

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

3 UM 2274

4 In the Matter of

5 PORTLAND GENERAL ELECTRIC  
6 COMPANY,

7 2023 ALL-SOURCE REQUEST FOR  
8 PROPOSALS.

9 STAFF RESPONSE TO NEWSUN'S  
10 APPLICATION FOR REHEARING OR  
11 RECONSIDERATION

12 Staff of the Public Utility Commission of Oregon (Staff) files this response to the  
13 Application filed by NewSun Energy LLC (NewSun) on March 12, 2024, seeking rehearing or  
14 reconsideration of Commission Order No. 24-011, corrected by Order Nos. 24-024 and 24-085,  
15 approving the Request for Proposals (RFP) issued by Portland General Electric Company (PGE).  
16 NewSun's Application requests rehearing or reconsideration of the order, under ORS 756.561  
17 and OAR 860-001-0720, alleging "new evidence" and good cause exist for further examination  
18 of the order.

19 Staff first notes that this docket is not a contested case proceeding in which the  
20 administrative rules for contested cases would apply. Nor is there a hearing and evidentiary  
21 record, so that neither a "rehearing" nor a claim of "new evidence" would be applicable.  
22 However, under ORS 756.568, the Commission may find good cause to reconsider and to amend  
23 an order. Upon review of NewSun's Application, Staff does not find cause to reconsider Order  
24 No. 24-011 for amendment and recommends the Commission take no action or deny NewSun's  
25 Application.

26 **BACKGROUND**

27 *Docket UM 2166.* In Docket UM 2166, PGE obtained approval to issue its 2021 All  
28 Source RFP.<sup>1</sup> On August 31, 2022, the Commission issued Order No. 22-315 memorializing its

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<sup>1</sup> Docket UM 2166, Order No. 21-46 (December 10, 2021), corrected by Order No. 22-064.

1 decision to acknowledge PGE’s final shortlist subject to conditions. One of those conditions  
2 directed PGE “to ensure that [Independent Evaluator (IE)] Bates White shall continue to serve as  
3 IE through final resource selection, in order to monitor all contract negotiations, file a final  
4 resource selection closing report with the Commission no later than 30 days after final resource  
5 selection, and respond to any Staff or Commission questions on the final IE report.”<sup>2</sup> PGE filed  
6 the IE’s Final Report on Contract Negotiations on June 30, 2023. Thereafter, on October 30, 2023,  
7 Staff filed a Staff Summary Upon Conclusion of RFP (UM 2166 Staff Summary) to confirm the  
8 required actions had been taken and summarize information of note it received from the IE,  
9 attaching the IE’s responses to Staff’s additional questions after the Final Report was filed. On  
10 February 5, 2024, Staff filed an errata to this Staff Summary (Errata Staff Summary), correcting  
11 redactions to disclose previously redacted portions and correcting certain statements regarding the  
12 RFP.

13 *Docket UM 2274.* This docket, UM 2274, addresses the required processes for PGE’s 2023  
14 All Source RFP. One of the initial issues considered by the Commission was whether to approve  
15 PGE’s use of Bates White as the IE for this docket. The Commission received stakeholder  
16 comments expressing some concern with Bates White’s performance in the 2021 All Source RFP,  
17 and on consideration of the issues, adopted Staff’s recommendation to approve use of Bates White  
18 in Order No. 23-146. To address stakeholder concerns, Staff made its recommendation noting that  
19 it would ask Bates White to prepare a report examining lessons learned from the prior RFP,  
20 including a summary of the findings in Bates White’s closing report from PGE’s 2021 AS RFP and  
21 recommendations to apply those findings to improve the 2023 All Source RFP, along with other  
22 recommendations to improve the competitiveness of this RFP.<sup>3</sup> The IE’s assessment of the draft  
23 RFP, filed May 31, 2023, included this assessment. The IE prepared a Second Assessment of the  
24 draft RFP, filed July 14, 2023, that reflects on stakeholder feedback.

25 <sup>2</sup> Docket UM 2166, Order No. 22-315 at 4.

26 <sup>3</sup> Order No. 23-146, Appendix A at 7-8.

1 While the 2023 All Source RFP was under review, PGE filed an application for approval of  
2 an affiliated interest transaction with Portland Renewable Resource Company, LLC in Docket  
3 UI 489. The Commission approved PGE’s application with a number of conditions, as ultimately  
4 clarified in Order No. 23-369. In addition, PGE filed a Supplemental Filing in this docket, on  
5 November 2, 2023, to describe the role of the affiliate in this RFP, based on the UI 489 proceeding.

