

**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

NEWSUN’S RESPONSE TO THE JOINT  
UTILITIES’ MOTION FOR REHEARING  
AND/OR CLARIFICATION

**I. INTRODUCTION**

Pursuant to OAR 860-001-0720(4), NewSun Energy LLC (“NewSun”) hereby submits this Response to the Joint Utilities’ Motion for Rehearing and/or Clarification of Order No. 23-005 (hereafter “Reconsideration”) submitted in Docket No. UM 2032 on March 21, 2023. In this brief, NewSun does not repeat its arguments made in its earlier briefing but simply responds to a few key points raised in the Reconsideration. Notably, the Joint Utilities’ Reconsideration attempts to overcomplicate an issue that is not complicated. The Public Utility Commission of Oregon (the “Commission”) should maintain its original decision in this matter to allow qualifying facilities (“QFs”) to be studied for and elect to receive Energy Resource Interconnection Service (“ERIS”) and directing the Joint Utilities to negotiate non-standard power purchase arrangements with those QFs. As discussed further below, PacifiCorp’s arguments made to and rejected by the Federal Energy Regulatory Commission (“FERC”) in the *Pioneer Wind* case, reiterated in their Reconsideration, do not warrant the Commission revisiting its decision in this matter. Further, the Commission’s direction to the utilities is not a complicated one that requires clarification. However, to the extent the Commission deems

clarification is necessary, it should clarify that the Joint Utilities should not use their position of having superior information about their own system to delay or obstruct a QF's ability to enter a contract but that they are expected to negotiate such contracts in good faith.

## II. RESPONSE

### A. The Commission Should Not Reconsider its Decision to Allow ERIS

The Joint Utilities' Reconsideration asks the Commission to reverse its decision to allow a QF to interconnect via ERIS by simply re-hashing arguments PacifiCorp made to and were rejected by the FERC. The Joint Utilities cite extensively to PacifiCorp's arguments arguing that certain facts and circumstances made a FERC ruling in that case premature.<sup>1</sup> However, FERC rejected those arguments and found it appropriate to act to remove uncertainty: "Although Pioneer Wind and PacifiCorp have not executed a final PPA and the Wyoming Commission procedures have not concluded with respect to the PPA, these facts are not dispositive of our ability to exercise our discretion to act on the Petition at this time and we, therefore, *reject PacifiCorp's arguments to this effect.*"<sup>2</sup> The FERC goes on to say: "Rather, the record demonstrates that Pioneer Wind and PacifiCorp have an irreconcilable controversy."<sup>3</sup>

Specifically, Pioneer Wind explained that "PacifiCorp is refusing to execute a PPA unless Pioneer Wind agrees to include in the PPA a curtailment provision."<sup>4</sup> FERC found that the proposed curtailment provision violated PURPA.<sup>5</sup> Therefore, as articulated in prior briefing

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<sup>1</sup> Joint Utilities' Motion for Rehearing and/or Clarification at 8-10.

<sup>2</sup> *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 35 (Dec. 16, 2013) (emphasis added).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at P 4.

<sup>5</sup> *Id.* at P 36.

in this case, *Pioneer Wind* stands for the proposition that a utility cannot *require* a QF to agree to greater curtailment than is permissible under PURPA.<sup>6</sup>

However, a utility may also not refuse to purchase output from a QF if the QF *chooses* to deliver something less than its full net output, and the utilities admit as much in the record in this proceeding.<sup>7</sup> A utility is still required to purchase a QF's output whether the QF is interconnected as ER or NR, whether it sells in only one hour per year, whether it sells its output over the whole year except for one day, whether it sells only seasonally, or whether it sells some of its output to another utility to name a few.<sup>8</sup> As such, a QF could choose to deliver its output at a level that obviates the need for certain network upgrades enabling more efficient use of the transmission system while helping to meet the State's clean energy goals. Therefore, the Commission reached the appropriate conclusion that a QF be allowed to interconnect as ERIS and sell power to the utility under a PURPA contract. In other words, an NRIS interconnection is not a prerequisite to the utilities' mandatory purchase obligation, and the Joint Utilities' Reconsideration is not persuasive that it is.

### **B. Clarification is Unnecessary**

To the extent the Joint Utilities' first clarification request is about foreseeing the level of transmission service curtailment when they conduct the interconnection study, it is simply a restatement of a fact well-established in this case—that interconnection and transmission service are achieved via different processes. There is no dispute in this case that an interconnection

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<sup>6</sup> NewSun's Post-Hearing Brief at 9 (Aug. 5, 2022); The Community Renewable Energy Association, The Northwest & Intermountain Power Producers Coalition, and The Renewable Energy Coalition's Post-Hearing Brief at 44-45 (Aug. 5, 2022); NewSun's Post-Hearing Response Brief at 11 (Sept. 2, 2022); The Community Renewable Energy Association, The Northwest & Intermountain Power Producers Coalition, and The Renewable Energy Coalition's Post-Hearing Response Brief at 13-14 (Sept. 2, 2022).

