



**Portland General Electric Company**

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**Erin E. Apperson**

Managing Corporate Counsel  
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March 22, 2024

***Via Electronic Filing***

Public Utility Commission of Oregon  
Attention: Filing Center  
P.O. Box 1088  
Salem, OR 97308-1088

RE: **UM 2274 – Portland General Electric Company, 2023 All-Source Request for Proposals**

Dear Filing Center:

Enclosed for filing in the above-referenced docket is Portland General Electric Company's (PGE) response to NewSun Energy LLC's reply to PGE's Motion for Protective Order.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erin Apperson", with a long horizontal flourish extending to the right.

Erin E. Apperson  
Managing Corporate Counsel

EEA: bp

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2274**

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

2023 RFP Process.

PORTLAND GENERAL ELECTRIC  
COMPANY'S REPLY TO NEWSUN  
ENERGY'S AND OSSEA'S RESPONSES  
TO MOTION FOR MODIFIED  
PROTECTIVE ORDER

**I. Introduction**

Portland General Electric Company (PGE) files this reply in accordance with OAR 860-001-0080(3)(d), and the Administrative Law Judge's (ALJ) March 19, 2024, Ruling. PGE respectfully requests that the ALJ grant PGE's motion for a modified protective order (MPO) with the additional clarifications described in this reply. As discussed below, PGE respectfully requests that the ALJ decline to adopt the substantive changes requested by NewSun Energy LLC (NewSun) and Oregon Solar + Storage Industries Association (OSSIA) in their responses. Instead, PGE offers targeted changes to address certain concerns regarding designation of highly confidential information.

NewSun asserts that the Commission should reconsider its approach to MPOs, citing to over-designations, use of the affiliate, and the general integrity of the request for proposals (RFP) process.<sup>1</sup> NewSun also proposes modifications to PGE's proposed MPO that depart from prior practice and would compromise competition with the RFP. It appears that NewSun is disregarding the Commission's decisions in the RFP approval docket and may not understand the implications of its requests. PGE offers the following responses to NewSun's and OSSIA's proposed change to the proposed MPO.

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<sup>1</sup> See NewSun Response at 1.

First, PGE offers clarifications to the proposed MPO in response to NewSun's and OSSIA's concerns that the language is overly broad that describes what information is covered by the MPO. PGE offers the following additional language to paragraph 2 of the proposed order to replace subpart (c): "is extremely commercially sensitive and requires additional restrictions on who may access the information than that provided under the Commission's general protective order."<sup>2</sup> Further, should the ALJ seek to include additional clarity regarding what constitutes highly confidential information in this proceeding, PGE proposes an additional subpart (d) to proposed paragraph 2: "Includes third-party bid information, associated evaluation, scoring, and modeling, and results, which may include highly commercially sensitive information regarding existing resources." As described below, NewSun's proposed language defining highly confidential information is too narrow to adequately protect the highly confidential information anticipated to be provided in this docket.

Second, PGE opposes NewSun's additional attempts to alter the competitive bidding rules through this MPO by including additional proposed prohibitions in paragraph 20 regarding staffing in future solicitations. If the Commission would like to address modifications to the competitive bidding rules, it should do so comprehensively and not in this ad-hoc, one-off fashion.

Third, PGE's proposed language regarding access to highly confidential information adequately balances the ability of other parties to seek highly confidential information through an ALJ-approval process while maintaining adequate protections for this extremely highly confidential information. However, if the ALJ seeks to modify the language to align with the approach followed in the PacifiCorp case cited by NewSun, it should also include the on-site review provision used that proceeding.

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<sup>2</sup> This language is consistent with what the Commission approved in Docket No. UM 2193, Order No. 23-097.

Finally, regarding the timeframes for challenging highly confidential designations, PGE appreciates that these are compressed timeframes but believes that there must be a balance between allowing parties, including both the challenger and the designating party, to adequately articulate their positions while also not causing significant or unnecessary delay to the overall docket. For this reason, PGE respectfully requests that the ALJ decline to modify the MPO to align with NewSun's expanded and open-ended language regarding these timeframes.

## **II. Response**

### **A. PGE Offers Certain Additional Clarifications to Further Define Highly Confidential Information Under the MPO.**

PGE does not agree with NewSun's proposal to significantly narrow the categories of information covered by the modified protective order, as this would undermine the competitive process and PGE's ability to provide comprehensive information and supporting workpapers in this proceeding. However, if the ALJ would like to add clarity to the type of information covered, PGE offers the following language be added to paragraph 11 to describe highly protective information as information that: "(c) is extremely commercially sensitive and requires additional restrictions on who may access the information than that provided under the Commission's general protective order; and (d) includes third-party bid information, associated evaluation, scoring, and modeling, and results, which may include highly commercially sensitive information regarding existing resources."

This is consistent with language approved in other modified protective orders, differentiates highly confidential information from information covered by the general protective order, enables PGE to provide all necessary information to support modeling and scoring bids in this RFP, and preserves the competitive process by ensuring bidders do not have access to other bid, scoring, modeling, and evaluation information in this proceeding.

NewSun states that PGE's language regarding what would be highly protected information is "vague and unworkable," and that PGE should "specifically describe the categories of information that may be designated as highly protected to prevent the over-designation of information under the MPO."<sup>3</sup> NewSun also seeks access to significantly broader types of information than has previously been permitted to enable a bidder to "spot check" other bids.<sup>4</sup> Allowing bidders such access to the evaluation of each other's bid information would significantly undermine the competitive process and likely run counter to PGE's obligations under the Commission-approved NDAs. Parties such as Staff, CUB, the IE, and NIPPC will be permitted to view this type of information, but bidders should not.

