



ALISHA TILL  
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December 3, 2020

**VIA ELECTRONIC FILING**

Attention: Filing Center  
Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
P.O. Box 1088  
Salem, Oregon 97308-1088

**Re: Docket UM 2032 – Investigation into the Treatment of Network Upgrade Costs for Qualifying Facilities**

Attention Filing Center:

Attached for filing in the above-captioned docket is the Joint Utilities' Motion to Supplement the Record.

Please contact this office with any questions.

Sincerely,

Alisha Till  
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2032**

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Investigation into Treatment of Network  
Upgrade Costs for QFs

**JOINT UTILITIES' MOTION TO  
SUPPLEMENT THE RECORD**

1 Pursuant to Oregon Administrative Rule 860-001-0420, Portland General Electric  
2 Company (PGE), PacifiCorp dba Pacific Power (PacifiCorp), and Idaho Power Company (Idaho  
3 Power) (together, the Joint Utilities) respectfully request leave to supplement the record with  
4 respect to NewSun Energy, LLC's (NewSun) Motion to Allow Brittany Andrus as a Witness,  
5 filed November 17, 2020 (NewSun's Motion or Motion).

6 On November 24, the Joint Utilities filed a Response to NewSun's Motion, in which they  
7 explained their legal and policy reasons for objecting to Ms. Andrus' testimony in this case. On  
8 December 1, 2020, NewSun filed a Reply to which it attached a letter that it had sent to the Joint  
9 Utilities on November 25, regarding the Joint Utilities' Response to its Motion. In that letter,  
10 NewSun levels accusations against the Joint Utilities, including an erroneous claim that they had  
11 made a filing that has no basis in law or fact—which is a sanctionable offense—and an  
12 unfounded charge that the Joint Utilities' filing was made for the purpose of disadvantaging  
13 NewSun in litigation and depriving Ms. Andrus of an opportunity to earn a livelihood.

14 The Joint Utilities take NewSun's accusations seriously and sent a response to the  
15 November 25 letter on the afternoon of December 1. That letter was received by NewSun well  
16 before NewSun filed its Reply. However, while NewSun attached its own letter to its Reply, it

1 did not include the Joint Utilities' letter written in response. Although the Joint Utilities do not  
2 believe that NewSun's letter is germane to the Commission's consideration of the issues raised  
3 by NewSun's Motion, the Joint Utilities request leave to file their response letter, which is  
4 attached, in order to complete the record in this case, given that NewSun's letter is now in the  
5 record.

6 There is one issue raised in NewSun's letter to which the Joint Utilities did not respond  
7 previously but will respond briefly now that the letter is in the record. NewSun states that the  
8 Joint Utilities' position is "unprecedented." While the Joint Utilities believe that their position  
9 finds support in the precedent cited in their Response, they note that NewSun's request to present  
10 testimony from a former Commission employee who worked on interrelated issues and dockets  
11 while at the Commission appears to be unprecedented. In their collective experience of  
12 Commission practice, the Joint Utilities are not aware of another such instance. For this reason,  
13 the Joint Utilities appropriately presented their concerns and requested Commission guidance on  
14 the important issue of general Commission policy presented in NewSun's Motion. The Joint  
15 Utilities respectfully request that the Commission accept their response letter into the record and  
16 provide the requested guidance.

17 Pursuant to OAR 860-001-0420(2), the Joint Utilities have conferred with Commission  
18 Staff, the Alliance of Western Energy Consumers (AWEC), NewSun, the Renewable Energy  
19 Coalition, the Northwest and Intermountain Power Producers Coalition, and the Community  
20 Renewable Energy Association regarding the request to supplement the record. NewSun,  
21 AWEC and Staff do not oppose the Motion, and the other parties have not yet taken a position  
22 in support of or in opposition to this Motion.

DATED: December 3, 2020.

**McDOWELL RACKNER GIBSON PC**



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Company, PacifiCorp, dba Pacific Power, and  
Idaho Power Company

# **ATTACHMENT 1**

**to**

## **Joint Utilities' Motion to Supplement the Record**

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*December 1, 2020 Letter to Marie Barlow of NewSun Energy, LLC*



LISA RACKNER  
Direct (503) 595-3925  
[lisa@mrg-law.com](mailto:lisa@mrg-law.com)

December 1, 2020

**VIA EMAIL**

Marie Barlow  
[mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net)

Re: UM 2032 –Former PUC Employee Witness

Dear Ms. Barlow:

This letter responds to your letter of November 25, 2020, in which you request that the Joint Utilities withdraw their response to NewSun’s Motion to Allow Brittany Andrus to be a Witness.

The Joint Utilities disagree with your statements that their response “has no basis in law or fact” and that it was filed in order to “chill participation of parties like NewSun”. On the contrary, the Joint Utilities filed the response based on the law and facts cited in their briefing, and out of concern for the Commission’s policy goal of “avoiding the appearance of impropriety that would result if former Commission employees used the knowledge or relationships they gained during public service to advantage a private party.” *Order No. 01-249*. Clearly, NewSun and the Joint Utilities have a disagreement regarding the merits of their respective positions, but the Joint Utilities believe it is important for the Commission to issue a ruling on what they view as a crucial issue of general Commission policy.

The Joint Utilities are particularly troubled by your accusation that their filing threatens Ms. Andrus’ future employment prospects. It is true that the Joint Utilities do not believe it is appropriate for Ms. Andrus to actually appear before the Commission in the same or closely interrelated dockets as those in which she took an active part on behalf of Staff. However, the Joint Utilities took pains in their response to point out that Ms. Andrus is not precluded from consulting with private clients on the dockets in which she participated while at the Commission; nor is Ms. Andrus precluded from appearing before other state public utility commissions on matters in which she gained expertise while at the Commission. Moreover, Ms. Andrus is entirely free to appear as a witness before the Commission in dockets that are not as closely interrelated with those in which she played an active role. The Joint Utilities respect Ms. Andrus and wish her success in her continued pursuit of work as a private consultant. The fact that they are also concerned regarding the perceived fairness and integrity of Commission proceedings should not be understood to conflict with their regard for Ms. Andrus and concern for her livelihood.

*December 1, 2020*

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For these reasons, the Joint Utilities decline to withdraw their response to NewSun's Motion and will await the Commission's order on this matter.

Sincerely,

A handwritten signature in blue ink that reads "Lisa Rackner". The signature is written in a cursive style with a large initial "L".

Lisa Rackner