



**Portland General Electric Company**

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April 4, 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 Response to NewSun Energy LLC's application for rehearing or reconsideration.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Erin Apperson".

Erin E. Apperson  
Managing Corporate Counsel

EEA: mb

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2274**

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY,

2023 All-Source Requests for Proposals.

PORTLAND GENERAL ELECTRIC  
COMPANY’S RESPONSE TO  
NEWSUN ENERGY LLC’S  
APPLICATION FOR REHEARING  
OR RECONSIDERATION

**I. INTRODUCTION**

In accordance with OAR 860-001-0720(4) and the ALJ’s April 1, 2024, Ruling, Portland General Electric Company (PGE) respectfully requests that the Commission deny NewSun Energy LLC’s (NewSun) Application for Rehearing or Reconsideration of Order No. 24-011 (Application). NewSun seeks rehearing or reconsideration, alleging “new evidence” has been revealed requiring amendment of Order No. 24-011<sup>1</sup> and asking that the Commission make sweeping changes to the 2023 RFP that would preclude PGE, NextEra, and their respective affiliates from submitting Benchmark Bids, remove Bates White as the Independent Evaluator (IE) in the 2023 RFP, amend the scoring criteria in the 2023 RFP, and delay the schedule to incorporate these changes.

NewSun alleges that an erratum filing submitted on February 5, 2024, in Docket UM 2166<sup>2</sup> provides “new evidence” that both PGE and Bates White exhibited bias in favor of the Clearwater project in the 2021 RFP. However, the information contained in the Errata and referenced by NewSun was largely publicly disclosed in the original filing on October 30, 2023, and the portions that are newly publicly disclosed—where redactions have been removed—are not “new” to the

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<sup>1</sup> UM 2274, Order No. 24-011 (Jan. 12, 2024).

<sup>2</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, Staff Errata to the October 30, 2023, Staff Memo (Feb. 5, 2024) (hereinafter, Errata).

Commission, Staff, CUB, and NIPPC. These stakeholders had access to all of the information as of October 30, 2023.<sup>3</sup> Moreover, in manufacturing allegations of bias, NewSun ignores critical context which explains the actions of PGE and Bates White. Thus, contrary to NewSun’s claims, the referenced information is not “new,” nor does it support NewSun’s claims. Additionally, NewSun’s requested remedy—precluding PGE and NextEra from submitting a Benchmark bid—would reduce competition within the RFP to the detriment of customers, contrary to the Commissions’ competitive procurement policies.

NewSun also asks the Commission to adopt new scoring criteria for the 2023 RFP. However, NewSun offered thematically similar proposals in its December 2023 comments, which were not adopted. While NewSun’s proposals attached to its Application provide more specificity in comparison with its prior comments, NewSun already had its chance to weigh in on RFP design. It is far too late for the Commission to change the scoring criteria for the 2023 RFP, and there is no reason for the Commission to change course now.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

### **A. Docket UM 2166 – 2021 RFP and Staff's Final Report**

PGE filed its Initial Application for its 2021 Request for Proposals (RFP) in UM 2166 in April 2021.<sup>4</sup> PGE conducted a competitive process to select an IE on behalf of the Commission, which resulted in the identification of three potential candidates.<sup>5</sup> Through that competitive process, Staff recommended Bates White as the most qualified and appointed to serve as the

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<sup>3</sup> While parties are not permitted to use highly confidential information in a docket other than where it is provided, parties had access to this information in UM 2166 and the modified protective order lays out a process for seeking highly confidential information in another proceeding.

<sup>4</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, Initial Application (Apr. 28, 2021).

<sup>5</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, PGE’s Request for Commission Approval to Engage IE and Application for Approval of Scoring and Modeling Methodology at 1 (Jun. 15, 2021).

independent evaluator on behalf of the Commission.<sup>6</sup> In the UM 2166 Staff Memorandum recommending approval of Bates White, Staff commented that its preference is for a highly qualified IE that brings past IE experience and awareness of the Northwest’s energy challenges, and that “Bates White’s experience sets its proposal apart from the other top scoring bidders.”<sup>7</sup>

On August 9, 2021, PGE hosted a workshop to introduce the IE, discuss the scope of the 2021 RFP, and present its proposed scoring and modeling methodology (SMM) and deadlines for bids.<sup>8</sup> On August 23, 2021, Staff and NIPPC filed comments on the RFP and proposed bidding process and SMM.<sup>9</sup> Staff raised questions relating to HB 2021 goals,<sup>10</sup> PGE’s treatment of projects with long lead times,<sup>11</sup> and various other elements of PGE’s scoring methodology.<sup>12</sup> NIPPC advocated for a requirement that PGE provide notice and opportunity to address insufficiencies when PGE intends to eliminate a bidder due to a lack of an achievable plan for transmission delivery.<sup>13</sup> NIPPC also advocated for certain changes to scoring, such as converting non-price score factors to minimum bidder requirements,<sup>14</sup> among others.