As part of its overarching support for these changes, NewSun claims that there is a risk of over-designation of highly confidential information, and specifically refers to over-designation in Staff's October 30, 2023, Staff Report in Docket UM 2166. In that instance, PGE received a copy of the Independent Evaluator's Q&A that was attached to the Staff Report and redacted that specific document. PGE is open to continue to work with Staff and parties to the extent there are concerns with incorrect confidential or highly confidential designations, but this instance should not serve as the basis to overhaul the terms of the modified protective order, which is intended to protect highly confidential, commercially sensitive information regarding bids and modeling, evaluating and scoring those bids, which could include information regarding existing resource characteristics and PGE's models.

In PGE's motion, when describing the exact Nature of the information involved consistent with OAR 860-001-0080(3)(a)(A), PGE states that "this proceeding will likely implicate highly confidential information including RFP bidder information, the analysis and

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<sup>3</sup> See *id* at 3.

<sup>4</sup> See *id* at 5.

creation of equally highly confidential modeling and results.”<sup>5</sup> Additionally, as noted in PGE’s response to NewSun when conferring regarding PGE’s motion, this information is anticipated to include primarily RFP bid information, but could also include PGE’s evaluation of these bids, which could include the proprietary models and inputs regarding existing resource characteristics.<sup>6</sup>

NewSun is attempting to limit highly confidential information to only information that “is individually identifiable information from third-party bidder”<sup>7</sup> and thereby permit public disclosure of substantial categories of highly confidential information. It is not just third-party bidder information that may be highly confidential in this proceeding. NewSun’s proposed language would not adequately protect the additional modeling and evaluation information that is anticipated to be provided highly confidentially in this proceeding. PGE would like to continue to be able to provide its workpapers supporting its scoring and evaluation to Staff, the Commission, the Independent Evaluator, and other signatories to the MPO as it has in prior dockets, but the only way that this will be possible is to have adequate protections in place to safeguard this highly confidential information. As stated in PGE’s motion, public disclosure of this modeling and resource information would harm PGE’s customers by disrupting PGE’s procurement efforts, putting PGE at a commercial disadvantage, and violating confidentiality agreements with third parties.

NewSun states that it assumes that its proposed language is generally how MPOs have been used in prior RFPs.<sup>8</sup> However, NewSun’s assumption has no basis, is inconsistent with PGE’s motion, PGE’s response to NewSun when conferring, and appears to depart from other utilities’

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<sup>5</sup> PGE’s Motion at 2.

<sup>6</sup> See Attachment A.

<sup>7</sup> NewSun Response at 6.

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

motions for modified protective orders. For example, in PacifiCorp’s motion for a modified protective order for its 2022 AS RFP, PacifiCorp stated that the modified protective order was necessary to protect bid information and related analysis based on the bid information.<sup>9</sup> PacifiCorp further described this as “bid information and associated analysis.”<sup>10</sup> Therefore, while it is not entirely clear, it appears that PGE’s request for confidential treatment to include highly confidential analysis supporting evaluation of the bids appears consistent with how this has been treated in other dockets.

As noted above, NewSun’s recommended approach would not adequately protect the workpapers that PGE would like to provide in this docket regarding its scoring and modeling to demonstrate how it arrived at the final shortlist. In the 2021 RFP, PGE provided this information to Staff and the Commission, the Independent Evaluator, and NIPPC. This enabled significant oversight at the time not only by the Independent Evaluator but also other parties in the process, of PGE’s scoring and evaluation decisions to support the final shortlist. These workpapers are voluminous, and while they do contain third-party bid information, they also contain information used to model these resources, which could include information regarding PGE’s existing resources. Therefore, it is important that protections under the MPO are not limited in the way NewSun suggests, which would have the effect of potentially limiting what PGE would be able to provide in this docket and therefore significantly limit the oversight by entities such as Staff and NIPPC that NewSun claims to want in this docket.

**B. The ALJ Should Decline to Adopt NewSun’s Proposed Substantive Modifications to the Competitive Bidding Rules.**

NewSun argues that additional protections for the modified protective order are needed to ensure PGE employees are not able to use highly protective information for an improper

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<sup>9</sup> UM 2193, PacifiCorp Motion for Modified Protective Order at 3 (March 13, 2023).

<sup>10</sup> *Id* at 4.

purpose.<sup>11</sup> It appears that NewSun is attempting to make the same arguments as were at issue in the underlying RFP approval proceeding to relitigate this issue and make another attempt at altering the requirements contained in the competitive bidding rules. NewSun is attempting to modify the competitive bidding rules in a one-off fashion by arguing that “simply preventing PGE employees from providing such services if they had access to the highly protected information in the last RFP is insufficient.”<sup>12</sup>

As part of its support for its position, NewSun references the use of the affiliate in this docket as a reason to substantively alter the terms of the modified protective order. However, the Commission has already carefully considered the implications of the affiliate’s involvement in this RFP in both the affiliate interest docket approving the affiliate and then again in the RFP approval proceeding where it considered 13 specific conditions regarding the affiliate’s participation in this proceeding.<sup>13</sup> In fact, the Commission considered a condition regarding the benchmark’s ability to receive information from the PRR PPA as part of its review of PRR Participation 9 which stated “the PRR Form PPA must specify that PGE Benchmark team employees are explicitly excluded from the list of Receiving Party Representatives.”<sup>14</sup> The Commission declined to adopt this condition, and instead determined that it would address this issue in a subsequent affiliate interest proceeding.<sup>15</sup> It would therefore be inappropriate to alter the terms of the modified protective order as NewSun suggests in this one-off fashion when the Commission declined to impose these types of restrictions when expressly considering the impact of PRR’s participation in this proceeding when approving the RFP.