6 Following a procedural schedule – that included the IE reports noted above, stakeholder  
7 comments on June 16, 2023, reply comments from PGE on June 28, 2023, the November 2  
8 Supplemental Filing, stakeholder comments on the Supplemental Filing on November 17, 2023,  
9 Staff’s report on December 12, 2023, All Party replies to the Staff report on December 21, 2023,  
10 and consideration at the January 4, 2024 special public meeting – the Commission approved PGE’s  
11 2023 All-Source Request for Proposals with a lengthy set of conditions, described in more detail  
12 below, as relevant here.<sup>4</sup>

13 *NewSun Application.* NewSun states in its Application that it now understands from the  
14 information available in the redacted Errata Staff Summary filing in UM 2166, that in the prior  
15 RFP docket, “the Clearwater project should never have been eligible to bid, as it did not meet the  
16 minimum threshold for long-term transmission rights.”<sup>5</sup> NewSun further argues that PGE abused  
17 subjective bidding elements and the IE “failed to safeguard against this abuse.”<sup>6</sup> NewSun requests  
18 the Commission amend Order No. 24-011 to do five things: 1) preclude PGE and affiliates from  
19 submitting benchmark or affiliate bids in the RFP pending in this docket, 2) preclude NextEra and  
20 its affiliates from participating in any benchmark bids in the pending RFP, 3) disallow Bates White  
21 from continuing to serve as the IE in the 2023 RFP, 4) “actively supervise” the pending RFP,  
22 particularly elements of subjective evaluation, and 5) change the price scoring structure for the  
23 RFP as proposed by NewSun.

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25 <sup>4</sup> Order No. 24-011 at 1.

26 <sup>5</sup> NewSun Application at 1.

<sup>6</sup> NewSun Application at 2.

1 DISCUSSION

2 1. *The Errata Staff Summary in UM 2166 is not a Valid Basis for Revisiting Order No. 24-011.*

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4 A. *The Clearwater Project was Eligible to Bid in in the UM 2166 RFP.*

5 On page one of NewSun’s Application, it states, without citation that “the Clearwater  
6 project should never have been eligible to bid, as it did not meet the minimum threshold for long-  
7 term transmission rights.” On this premise, NewSun argues that the project’s participation and  
8 ultimate selection was improper. But this statement that Clearwater was not eligible to bid cannot  
9 be attributed to the Errata Staff Summary in Docket UM 2166, which reports that “PGE had agreed  
10 to allow other bidders unable to meet the 80 percent transmission requirement to still be considered  
11 for further evaluation if they could provide a narrative description of a plan to secure the necessary  
12 transmission rights.”<sup>7</sup> The Errata Staff Summary explains that Clearwater was allowed to continue  
13 for further evaluation and was eventually included on the final shortlist “along with some other  
14 independent projects that provided alternative plans that PGE deemed viable.”<sup>8</sup>

15 Much of the information NewSun alleges was newly available to the public in the redacted  
16 Errata Staff Summary was included in the public version of the original Staff Summary filed on  
17 October 30, 2023. This includes the fact that the Clearwater project failed to secure long-term  
18 transmission rights for 80 percent of its output, offering 77 percent in the short-term and 60 percent  
19 longer-term, that the IE stated Clearwater did not quite meet the letter of the law from the RFP, but  
20 concluded the alternative plan was reasonable given PGE’s reliability and clean energy needs and  
21 in the long-term, there is additional time for the project to secure more firm service.<sup>9</sup>

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24 <sup>7</sup> Errata Staff Summary at 2.

25 <sup>8</sup> Errata Staff Summary at 5.

26 <sup>9</sup> Compare NewSun Application at 8 with Staff Summary filed October 30, 2023 at 2, 4, Attached Memo from IE to Staff at 3, 10.