On September 29, 2021, Staff filed its Staff Report on the 2021 RFP.<sup>15</sup> In the Staff Report, Staff recommended approving PGE’s SMM with certain changes outlined by Staff.<sup>16</sup> Thereafter, PGE filed its Final Draft RFP on October 15, 2021, and the IE filed its Draft Report on October

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<sup>6</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, Order No. 21-235 at 1, App. A at 8 (Jul. 15, 2021).

<sup>7</sup> Order No. 21-235, App. A at 7.

<sup>8</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, Presentation from the August 9, 2021, Workshop (Aug. 10, 2021).

<sup>9</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, Staff’s Comments (Aug. 23, 2021) (Staff’s Comments); NIPPC’s Comments (Aug. 23, 2021) (NIPPC’s Comments).

<sup>10</sup> UM 2166, Staff’s Comments at 4-6.

<sup>11</sup> UM 2166, Staff’s Comments at 7-10.

<sup>12</sup> UM 2166, Staff’s Comments at 10-12.

<sup>13</sup> UM 2166, NIPPC’s Comments at 3.

<sup>14</sup> UM 2166, NIPPC’s Comments at 5-6.

<sup>15</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, Staff Report (Sept. 29, 2021).

<sup>16</sup> Staff Report at 1, 13.

20, 2021, and stakeholders provided comments on November 1, 2021. Staff, AWEC, NIPPC, Renewable Northwest, and Swan Lake filed comments on the Final Draft RFP.<sup>17</sup> Staff raised concerns for additional analysis of HB 2021 goals and the market price sensitivity.<sup>18</sup> AWEC advocated for the Commission's rejection of two components of the Draft RFP, PGE's exploration of procuring additional megawatt of renewable resources for HB 2021 targets, and PGE's ability to select long-lead time pumped hydro resources.<sup>19</sup> NIPPC commented a number of recommendations it urged the Commission to adopt before approving the RFP that it argued made the scoring fairer to non-utility bidders, such as reducing the weight of non-price scoring to ten percent,<sup>20</sup> changing the scoring on term sheet revisions,<sup>21</sup> and adjusting scoring to allow bidders to self-score certain criteria.<sup>22</sup> NIPPC included additional recommendations relating to PGE's requirements for bidders and required online date,<sup>23</sup> the content of PGE's non-disclosure and project labor agreements,<sup>24</sup> the treatment of affiliate bids,<sup>25</sup> the timeline for final bids, and bidders' ability to cure deficiencies.<sup>26</sup> Renewable Northwest provided general recommendations for clarifying the RFP.<sup>27</sup> Swan Lake provided recommendations it argued would make the RFP fair to pumped storage bidders.<sup>28</sup>

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<sup>17</sup> See *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, Staff's Comments on Final Draft RFP (Nov. 1, 2021); AWEC's Comments (Nov. 1, 2021); NIPPC's Comments on PGE's Final Draft RFP (Nov. 1, 2021); Renewable NW Comments on PGE Draft RFP (Nov. 1, 2021); Swan Lake's Comments on PGE's 2021 All-source RFP Final Draft (Nov. 1, 2021).

<sup>18</sup> Staff's Comments on the Final Draft RFP at 10-12.

<sup>19</sup> AWEC's Comments at 1-2.

<sup>20</sup> NIPPC's Comments on PGE's Final Draft RFP at 14.

<sup>21</sup> NIPPC's Comments on PGE's Final Draft RFP at 23.

<sup>22</sup> NIPPC's Comments on PGE's Final Draft RFP at 25.

<sup>23</sup> NIPPC's Comments on PGE's Final Draft RFP at 25-26, 30-31, 37-38.