The Commission did adopt PRR Condition 1, which states “PGE will provide the IE a list

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<sup>11</sup> NewSun Response at 6.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> Order No. 24-011 at 1, 3.

<sup>14</sup> Order No. 24-011, App. A at 60.

<sup>15</sup> Order No. 24-011 at 3.



of all employees working as part of the RFP team, the Benchmark team, and any employees performing duties on behalf of PRR, including the roles, and associated dates of their work for the various teams at the time it files its benchmark score, at the time it files its FSL, and again after it has completed negotiations for all PRR bids.”<sup>16</sup> NewSun’s suggested modifications would move beyond this information-gathering condition that the Commission did approve in the RFP approval order. Should the Commission seek to consider these issues in the future, it should do so holistically instead of in this ad-hoc basis as NewSun suggests.

NewSun’s position in response to PGE’s motion for a modified protective order is similar to the issues NIPPC raised<sup>17</sup> in the RFP approval process, but the Commission ultimately declined to adopt.<sup>18</sup> As PGE noted in its comments in response to these issues in the approval portion of this docket, this would be an inappropriate expansion of the competitive bidding rules and should not be taken up on a one-off basis. Here, however, it is even more procedurally problematic to significantly alter the framework provided in the CBRs through issuing an individual utility’s modified protective order.

In OAR 860-089-0300(1)(b), the CBRs provide explicit direction to utilities in the preparation of both their RFP and benchmark or affiliate bids as follows: any individual who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company may not participate in the preparation of an electric company or affiliate bid and must be screened from that process. The intent of the rule is clear—it is designed to ensure that utility personnel that design or score the current RFP will not use information gleaned from that process to design a benchmark or affiliate bid. In other words, the staffing restriction only

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<sup>16</sup> Order No. 24-011 at 1, App. A at 42.

<sup>17</sup> At the Public Meeting approving the 2023 RFP, NIPPC appeared to reserve these arguments for future proceedings.

<sup>18</sup> See PGE’s Dec 21 Comments at 26.

applies to development of the RFP, not any other proceeding. There is no indication in the rule that the Commission intended to preclude PGE employees who served on prior RFP teams from being assigned to the benchmark team in the future, nor would that be a reasonable interpretation of the rule. NewSun now seeks to alter the requirements of the rules, arguing that they are inadequate. The ALJ should refrain from significantly expanding the requirements of OAR 860-089-0300(1)(b) in this one-off fashion in addressing a motion for a modified protective order.

The CBRs were adopted after a lengthy rulemaking proceeding that spanned several years and included both informal and formal phases. In its final order in that rulemaking, the Commission carefully considered all of the proposed rules, including OAR 860-089-0300(1)(b), and struck a balance of interest regarding restrictions on utility staffing. An ALJ should not alter this framework in reviewing an individual motion for a modified protective order in this proceeding. Moreover, any expansion of the CBRs' staffing requirements in this modified protective order in this RFP docket may arguably constitute an impermissible expansion or refinement of an existing rule, which must be promulgated in accordance with applicable rulemaking procedures under the Oregon Administrative Procedures Act (APA) to be valid. If the Commission wishes to consider proposals to expand the staffing rule in the CBRs, it should do so in a rulemaking docket where all parties can share perspectives regarding alternative approaches and provide policy arguments for the Commission's consideration—and not in setting the terms for a modified protective order.

As discussed recently and at length in the UI 489 proceeding, the competitive bidding rules provide for strict separations between the team members preparing the benchmark bid and those working on the development and scoring of the current RFP. As a result, employees assigned to work on the benchmark bid are shielded from any access to highly confidential bidder

information in the current RFP. This provision ensures that the benchmark bid does not gain an unfair advantage over the bids submitted by third parties. The Commission's existing rules are comprehensive, robust, and sufficient to ensure a fair process, despite NewSun's claims to the contrary.

The current screening rule under the rules requires PGE to separately staff the teams for the RFP and a benchmark bid.<sup>19</sup> Because of the prohibition on use of shared resources, PGE has maintained two separate teams with subject matter experts for each of the numerous areas of expertise required to support complex energy projects, including employees with specialized expertise in areas such as merchant transmission, interconnections, and specialized commercial negotiations and contracting. As PGE articulated during the rulemaking, the need for separate staffing has put a significant strain on the Company's resources. Despite this fact, PGE has thus far been able to comply with the staffing rules without a request for a waiver. However, the further restrictions proposed by NewSun could render the process unworkable in the future. For this reason, if the Commission would like to address this issue, it should do so comprehensively and not in this one-off fashion.

NewSun also speculates that PGE's prior track record of winning all, or a portion of its prior RFPs may be an indication that PGE has been using highly protected information from prior RFPs for inappropriate competitive purposes and that the introduction of the affiliate further complicates the matter. PGE does not agree with this assessment. Additionally, as discussed above, the Commission has already thoroughly considered the use of the implications of the use of the affiliate, and as explained by PGE, the affiliate has no role in bid preparation and is not involved until later in the process.