<sup>7</sup> NewSun/403, Andrus/28.

<sup>8</sup> *Id.*

study cannot award transmission service.<sup>9</sup> The Joint Utilities ask the Commission to clarify that their order directing a utility to allow a QF to be studied for ERIS does not require the utility to study the QF for transmission service in the interconnection study process.<sup>10</sup> This clarification is unnecessary. No party has asserted such rights and the Commission's order does not create an ambiguity that needs clarification. The Commission's Order simply directs a utility to allow QFs to be studied for ERIS and NRIS and to elect either and then directs the utilities to negotiate appropriate contractual arrangements.<sup>11</sup> The Joint Utilities' request for clarification simply overcomplicates an issue that is not complicated.

As established in the record in this case, regardless of whether a generating facility elects ER or NR interconnection service, there is a separate process for submitting a transmission service request and acquiring transmission service.<sup>12</sup> An interconnection study that studies a project for ER and NR service identifies both the network upgrades required for reliability under ER service and network upgrades required for deliverability under NR service.<sup>13</sup> The study can therefore identify the point at which upgrades are triggered based on the amount of load and generation in the local area—it can identify how much generation from the QF can be accepted before triggering upgrades, either annually or seasonally, to better inform the QF's decisions. A transmission service request can similarly be for a variety of transmission services including firm network or point-to-point transmission service or a type of non-firm transmission service.<sup>14</sup> The type of interconnection service does not require any particular type of transmission service and

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<sup>9</sup> See e.g. Joint Utilities' Posthearing Brief at 8n.22 (Aug. 5, 2022); See also e.g. NewSun's Post-Hearing Brief at 7;

<sup>10</sup> Joint Utilities' Motion for Rehearing and/or Clarification, at 11.

<sup>11</sup> Order No. 23-005 at 34.

<sup>12</sup> NewSun's Post-Hearing Brief at 7-8.

<sup>13</sup> Joint Utilities' Prehearing Brief at 31-32 (June 3, 2022).

<sup>14</sup> *Id.*

vice versa. Notably, for the topic at issue here, a generator interconnected as ERIS can still obtain firm transmission.<sup>15</sup> What the Commission's Order directs, is simply that the Joint Utilities offer QFs the option to be studied for both and ultimately elect either NR or ER interconnection service and then to negotiate appropriate power purchase arrangements for any QF that elects ER service. As such, no clarification is necessary.

To the extent the Commission deems any clarification is necessary, it should clarify that the Joint Utilities should not subvert a QF's right to sell power to the utility simply because a QF proposes to interconnect as ERIS and/or sell something less than its full net output. Specifically, the Commission should clarify that allowing ERIS means that the utility cannot obstruct a QF's right to sell power by assigning the costs of, for example, a large expensive transmission line to the QF to address a constraint that might only apply only in limited instances, when the QF might voluntarily agree to simply not deliver to an extent that addresses that constraint. And part of the rationale for this change in Commission policy is the record evidence in this case that NRIS studies often result in multi-hundred-million-dollar network upgrades whereby nearby projects being studied for ERIS might have much smaller interconnection costs.<sup>16</sup> Additionally, the Commission should be cognizant of the imbalance of power and information. It is the utility that has the best information about its own system. To the extent the Commission deems any clarification is necessary, it should clarify that, that the utility should not use this power and information imbalance to unreasonably delay or obstruct the QF's ability to enter a contract with the utility, but rather is expected to negotiate such non-standard contracts in good faith and propose reasonable terms that address the issues applicable to any particular QF contract.

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<sup>15</sup> NewSun's Post-Hearing Brief at 7-8.

<sup>16</sup> NewSun's Prehearing Brief at 11.

The Joint Utilities' other clarification requests also do not require clarification. First, Joint Utilities ask the Commission to clarify that its ruling does not require them to violate FERC statutes, orders, or regulations other than the *Pioneer Wind* case.<sup>17</sup> As articulated above, the Commission's Order does not violate *Pioneer Wind*, and this Commission does not need to clarify that the Joint Utilities are required to comply with laws. Second, the Commission does not need to clarify that its order is directing the Joint Utilities to file optional interconnection tariffs like the one filed by Puget Sound Energy and approved by the Washington Utilities and Transportation Commission.<sup>18</sup> The Order plainly does not say that they are required to do so.

### III. CONCLUSION

For the reasons articulated above, the Commission should not reconsider its decision to allow QFs to elect ERIS under Order No. 23-005 and no clarifications are necessary. Finally, to the extent the Commission has questions about how its ruling might be practically implemented, NewSun is more than willing to participate in any workshops to discuss with the Commissioners and Parties.

Dated this 5th day of April 2023.

Respectfully submitted,

NewSun Energy LLC

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<sup>17</sup> Joint Utilities' Motion for Rehearing and/or Clarification at 14.

<sup>18</sup> See Joint Utilities' Motion for Rehearing and/or Clarification at 16.