery that the disputed issue turns solely on policy questions implicating no need for discovery. If the Commission will continue to process this case as a contested case, the rules entitle NewSun and other parties to conduct discovery, and the Joint Utilities must produce such relevant information and materials within their possession.

CONCLUSION

In sum, for the reasons set forth in NewSun Energy's Motion, the Commission should compel the utilities to produce the requested discovery.

Dated this 28th day of June 2021.

Respectfully submitted,

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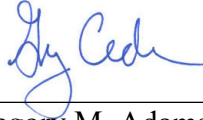


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⁸ See Docket No. UM 2032, ALJ Ruling at 2 (May 22, 2020)(noting the Joint Utilities characterized the issues at hand to be “legally and factually complex” in support of their opposition to including additional issues).

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