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<sup>19</sup> OAR 860-089-0300(1)(b).

**C. PGE’s Proposed Language Regarding Signatory Pages Strikes the Correct Balance of Protecting Highly Confidential Information While Allowing Certain Third-Party Access.**

PGE’s proposed language regarding access to highly confidential information adequately balances the ability of other parties to seek highly confidential information through an approval process while maintaining adequate protections for this extremely sensitive information.

NewSun argues that PGE should use the language from PacifiCorp’s prior RFP, which included “Persons (including attorneys) that are not involved in PacifiCorp's ongoing 2020AS RFP solicitation process as bidders.” However, NewSun neglected to include the additional important protections that PacifiCorp sought and received in that proceeding, which was to require an on-site review for any parties other than CUB or Staff seeking to review such highly confidential information.<sup>20</sup> The approved modified protective order in that case stated “Access to Highly Protected Information will be provided to all persons qualified under paragraph 12(b) only at PacifiCorp's offices. PacifiCorp will distribute Highly Protected Information to only those persons qualified under paragraphs 11 and 12(a).”<sup>21</sup>

PGE recommends that the ALJ reject NewSun’s recommended language and instead maintain the process outlined by PGE in the proposed MPO. PGE has already reached agreement with NIPPC’s attorneys that PGE will not object to their signatory pages under the MPO, which demonstrates that this process can be workable. However, if the ALJ sees value in the modifications outlined by NewSun, then the onsite review should also be included as an additional protection of this information and PGE offers the following language to replace paragraph 13:

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<sup>20</sup> See Order No. 23-097, Appendix A at 2-3.

<sup>21</sup> *Id.* In that order, paragraph 11 included “Commission employees; and (b) Assistant Attorneys General assigned to represent the Commission”, paragraph 12(a) included “An employee or counsel of the Regulatory Division at the Oregon Citizens' Utility Board” and paragraph 12(b) included “Persons (including attorneys) that are not involved in PacifiCorp's ongoing 2020AS RFP solicitation process as bidders.”

Persons qualified to access Highly Protected Information upon a party signing the Consent to be Bound section of Appendix B are: (a) An employee or counsel of PGE or CUB; and (b) Persons (including attorneys) that are not involved in PGE's ongoing 2023 RFP solicitation process as bidders.

Access to Highly Protected Information will be provided to all persons qualified under paragraph 13(b) only at PGE's offices. PGE will distribute Highly Protected Information to only those persons qualified under paragraphs 12 and 13(a).

Under this construct, PGE would still have the ability to object to a specific signatory's access to highly confidential information under paragraph 13(b) on a case-by-case basis. Should the ALJ choose to alter the terms of the MPO in this way, PGE respectfully respects that the on-site provision be included.

**D. NewSun's Proposal is Too Open-Ended Regarding Additional Time to Reply to PGE's Response**

NewSun would like to alter the response timeframe for a challenging party regarding designation of highly confidential information contained in paragraph 11 of the draft modified protective order. PGE notes that the disclosing party (here, likely PGE) only has five days to respond to the challenge, and then the challenging party has five days to respond. These timeframes have been consistently approved by the Commission in various modified protective orders and also align with the timeframes of the general protective order.<sup>22</sup>

PGE appreciates that these are compressed timeframes but believes that there must be a balance between allowing parties, including both the challenger and the designating party, to adequately articulate their positions while also not causing significant or unnecessary delay to

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<sup>22</sup> *In the Matter of Public Utility Commission of Oregon, Modifications to the General Protective Order*, UM 2054, Order No. 23-132, App. A at 2-3 (Apr. 10, 2023) ("Within five business days of service of the objection [to a designation of information as protected], the designating party must either remove the protected designation or file a response. . . . The challenging party may file a reply to any response within five business days of service of the response."); *In the Matter of Idaho Power Company, Request for a General Rate Revision*, UE 426, Order No. 24-004 at 2, App. A at 3 (Jan. 8, 2024) (adopting a modified protective order stating the same); *In the Matter of Portland General Electric Company, Renewable Resource Automatic Adjustment Clause (Schedule 122) (Clearwater Wind Project)*, UE 427, Order No. 23-431 at 2, App. A at 2 (Nov. 13, 2023) (same); *In the Matter of PacifiCorp, dba Pacific Power, 2019 Integrated Resource Plan*, LC 70, Order No. 20-035 at 2, App. A at 2 (Jan. 29, 2020) (same).

the overall docket. NewSun’s proposal does not strike that balance, and instead could allow a single party to delay the entire docket. When balancing these interests, PGE continues to believe that the timeframes outlined in the proposed modified protective order are appropriate and would prevent unnecessary delay to the proceeding.

### **III. Conclusion**

For these reasons, PGE respectfully requests that the ALJ approve PGE’s proposed modified protective order with the following change to the definition of highly protected information: “(c): Is extremely commercially sensitive and requires additional restrictions on who may access the information than that provided under the Commission's general protective order; and (d) includes third-party bid information, associated evaluation, scoring, and modeling, and results, which may include highly commercially sensitive information regarding existing resources.” The purpose of this change is to clarify and distinguish highly protected information under the modified protective order from protected information under the general protective order.