<sup>24</sup> NIPPC's Comments on PGE's Final Draft RFP at 26-30.

<sup>25</sup> NIPPC's Comments on PGE's Final Draft RFP at 31-37.

<sup>26</sup> NIPPC's Comments on PGE's Final Draft RFP at 38-39.

<sup>27</sup> Renewable NW Comments on PGE Draft RFP 2-7.

<sup>28</sup> See generally, Swan Lake's Comments on PGE's 2021 All-source RFP Final Draft.

On November 19, 2021, Staff filed its Staff Report, recommending approval of PGE’s RFP subject to conditions.<sup>29</sup> On November 24, 2021, stakeholders filed comments on the Staff Report, and on December 10, 2021, the Commission issued Order No. 21-460 approving the RFP with modifications.<sup>30</sup>

On April 1, 2022, PGE filed its Final 2021 RFP,<sup>31</sup> and on May 5, 2022, PGE filed its Final Shortlist, and the IE filed its Closing Report. PGE provided highly confidential workpapers supporting the selection of the final shortlist to Staff, the IE, and NIPPC. On August 31, 2022, the Commission acknowledged the Final Shortlist subject to conditions.

The 2021 RFP culminated in the selected of Clearwater, and as explained by the IE, the bid most similar to Clearwater did not have the near-term transmission coverage that Clearwater offered and “by virtue of its location and strong output Clearwater delivered more benefit via its capacity contribution than other bids.”<sup>32</sup> Clearwater was the best resource from the 2021 RFP and is now in service.<sup>33</sup> As shown in PGE’s cost recovery proceeding, in UE 427, the inclusion of Clearwater results in a rate decrease for customers.<sup>34</sup>

Staff issued a Final Report for the 2021 RFP on October 30, 2023 (Final Report), which also included an attachment with questions that Staff had posed to the IE, along with Bates White’s

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<sup>29</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, Staff Report (Nov. 19, 2021).

<sup>30</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, Order No. 21-460 (Dec. 10, 2021).

<sup>31</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, PGE’s 2021 All-Source Request for Proposals (Apr. 1, 2022).

<sup>32</sup> *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, Staff Memo Regarding the IE Contract Negotiations Report, Attachment 1 at 7 (Oct. 30, 2023) (hereinafter, Bates White Memo).

<sup>33</sup> See *In the Matter of Portland General Electric Company, Renewable Resource Automatic Adjustment Clause (Schedule 122) (Clearwater Wind Project)*, UE 427, PGE’s Direct Testimony and Exhibits, PGE/100, Abel-Batzler/37 (Oct. 30, 2023) (specifying the online date for the Clearwater project).

<sup>34</sup> *In the Matter of Portland General Electric Company, Renewable Resource Automatic Adjustment Clause (Schedule 122) (Clearwater Wind Project)*, UE 427, Stipulation at 2 (Mar. 5, 2024).

answers to those questions (Bates White Memo).<sup>35</sup> The Final Report included highly confidential information, which was available to the Commission, Staff, CUB, AWEC, and NIPPC. Staff subsequently issued the Errata. The Errata included limited substantive changes to correct erroneous statements in the Final Report and reclassified to make public certain information that had previously been designated as highly confidential information.

**B. Docket UM 2274 – 2023 RFP**

PGE initiated its 2023 RFP over a year ago, on January 31, 2023. To date, there has been a significant amount of process and stakeholder input in vetting PGE’s 2023 RFP, including concerning PGE’s request for waiver of the requirement to use an RFP to select the IE<sup>36</sup> and the proposal that the Commission continue to use Bates White as the IE.

When PGE initiated UM 2274, it had conducted the RFP to select Bates White only 18 months prior. Because Bates White had been recently selected through a competitive process, PGE proposed that the Commission continue to use Bates White in UM 2274.<sup>37</sup> PGE held a workshop on March 2, 2023, to present its waiver requests and overall plan for a 2023 RFP to all interested stakeholders. Staff agreed with PGE’s proposal, commenting that due to the recent selection of Bates White, “Staff believes that replicating the process would be an inefficient use of time and resources by the Company, Staff, and stakeholders.”<sup>38</sup> NIPPC conditionally supported approval of Bates White as the IE, suggesting that the Commission build on Bates White’s prior

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<sup>35</sup> See Bates White Memo at 1.

<sup>36</sup> OAR 860-089-0200(1), (2).