1           What NewSun’s Application cites that is now visible in the Errata Staff Summary, is the  
2 fact that the developer proposed that the Clearwater project could use existing PGE transmission  
3 rights in the alternative transmission plan that were not made available to other bidders or  
4 identified as a resource used for a benchmark bid. Also cited is the example of a separate bid that  
5 could have passed the minimum requirement screening and moved on for further evaluation, had it  
6 and its alternative transmission plan been treated like Clearwater, but that the IE was more focused  
7 on making the other bid’s offer the most competitive it could be.<sup>10</sup>

8           From reviewing the above information in just the redacted versions of these filings,  
9 NewSun jumps to the conclusion, “It is clear that Bates White and PGE were intent on propping up  
10 the Clearwater project, at the expense of creating a level playing field for all bidders.” But  
11 NewSun does not acknowledge that the Errata Staff Summary states that “The IE also noted that  
12 based on the offered prices the bid was much less competitive than the Clearwater offer.” Nor  
13 does NewSun acknowledge that the Errata Report states, “Ultimately, PGE advises that it did not  
14 accept the inclusion of these assets as part of Clearwater’s alternate transmission plan and did not  
15 score the bid using such assets.”

16           NewSun’s Application is thus based on the incorrect assumptions that Clearwater should  
17 never have been eligible to bid, and that it was treated differently by PGE and the IE in order to  
18 disadvantage more competitive bids. This was not the case, as discussed above, and the Errata  
19 Report provides no basis for modifying the order.

20                           *B. Order No. 24-011 Already Includes Numerous Provisions that Directly Address*  
21                           *Lessons Learned from the 2021 All Source RFP.*

22           NewSun’s Application argues the “facts disclosed in the errata are bad enough in isolation  
23 to warrant closer scrutiny by the Commission in the 2023 RFP.”<sup>11</sup> Such a statement is not grounds  
24 for modifying Order 24-011 at this time as Staff plainly stated in its Staff Summary filed October

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25                           <sup>10</sup> NewSun Application at 9.

26                           <sup>11</sup> *Id.*

1 30, 2023, that "... Staff plans to carry lessons learned from this process to future RFP  
2 investigations. Staff intends to closely monitor the bid scoring and evaluation processes,  
3 particularly for benchmark bids, and encourage communication between bidders and the utility in  
4 future RFPs."<sup>12</sup> Order No. 24-011 approved the RFP with eleven conditions for the Scoring and  
5 Modeling Methodology (SMM), thirteen conditions for the RFP, and twelve conditions related to  
6 PGE's affiliate. In addition, the Commission adopted four conditions recommended by the  
7 Northwest and Intermountain Power Producers' Coalition (NIPPC).<sup>13</sup>

8 The RFP was approved only after Staff and Intervenors, with input from the IE, made  
9 numerous recommendations to improve the assessment of transmission availability and  
10 alternatives, directly address the need for consistent treatment between benchmark bids and other  
11 bids, and improve oversight of contract negotiations. These efforts are already reflected in Order  
12 24-011.

13 First, Staff's Report noted that transmission requirements were a point of significant  
14 discussion in PGE's 2021 RFP, as well as in this docket, noting that transmission constraints on  
15 PGE's system presented significant challenges to both PGE and potential bidders. To address this  
16 the Commission adopted SMM Condition Conditions 4 and 5, expanding the pool of conforming  
17 bids.<sup>14</sup> In adopting SMM Condition 4, the Commission clarified it understands the Condition "to  
18 mean that PGE's RFP will make clear that the company will treat all bids using Conditional Firm -  
19 System Conditions (CF-SC) transmission products as conforming, including both energy and  
20 dispatchable capacity resources."<sup>15</sup> In part in response to feedback from the Oregon Solar +  
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23 <sup>12</sup> Staff Summary at 5.

24 <sup>13</sup> NIPPC was a signatory to the Modified Protective Order, No. 22-025 in Docket UM 2166 with access to the unredacted Staff  
25 Summary.

26 <sup>14</sup> Order No. 24-011 at 1-2.

<sup>15</sup> Order 24-011 at 1.

1 Storage Industries Association (OSSIA), SMM Condition 5 further expanded pool of potential bids  
2 by reducing the transmission threshold for minimum bidder requirements:<sup>16</sup>

3 PGE will reduce the transmission requirement for renewable resources included in  
4 Appendix N of the RFP from 80 percent of the resource's interconnection limit to  
5 75 percent of the resource's interconnection limit, to align with the requirements of  
6 the Western Resource Adequacy Program.