Should the ALJ wish to modify paragraph 13 regarding access to highly confidential information, PGE respectfully requests that the ALJ adopt the on-site review provision as well as the addition suggested by NewSun and offers the following language to replace paragraph 13:

Persons qualified to access Highly Protected Information upon a party signing the Consent to be Bound section of Appendix B are: (a) An employee or counsel of PGE or CUB; and (b) Persons (including attorneys) that are not involved in PGE’s ongoing 2023 RFP solicitation process as bidders.

Access to Highly Protected Information will be provided to all persons qualified under paragraph 13(b) only at PGE’s offices. PGE will distribute Highly Protected Information to only those persons qualified under paragraphs 12 and 13(a).

PGE respectfully respects that the ALJ issue PGE’s proposed modified protective order as described herein and decline to modify the MPO in the other ways suggested by NewSun.

PGE respectfully requests that the ALJ issue the MPO by March 27 to facilitate filing benchmark bid scores on March 28 before solar bids are due on March 29 per PGE’s updated schedule communicated to bidders on March 22, 2024.<sup>23</sup>

DATE this 22<sup>nd</sup> day of March 2024.

Respectfully Submitted By:



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Erin E. Apperson, OSB No. 175771  
Managing Corporate Counsel  
Portland General Electric Company  
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Portland, Oregon 97204  
Phone: 503-464-8544  
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<sup>23</sup> PGE’s RFP Team sent the following communication to participants on March 22, 2024: “After conferring with the IE, to ensure that there is adequate time to evaluate and seal the Benchmark bids accurately and in accordance with the rules, we are making the following changes to the solicitation schedule: Solar BTA/APA bids are due March 29. We are maintaining the All-Remaining Bids submission date of April 9 pending the volume of bids received on March 29.”

## Erin Apperson

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**From:** Erin Apperson  
**Sent:** Friday, March 8, 2024 2:41 PM  
**To:** Marie Barlow  
**Subject:** RE: PGE's Conferral re Upcoming Motion for Modified Protective Order

Marie –

I want to flag that we filed this motion today based on the need to keep moving this process along and get a modified protective order in place. I had not heard back from you with additional information on NewSun's position, so PGE noted NewSun's objection in the motion. We also requested a slightly more expedited timeframe for responses and replies in order to receive an order in time for the next steps in this docket.

Thank you,

Erin



**Erin Apperson**

Pronouns: she/her

Managing Corporate Counsel | 503-464-8544

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**From:** Marie Barlow <mbarlow@newsunenergy.net>  
**Sent:** Thursday, March 7, 2024 11:13 AM  
**To:** Erin Apperson <Erin.Apperson@pgn.com>  
**Subject:** Re: PGE's Conferral re Upcoming Motion for Modified Protective Order

**This email is from someone outside PGE.**

Please take care when opening links, attachments or responding to this email.

Thanks for following up, Erin. The response below has not alleviated NewSun's concerns so I would propose the following instead:



“NewSun objected to a number of aspects of the modified protective order, which PGE responded to. PGE’s responses have not alleviated NewSun’s concerns so NewSun continues to object.”

**Marie P. Barlow** | In-House Counsel, Policy & Regulatory Affairs | she/her  
**NewSun Energy** | Office: (503) 420-7734 | Cell: (509) 389-4847

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**From:** Erin Apperson <[Erin.Apperson@pgn.com](mailto:Erin.Apperson@pgn.com)>  
**Date:** Thursday, March 7, 2024 at 10:24 AM  
**To:** [mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net) <[mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net)>  
**Subject:** RE: PGE's Conferral re Upcoming Motion for Modified Protective Order

Marie –

PGE is filing its motion for the MPO this afternoon. At this point, PGE has included the following statement about NewSun’s position on this motion.

“NewSun raised a number of questions/issues, which PGE responded to, and NewSun has not provided further clarification regarding its position on this motion when asked.”

Please let me know if NewSun does have a different position on this motion. PGE will file by 3PM today.

Thank you,

Erin



**Erin Apperson**

Pronouns: she/her

Managing Corporate Counsel | 503-464-8544

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**From:** Erin Apperson

**Sent:** Tuesday, February 20, 2024 2:45 PM

**To:** Marie Barlow <[mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net)>; Ellie Hardwick <[ellie@sanger-law.com](mailto:ellie@sanger-law.com)>

**Cc:** PGE OPUC Filings <[pge.opuc.filings@pgn.com](mailto:pge.opuc.filings@pgn.com)>; Greg Adams <[greg@richardsonadams.com](mailto:greg@richardsonadams.com)>; BATMALE JP \* PUC <[JP.BATMALE@puc.oregon.gov](mailto:JP.BATMALE@puc.oregon.gov)>; Greg Batzler <[Greg.Batzler@pgn.com](mailto:Greg.Batzler@pgn.com)>; [diane@renewablenw.org](mailto:diane@renewablenw.org); [bic@dvclaw.com](mailto:bic@dvclaw.com); [tdonadio@steptoe.com](mailto:tdonadio@steptoe.com); [jog@dvclaw.com](mailto:jog@dvclaw.com); [sgray@nippc.org](mailto:sgray@nippc.org); Max Greene <[max@renewablenw.org](mailto:max@renewablenw.org)>; HERB Kim \* PUC <[kim.herb@puc.oregon.gov](mailto:kim.herb@puc.oregon.gov)>; [rlorenz@cablehuston.com](mailto:rlorenz@cablehuston.com); [tcp@dvclaw.com](mailto:tcp@dvclaw.com); Riemenschneider Johanna <[johanna.riemenschneider@doj.state.or.us](mailto:johanna.riemenschneider@doj.state.or.us)>; [michael@ryedevelopment.com](mailto:michael@ryedevelopment.com); [irion@sanger-law.com](mailto:irion@sanger-law.com); [jstephens@newsunenergy.net](mailto:jstephens@newsunenergy.net); [tashiana.wangler@avangrid.com](mailto:tashiana.wangler@avangrid.com); [czentz@steptoe.com](mailto:czentz@steptoe.com); Jacob Goodspeed <[jacob.goodspeed@pgn.com](mailto:jacob.goodspeed@pgn.com)>

**Subject:** RE: PGE's Conferral re Upcoming Motion for Modified Protective Order

Marie,

PGE has the following responses to the issues you've raised. In light of these clarifications, please let me know NewSun's position on PGE's motion.