<sup>37</sup> UM 2274, Portland General Electric Company’s Notice and Request for Partial Waiver of Competitive Bidding Rules at 7 (Jan. 31, 2023).

<sup>38</sup> UM 2274, Order No. 23-146, App. A at 7 (Apr. 21, 2023).

RFP experience and provide specific direction to Bates White based on its experience in UM 2166.

<sup>39</sup> Staff supported this recommendation, and it was ultimately adopted by the Commission.<sup>40</sup>

On May 26, 2023, PGE hosted a workshop as an introduction for stakeholders and bidders in the RFP. In this workshop, PGE introduced the IE Bates White, discussed its RFP planning process, introduced the minimum bidder requirements, and explained its SMM approach. PGE underscored Bates White's responsibility to report to the Commission to ensure a fair and transparent RFP. It also explained that the SMM would score bids entirely on price criteria—eliminating non-price criteria in the 2023 RFP.

On May 31, 2023, Bates White filed its first Assessment of PGE's Draft RFP. In it, the IE provided a summary of "lessons learned" from the 2021 RFP that would inform the 2023 RFP and included details on the minimum bidding, bid scoring, and benchmark requirements. The IE included in this assessment suggestions for the RFP that it concluded would lead to a more successful procurement, for example extending the timeline for the evaluation time for benchmark bids and changing the Commercial Operation Date to December 2026.<sup>41</sup> The IE also included suggestions to improve the timelines for the RFP, to change the bidding requirements to allow for bids that have multi-phase projects or long lead times, and to either eliminate or change the notice of intent to bid requirement based on the timing of the final RFP.

On June 5, 2023, PGE held a second workshop for stakeholders and bidders at which it presented more information about the 2023 RFP. PGE indicated that in the 2023 RFP capacity and energy in bids would be scored the same under its SMM, but it would also consider portfolio construction. On July 14, 2023, Bates White filed its Second Assessment of the 2023 RFP.

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<sup>39</sup> UM 2274, NIPPC Comments at 6-7 (Apr. 13, 2023).

<sup>40</sup> UM 2274, Staff Report for the April 18, 2023, Public Meeting at 7 (Apr. 13, 2023).

<sup>41</sup> UM 2274, Independent Evaluator's Assessment of PGE's Draft All Source RFP at 23 (May 31, 2023).



In a related proceeding, Docket UI 489, PGE sought approval of the use of an affiliate, Portland Renewable Resources (PRR), as a vehicle to capture additional value from solar BTA projects that may bid into the RFP, including Benchmark Bids. PGE sought clarification or reconsideration of certain terms in the Commission's order approving the affiliate, and on October 18, 2023, the Commission granted PGE's request for reconsideration in Docket UI 489.<sup>42</sup> To further explain the role of the affiliate in the 2023 RFP, PGE filed an Affiliate Services Overview memo that discussed the use of PRR, and the benefits customers would receive.<sup>43</sup>

On December 12, 2023, Staff filed its Staff Report recommending approval of the RFP subject to the conditions it included in its memo.<sup>44</sup> Staff concluded that the SMM was reasonable and provided sufficient options to bidders.<sup>45</sup> Staff proposed the Commission adopt 12 conditions to the SMM, 12 conditions for the RFP, and 13 conditions associated with PGE's affiliate.

On December 20, 2023, NewSun filed a Motion for Scheduling Conference and to Amend Procedural Schedule, seeking an order delaying the January public meeting's adoption of the final draft RFP to a public meeting in mid-February 2024.<sup>46</sup> ALJ Katharine Mapes denied NewSun's Motion for Scheduling Conference and to Amend Procedural Schedule.<sup>47</sup>

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<sup>42</sup> *In the Matter of Portland General Electric Company, Application for Affiliated Interest Transaction with Portland Renewable Resource Company, LLC*, UI 489, Order No. 23-369 at 1 (Oct. 18, 2023) (adopting Administrative Hearings Division's recommendation to grant PGE's application for reconsideration).

<sup>43</sup> For example, PGE indicated that PRR would allow for full realization of investment tax credits, which would benefit customers. PGE explained that PRR's potential ownership of tax-credit-eligible assets would have to be evaluated as part of the RFP. PGE also outlined what would happen if PRR were to be included as part of the final shortlist for the RFP and if it moves forward with a power purchase agreement (PPA).