7 Second, the Order addresses the discussion in this docket regarding consistent treatment  
8 between benchmarks and third-party bids regarding transmission alternatives. In its discussion  
9 supporting SMM Condition 4, Staff disagreed with OSSIA's argument that "the requirement for  
10 bidders to demonstrate an "achievable plan" was subjective and discretionary." Pointing to the  
11 RFP's stated Transmission Requirements listed in Table 1 of Appendix N, and footnote 7, which  
12 describe transmission product and quantity requirements and what must be included in a  
13 description of an alternative transmission path. PGE further confirmed that it would provide a cure  
14 period for bidders to address deficiencies in alternative transmission paths as identified by PGE.<sup>17</sup>

15 Third, the Order increases the level of oversight by the Commission during contract  
16 negotiations from the process used in the 2021 All Source RFP. The Commission adopted RFP  
17 Condition 11:<sup>18</sup>

18 PGE shall retain the IE through final resource selection. PGE will require the IE to  
19 monitor all contract negotiations. In addition to filing a final resource selection  
20 closing report with the Commission no later than 30 days after final resource  
21 selection, the IE will report at least monthly on contract negotiations and any  
22 impacts to pricing or bid withdrawals. The final report will include a full analysis of  
23 how the specific commercial terms shaped the Final Short List seeking  
24 acknowledgement and any impact to bid prices, including but not limited reporting  
25 on contract negotiations, which shall include, but not be limited to analysis of  
26 negotiations on the following contract terms: Guaranteed COD; Transmission  
Upgrade Cost; Transmission Scheduling of Energy Effective Date; curtailment; and  
output guarantees.

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<sup>16</sup> Order 24-011 at 2. *See also* OSSIA Comments on Final Draft RFP, at 2 (June 16, 2023).

<sup>17</sup> Order 24-011, Appendix A at 15.

<sup>18</sup> Order No. 24-011, Appendix A at 75-76.

1 And, the Commission adopted PRR Participation Condition 13, requiring the IE to oversee and  
2 report on contract negotiations between PGE and PRR, including negotiations on performance  
3 guarantees.<sup>19</sup>

4 Together, these provisions reflect that issues that might be relevant to the information in the  
5 UM 2166 Staff Summary have already been considered in depth and addressed in the process for  
6 the pending 2023 RFP.

7 *C. Order No. 24-011 Allows for a Competitive RFP Process.*

8 NewSun’s Application repeatedly references one of the basic purposes of the RFP process,  
9 to “establish a fair, objective, and transparent competitive bidding process.”<sup>20</sup> Staff recognized in  
10 its December 12, 2023 Staff Report that NewSun was raising concerns about the general unfairness  
11 of the procurement practices of PGE and the issues facing third-party bids when benchmark bids  
12 are included in the RFP process.<sup>21</sup> Then, as now, Staff found the IE’s continued engagement  
13 during negotiations for the 2021 All Source RFP to be a valuable tool in ensuring a competitive  
14 process as well as enabling greater visibility into issues that can potentially impact that process.<sup>22</sup>

15 The Commission’s decision to require IE oversight of negotiations in Docket UM 2166 and  
16 its decision to authorize the continued retention of Bates White as the IE in this docket have  
17 produced additional information (including the Staff Summary) of value to future RFPs and cost  
18 recovery dockets. Those decisions have resulted in analysis that will enable the Commission to  
19 continually refine future RFPs to be as competitive as possible. In UM 2274, the changes in the  
20 issued RFP that resulted from stakeholder and IE review of the draft RFP and the conditions  
21 imposed on the final RFP in Order No. 24-011 all represent informed refinements that strengthen  
22 the fairness of the procurement process.

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24 <sup>19</sup> Order No. 24-011 at 3.

25 <sup>20</sup> See NewSun Application at 6, citing OAR 860-089-0010.

26 <sup>21</sup> Order No. 24-011, Appendix A at 43.

<sup>22</sup> *Id.*; See also UM 2166 Errata Staff Summary at 5.



1 NewSun’s request to preclude Bates White from continuing as the IE would mean  
2 proceeding without the knowledge and expertise of an IE well-informed as to PGE’s RFP process  
3 and adding months of delay for the selection of a new IE. Similarly, NewSun’s request to preclude  
4 bidding concerning PGE, NextEra, and any affiliate bids is unsupported and will add months of  
5 delay. Further, the Commission has already considered the risks and benefits of the affiliate in  
6 Docket UI 489 and earlier in this proceeding. There are numerous conditions regulating PRR’s  
7 participation in both dockets. Precluding such affiliate bids from participation would deprive  
8 customers of the value these potential bids may represent. These would be steps backward in  
9 conducting a fair and competitive procurement process.