- Additional clarity around what is and what is not highly confidential would benefit all parties.
  - The highly confidential information anticipated to be at issue in this proceeding is primarily RFP bid information. Highly confidential information may also include PGE's evaluation of these bids, which could include the proprietary models and inputs regarding existing resource characteristics. This is consistent with the draft modified protective orders which states "This proceeding will likely implicate highly confidential information including RFP bidder information, the analysis and creation of equally highly confidential modeling and results."
- PGE employees gaining access to highly confidential information should remain covered by the MPO for the duration of the protective order and be prevented from working on PGE competitive operations during that time.
  - PGE expects that certain employees on PGE's RFP Team will sign the MPO and be bound by its terms. There are additional limitations placed on PGE employees from the NDAs and PGE's Staffing Principles. It is unclear to PGE what NewSun means by competitive operations for PGE. We oppose this proposed additional limitation that does not appear warranted, is unclear and undefined and therefore may lead to unnecessary future disputes. It appears that NewSun may be attempting to make arguments regarding requirements for future staffing based on signing an MPO in this proceeding, which is beyond the scope of what is being requested by PGE in seeking a modified protective order.
- There should be some category of individuals or parties (non-bidders) that can gain access to the data upon executing the MPO, without having to first obtain PGE consent or an ALJ ruling.
  - Staff and CUB are the entities covered by this suggestion. With this RFP PGE has also not objected to NIPPC's attorneys accessing this information.
- Parties require more than 5 days to respond to PGE when there is a dispute about what information is highly confidential.
  - The purpose of these timeframes to resolve disputes around confidentiality is to ensure that these disputes do not interfere with the docket schedule. This type of timeframe is routinely included in modified protective orders and PGE is not aware of where this has been a problem. PGE is concerned with lengthening this timeframe in any meaningful way such that it would potentially cause delays in the larger schedule.
  -



**Erin Apperson**

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**From:** Marie Barlow <[mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net)>

**Sent:** Friday, February 16, 2024 3:58 PM

**To:** Erin Apperson <[Erin.Apperson@pgn.com](mailto:Erin.Apperson@pgn.com)>; Ellie Hardwick <[ellie@sanger-law.com](mailto:ellie@sanger-law.com)>

**Cc:** PGE OPUC Filings <[pge.opuc.filings@pgn.com](mailto:pge.opuc.filings@pgn.com)>; Greg Adams <[greg@richardsonadams.com](mailto:greg@richardsonadams.com)>; BATMALE JP \* PUC <[JP.BATMALE@puc.oregon.gov](mailto:JP.BATMALE@puc.oregon.gov)>; Greg Batzler <[Greg.Batzler@pgn.com](mailto:Greg.Batzler@pgn.com)>; [diane@renewablenw.org](mailto:diane@renewablenw.org); [btc@dvclaw.com](mailto:btc@dvclaw.com); [tdonadio@steptoe.com](mailto:tdonadio@steptoe.com); [jog@dvclaw.com](mailto:jog@dvclaw.com); [sgray@nippc.org](mailto:sgray@nippc.org); Max Greene <[max@renewablenw.org](mailto:max@renewablenw.org)>; HERB Kim \* PUC <[kim.herb@puc.oregon.gov](mailto:kim.herb@puc.oregon.gov)>; [rlorenz@cablehuston.com](mailto:rlorenz@cablehuston.com); [tcp@dvclaw.com](mailto:tcp@dvclaw.com); Riemenschneider Johanna <[johanna.riemenschneider@doj.state.or.us](mailto:johanna.riemenschneider@doj.state.or.us)>; [michael@ryedevelopment.com](mailto:michael@ryedevelopment.com); [irion@sanger-law.com](mailto:irion@sanger-law.com); [jstephens@newsunenergy.net](mailto:jstephens@newsunenergy.net); [tashiana.wangler@avangrid.com](mailto:tashiana.wangler@avangrid.com); [czentz@steptoe.com](mailto:czentz@steptoe.com); Jacob Goodspeed <[jacob.goodspeed@pgn.com](mailto:jacob.goodspeed@pgn.com)>

**Subject:** Re: PGE's Conferral re Upcoming Motion for Modified Protective Order

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Erin,

NewSun objects to the form of the MPO as drafted for the reasons articulated when you reached out previously, which do not appear to have been addressed, and for additional reasons that have arisen since particularly with regard to what information is covered and what is not. Additionally, Ms. Hardwick's observation highlights exactly why NewSun has objections—PGE employees who become qualified under the MPO cannot unsee that information and it would inevitably influence their actions on behalf of PGE if they later perform work for PGE's competitive operations.