<sup>44</sup> UM 2274, Staff Report for the January 4, 2023, Special Public Meeting at 1 (Dec. 12, 2023).

<sup>45</sup> Staff Report for the January 4, 2023, Special Public Meeting at 7, 10.

<sup>46</sup> UM 2274, NewSun's Motion For Scheduling Conference and To Amend Procedural Schedule at 5-6 (Dec. 20, 2023).

<sup>47</sup> UM 2274, Ruling at 1 (Dec. 28, 2023).

On December 21, 2023, PGE, NIPPC, Renewable Northwest, OSSIA, and NewSun filed comments on the December 12, 2023 Staff Report.<sup>48</sup> NIPPC proposed a number of recommendations for changes to the terms of the proposed PPA, bid requirements, and affiliate rules.<sup>49</sup> Renewable Northwest echoed recommendations from Staff and suggested modifications to Staff’s recommended RFP Condition 6.<sup>50</sup> OSSIA generally supported Staff’s proposed conditions, opposing only one and opposing affiliate participation in the bid.<sup>51</sup> NewSun’s comments argued that the RFP was unfair and the IE did not exert enough control over PGE during the RFP process.<sup>52</sup> To address this alleged unfairness, NewSun included several proposals to achieve an “objective, points-based scoring criteria” that is transparent to bidders.<sup>53</sup> In particular, NewSun argued that PGE should score projects on a scale, where projects that met PGE’s criteria more clearly receiving a higher score and those behind in the process—for example, the study process—receiving a lower score.<sup>54</sup> NewSun also suggested a new score category that would reward bidders’ compliance with Oregon “policy goals,” such as “creating and sustaining meaningful living wage jobs, promoting workforce equity, and increasing energy security and resiliency.”<sup>55</sup>

On January 4, 2024, the Commission held a public hearing on the 2023 RFP and took public comments and deliberated regarding the proposed conditions for over four hours. NewSun attended and actively participated in the hearing. The Commission adopted the bulk of Staff’s

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<sup>48</sup> UM 2274, NIPPC’s Final Comments (Dec. 21, 2023); Renewable NW’s Comments on Staff Report (Dec. 21, 2023); OSSIA’s Comments on Staff Report (Dec. 21, 2023); PGE’s Reply Comments (Dec. 21, 2023); NewSun’s Comments on Staff Report (Dec. 21, 2023) (hereinafter, December Comments).

<sup>49</sup> NIPPC’s Final Comments at 3-7.

<sup>50</sup> Renewable NW’s Comments on Staff Report at 1-2.

<sup>51</sup> OSSIA’s Comments on Staff Report at 2-5.

<sup>52</sup> NewSun’s December Comments at 1-4.

<sup>53</sup> NewSun’s December Comments at 3-4.

<sup>54</sup> NewSun’s December Comments at 7-10.

<sup>55</sup> NewSun’s December Comments at 12-13.

proposed conditions, with certain additional modification as memorialized in its Order No. 24-011, issued on January 12, 2024. Order No. 24-011 is the order at issue in NewSun’s Application.

### **III. LEGAL STANDARD**

By statute, the Commission may grant rehearing or reconsideration if sufficient reason therefor is made to appear.<sup>56</sup> Under the Commission’s rules, the Commission may grant reconsideration if the applicant shows that there is: (a) new evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order; (b) a change in the law or policy since the date the order was issued relating to an issue essential to the decision; (c) an error of law or fact in the order that is essential to the decision; or (d) good cause for further examination of an issue essential to the decision.<sup>57</sup>

### **IV. ARGUMENT**

NewSun’s Application must be denied, as it has failed to meet the Commission’s legal standard for granting reconsideration. The Errata is not new evidence, and in any event, would not provide a basis to reconsider or rehear the Commission’s order approving the 2023 RFP. NewSun’s allegations of bias are unfounded and there is no factual, legal, or policy basis on which reconsideration or rehearing should be granted. Finally, NewSun’s proposed modifications to the 2023 RFP reprise their previously filed comments, albeit with additional detail, and there is no reason for the Commission to adopt their proposals.

#### **A. The Errata is not “new evidence” and does not support NewSun’s allegations of bias.**

##### **1. The Errata is not new evidence.**

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<sup>56</sup> ORS 756.561(1).

<sup>57</sup> OAR 860-001-0720(3).