10 *D. NewSun’s Application Does Not Provide Grounds for Reconsideration of the Price*  
11 *Scoring in the 2023 All Source RFP.*

12 NewSun’s Application is purportedly based on the argument that the Staff Errata Report  
13 filing provides grounds for reconsideration of Order No. 24-011. But in requesting changes to the  
14 price score, NewSun simply argues the Commission’s order approves an RFP that is inconsistent  
15 with the Commission’s competitive bidding rules.<sup>23</sup> These arguments are repetitive of NewSun’s  
16 comments on the December 12, 2023 Staff Report.<sup>24</sup> They are not grounds for reconsidering Order  
17 No. 24-011. In addition, the Staff Report addressed the issue of non-price scoring elements that  
18 were either removed entirely or addressed elsewhere in the RFP.<sup>25</sup>

19 To be clear, NewSun’s argument relies on the general statement in OAR 860-089-0010(1)  
20 indicating the competitive bidding rules are intended to establish a fair, objective, and transparent  
21 competitive bidding process.<sup>26</sup> To affect that purpose with respect to RFP scoring,  
22 OAR 860-089-0400 specifically provides:

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24 <sup>23</sup> NewSun Application at 11-14.

25 <sup>24</sup> See Comments of NewSun Energy LLC on Staff Report at (December 21, 2023).

26 <sup>25</sup> See Order No. 24-011, Appendix A at 8-11.

<sup>26</sup> NewSun Application at 11.

1 (2) The electric company must base the scoring of bids and selection of an initial  
2 shortlist on price and, as appropriate, non-price factors. Non-price factors must be  
3 converted to price factors where practicable. Unless otherwise directed by the  
Commission, the electric company must use the following approach to develop  
price and non-price scores:

4 (a) Price scores must be based on the prices submitted by bidders and calculated  
5 using units that are appropriate for the product sought and technologies anticipated  
6 to be employed in responsive bids using real-levelized or annuity methods. The IE  
7 may authorize adjustments to price scores on review of information submitted by  
8 bidders.

9 (b) Non-price scores must, when practicable, primarily relate to resource  
10 characteristics identified in the electric company's most recent acknowledged IRP  
11 Action Plan or IRP Update and may be based on conformance to standard form  
12 contracts. Non-price scoring criteria must be objective and reasonably subject to  
13 self-scoring analysis by bidders.

14 (c) Non-price score criteria that seek to identify minimum thresholds for a  
15 successful bid and that may readily be converted into minimum bidder  
16 requirements must be converted into minimum bidder requirements.

17 (d) Scoring criteria may not be based on renewal or ownership options, except  
18 insofar as these options affect costs, revenues, benefits or prices. Any criteria based  
19 on renewal or ownership options must be explained in sufficient detail in the draft  
20 RFP to allow for public comment and Commission review of the justification for  
21 the proposed criteria.

22 NewSun's Application fails to articulate how the RFP approved under Order No. 24-011 is  
23 inconsistent with this rule.

24 Rather, NewSun appears to equate the general policy under the competitive bidding rules to  
25 establish a fair, objective, and transparent competitive bidding process with a process that makes  
26 all models transparent to bidders. This approach is not necessarily always consistent with  
conducting a fair and objective RFP process. For example, NewSun's Application states: "First,  
PGE determines bid cost by utilizing 'a revenue requirement model in Excel over the economic life  
of the asset to calculate the total offer cost.' PGE 2023 RFP, Appendix N at 8. Bidders do not have

1 access to this Excel spreadsheet.”<sup>27</sup> Staff’s understanding is that some of this spreadsheet includes  
2 trade secrets, as well as other bidder details, which complicates sharing it with bidders. But this  
3 information will be shared in a timely fashion with the IE and Staff and is transparent in this  
4 respect, while also allowing for a fair and objective process.

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CONCLUSION

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For the foregoing reasons, Staff requests that the Commission either take no action or deny

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NewSun’s Application in its entirety.

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DATED this 4th day of April 2024.

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Respectfully submitted,

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ELLEN F. ROSENBLUM

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Attorney General

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*/s/ Johanna M. Riemenschneider*

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<sup>27</sup> NewSun Application at 11.