At a minimum:

- Additional clarity around what is and what is not highly confidential would benefit all parties.
- PGE employees gaining access to highly confidential information should remain covered by the MPO for the duration of the protective order and be prevented from working on PGE competitive operations during that time.
- There should be some category of individuals or parties (non-bidders) that can gain access to the data upon executing the MPO, without having to first obtain PGE consent or an ALJ ruling.

- Parties require more than 5 days to respond to PGE when there is a dispute about what information is highly confidential.

There may be additional reasons NewSun objects, but I have not had the opportunity to run those down (if any) today. I am happy to discuss potential changes that would address the concerns, but I am out of the office this afternoon.

**Marie P. Barlow** | In-House Counsel, Policy & Regulatory Affairs | she/her  
**NewSun Energy** | Office: (503) 420-7734 | Cell: (509) 389-4847

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**From:** Erin Apperson <[Erin.Apperson@pgn.com](mailto:Erin.Apperson@pgn.com)>  
**Date:** Friday, February 16, 2024 at 1:55 PM  
**To:** Ellie Hardwick <[ellie@sanger-law.com](mailto:ellie@sanger-law.com)>  
**Cc:** PGE OPUC Filings <[pge.opuc.filings@pgn.com](mailto:pge.opuc.filings@pgn.com)>, Greg Adams <[greg@richardsonadams.com](mailto:greg@richardsonadams.com)>, [mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net) <[mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net)>, BATMALE JP \* PUC <[JP.BATMALE@puc.oregon.gov](mailto:JP.BATMALE@puc.oregon.gov)>, Greg Batzler <[Greg.Batzler@pgn.com](mailto:Greg.Batzler@pgn.com)>, [diane@renewablenw.org](mailto:diane@renewablenw.org) <[diane@renewablenw.org](mailto:diane@renewablenw.org)>, [blc@dvclaw.com](mailto:blc@dvclaw.com) <[blc@dvclaw.com](mailto:blc@dvclaw.com)>, [tdonadio@steptoe.com](mailto:tdonadio@steptoe.com) <[tdonadio@steptoe.com](mailto:tdonadio@steptoe.com)>, [jog@dvclaw.com](mailto:jog@dvclaw.com) <[jog@dvclaw.com](mailto:jog@dvclaw.com)>, [sgray@nippc.org](mailto:sgray@nippc.org) <[sgray@nippc.org](mailto:sgray@nippc.org)>, Max Greene <[max@renewablenw.org](mailto:max@renewablenw.org)>, HERB Kim \* PUC <[kim.herb@puc.oregon.gov](mailto:kim.herb@puc.oregon.gov)>, [rlorenz@cablehuston.com](mailto:rlorenz@cablehuston.com) <[rlorenz@cablehuston.com](mailto:rlorenz@cablehuston.com)>, [tcp@dvclaw.com](mailto:tcp@dvclaw.com) <[tcp@dvclaw.com](mailto:tcp@dvclaw.com)>, Riemenschneider Johanna <[johanna.riemenschneider@doj.state.or.us](mailto:johanna.riemenschneider@doj.state.or.us)>, [michael@ryedevelopment.com](mailto:michael@ryedevelopment.com) <[michael@ryedevelopment.com](mailto:michael@ryedevelopment.com)>, [irion@sanger-law.com](mailto:irion@sanger-law.com) <[irion@sanger-law.com](mailto:irion@sanger-law.com)>, [jstephens@newsunenergy.net](mailto:jstephens@newsunenergy.net) <[jstephens@newsunenergy.net](mailto:jstephens@newsunenergy.net)>, [tashiana.wangler@avangrid.com](mailto:tashiana.wangler@avangrid.com) <[tashiana.wangler@avangrid.com](mailto:tashiana.wangler@avangrid.com)>, [czentz@steptoe.com](mailto:czentz@steptoe.com) <[czentz@steptoe.com](mailto:czentz@steptoe.com)>, Jacob Goodspeed <[jacob.goodspeed@pgn.com](mailto:jacob.goodspeed@pgn.com)>  
**Subject:** RE: PGE's Conferral re Upcoming Motion for Modified Protective Order

Ellie,

Thanks for reviewing. That deletion was not intended to be substantive—when reviewing the draft, it just seemed that content was not directly addressing that subsection so we removed it in clean up.

Thanks,

Erin



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**From:** Ellie Hardwick <[ellie@sanger-law.com](mailto:ellie@sanger-law.com)>  
**Sent:** Friday, February 16, 2024 1:42 PM  
**To:** Erin Apperson <[Erin.Apperson@pgn.com](mailto:Erin.Apperson@pgn.com)>  
**Cc:** PGE OPUC Filings <[pge.opuc.filings@pgn.com](mailto:pge.opuc.filings@pgn.com)>; Greg Adams <[greg@richardsonadams.com](mailto:greg@richardsonadams.com)>; [mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net); BATMALE JP \* PUC <[JP.BATMALE@puc.oregon.gov](mailto:JP.BATMALE@puc.oregon.gov)>; Greg Batzler <[Greg.Batzler@pgn.com](mailto:Greg.Batzler@pgn.com)>; [diane@renewablenw.org](mailto:diane@renewablenw.org); [btc@dvclaw.com](mailto:btc@dvclaw.com); [tdonadio@steptoe.com](mailto:tdonadio@steptoe.com); [jog@dvclaw.com](mailto:jog@dvclaw.com); [sgray@nippc.org](mailto:sgray@nippc.org); Max Greene <[max@renewablenw.org](mailto:max@renewablenw.org)>; HERB Kim \* PUC <[kim.herb@puc.oregon.gov](mailto:kim.herb@puc.oregon.gov)>; [rlorenz@cablehouston.com](mailto:rlorenz@cablehouston.com); [tcp@dvclaw.com](mailto:tcp@dvclaw.com); Riemenschneider Johanna <[johanna.riemenschneider@doj.state.or.us](mailto:johanna.riemenschneider@doj.state.or.us)>; [michael@ryedevelopment.com](mailto:michael@ryedevelopment.com); [irion@sanger-law.com](mailto:irion@sanger-law.com); [jstephens@newsunenergy.net](mailto:jstephens@newsunenergy.net); [tashiana.wangler@avangrid.com](mailto:tashiana.wangler@avangrid.com); [czentz@steptoe.com](mailto:czentz@steptoe.com); Jacob Goodspeed <[jacob.goodspeed@pgn.com](mailto:jacob.goodspeed@pgn.com)>  
**Subject:** Re: PGE's Conferral re Upcoming Motion for Modified Protective Order

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Erin,

NIPPC appreciates that PGE included NIPPC's changes in the Appendix to the Modified Protective Order (MPO).

One question we had was why PGE removed the following sentence from Section E of the Motion for the MPO that was in the previous version: "As explained above, it is necessary to limit access to highly confidential, commercially sensitive information because viewing such information would inevitably influence the actions of market participants and potential market participants, and no precautions other than limiting access can prevent this outcome." Thanks!

Best,

Ellie

-----

**Ellie Hardwick**

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**From:** Erin Apperson <[Erin.Apperson@pgn.com](mailto:Erin.Apperson@pgn.com)>

**Date:** Thursday, February 15, 2024 at 1:41 PM

**To:** PGE OPUC Filings <[pgc.opuc.filings@pgn.com](mailto:pgc.opuc.filings@pgn.com)>, Greg Adams <[greg@richardsonadams.com](mailto:greg@richardsonadams.com)>, Erin Apperson <[Erin.Apperson@pgn.com](mailto:Erin.Apperson@pgn.com)>, mbarlow@newsunenergy.net <[mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net)>, BATMALE JP \* PUC <[JP.BATMALE@puc.oregon.gov](mailto:JP.BATMALE@puc.oregon.gov)>, Greg Batzler <[Greg.Batzler@pgn.com](mailto:Greg.Batzler@pgn.com)>, [diane@renewablenw.org](mailto:diane@renewablenw.org) <[diane@renewablenw.org](mailto:diane@renewablenw.org)>, 'blc@dvclaw.com' <[blc@dvclaw.com](mailto:blc@dvclaw.com)>, [tdonadio@steptoe.com](mailto:tdonadio@steptoe.com) <[tdonadio@steptoe.com](mailto:tdonadio@steptoe.com)>, [jog@dvclaw.com](mailto:jog@dvclaw.com) <[jog@dvclaw.com](mailto:jog@dvclaw.com)>, [sgray@nippc.org](mailto:sgray@nippc.org) <[sgray@nippc.org](mailto:sgray@nippc.org)>, Max Greene <[max@renewablenw.org](mailto:max@renewablenw.org)>, HERB Kim \* PUC <[kim.herb@puc.oregon.gov](mailto:kim.herb@puc.oregon.gov)>, [rlorenz@cablehouston.com](mailto:rlorenz@cablehouston.com) <[rlorenz@cablehouston.com](mailto:rlorenz@cablehouston.com)>, [tcp@dvclaw.com](mailto:tcp@dvclaw.com) <[tcp@dvclaw.com](mailto:tcp@dvclaw.com)>, Riemenschneider Johanna <[johanna.riemenschneider@doj.state.or.us](mailto:johanna.riemenschneider@doj.state.or.us)>, [michael@ryedevelopment.com](mailto:michael@ryedevelopment.com) <[michael@ryedevelopment.com](mailto:michael@ryedevelopment.com)>, [irion@sanger-law.com](mailto:irion@sanger-law.com) <[irion@sanger-law.com](mailto:irion@sanger-law.com)>, [jstephens@newsunenergy.net](mailto:jstephens@newsunenergy.net) <[jstephens@newsunenergy.net](mailto:jstephens@newsunenergy.net)>, [tashiana.wangler@avangrid.com](mailto:tashiana.wangler@avangrid.com) <[tashiana.wangler@avangrid.com](mailto:tashiana.wangler@avangrid.com)>, [czentz@steptoe.com](mailto:czentz@steptoe.com) <[czentz@steptoe.com](mailto:czentz@steptoe.com)>, Jacob Goodspeed <[jacob.goodspeed@pgn.com](mailto:jacob.goodspeed@pgn.com)>

**Subject:** PGE's Conferral re Upcoming Motion for Modified Protective Order

PGE is reaching out regarding its upcoming motion for a modified protective order in UM 2274. The draft motion and draft order are attached. PGE previously conferred with parties on this draft motion but had not filed as it was not necessary to provide highly confidential information previously. PGE now intends to move forward with filing to prepare for next steps in this proceeding. This draft includes NIPPC's requested changes to the consent to be bound portion of the draft order.

Even though PGE already previously conferred, given the lapse in time we are reaching out again to determine parties' positions on this motion and proposed order. Please provide parties' positions by end of day tomorrow for inclusion in the motion. PGE intends to file Monday.

Thank you,



**Erin Apperson**

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