In its Application, NewSun quotes portions of the Errata and characterizes it as “new information” and further insinuates that the “newly disclosed” portions of the Final Report illustrate bias and/or collusion on behalf of PGE, the IE, and NextEra. However, NewSun’s arguments fail for two reasons.

*First*, the Errata is not “new evidence” to warrant reconsideration of Order No. 24-011. While the Errata disclosed publicly certain information that was previously regarded as Highly Confidential, various parties to UM 2166 had access to that information in that proceeding, and most importantly, **the Commission** had access to that information. To the extent that any of the parties or the Commission may have sought any specific modifications to the 2023 RFP based on information contained in the UM 2166 Final Report, they had the opportunity to do so in the ordinary course of the procedural schedule in this case, as comments on the Staff Report on the 2023 RFP were due approximately two months later, on December 21, 2023. Moreover, the Commission certainly would have previously had access to and would have been aware of the highly confidential portions of the Final Report when it considered the Final RFP at its January 4, 2024, meeting. The information at issue cannot possibly be considered new information if it was previously available to the Commission and other stakeholders—even if portions of the information were not available to NewSun.

Furthermore, NewSun does not provide any authority for its position that “newly unredacted” information that was available to the Commission during its decision-making process meets the standard for reconsideration simply because intervening parties did not have access to the same information. Instead, NewSun appears to argue that because the Errata revealed information that was previously redacted, NewSun should receive another opportunity to present

arguments specific to those newly unredacted portions.<sup>58</sup> NewSun does not explain how the unredacted portions of the Errata are “new” when the Commission has always had access to the unredacted version of the Final Report that contained those same facts. Since the evidence that is key to NewSun’s Application already existed in the record in UM 2166 and was accessible to the Commission, there is no basis for granting NewSun’s request for reconsideration.<sup>59</sup>

**Second**, four out of seven statements referenced by NewSun in its Application as “new information” were in fact also provided **publicly** on October 30, 2023, either in the non-redacted portions of the Final Report or in the attached Bates White Memo.<sup>60</sup> Simply put, the bulk of the information NewSun references in its Application was previously publicly available and not newly disclosed in the Errata. The Commission has rejected reconsideration based on “new evidence unavailable at the time the Commission issued its order” when the information contained in the purported new evidence was available to the Commission in the record but in a different form.<sup>61</sup> For example, when a party sought reconsideration on the basis of “new evidence” in the form of letters exchanged with the opposing party, the Commission rejected the application for reconsideration.<sup>62</sup> The Commission indicated that the communications did not constitute new evidence because a memorandum of understanding introduced into the record contained similar information.<sup>63</sup> Similarly, the evidence that NewSun contends is “new” was already in the

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<sup>58</sup> NewSun’s Application at 9 (arguing its position that “[t]he facts disclosed in the [E]rrata . . . warrant closer scrutiny by the Commission”).

<sup>59</sup> See OAR 860-001-0720(2) (requiring an applicant for reconsideration to specify the grounds for reconsideration).

<sup>60</sup> See Attachment 1 to this Response.

<sup>61</sup> See e.g. *In the Matter of the Petition of Qwest Corporation for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Beaver Creek Cooperative Telephone Company*, ARB 365, Order No. 02-367 at 7-8 (Jun. 5, 2002).

<sup>62</sup> Order No. 02-367 at 7.

<sup>63</sup> Order No. 02-367 at 7.

Commission’s record in UM 2166, though in a different form.<sup>64</sup> As a result, the evidence NewSun relies upon is not new evidence.

**2. Even if it were assumed to be new evidence, the Errata would not warrant a modification to the Commission’s order.**

Even if the more limited subset of recently unredacted information identified by NewSun and not previously publicly disclosed in the Final Report were to be regarded as “new” information for purposes of OAR 860-001-0720(3), the Commission has routinely rejected applications for reconsideration when the “new evidence” would not have affected the Commission’s decision even if it had been available.<sup>65</sup> Therefore, even assuming for the sake of argument that the portions of the Errata referenced by NewSun were “new evidence” for purposes of OAR 860-001-0720(3), the Commission may decline reconsideration because even upon consideration of this evidence, it would not change the Commission’s prior decision.

Here, the limited information that is newly unredacted in the Errata and referenced by NewSun include the following statements:

- “[T]he existing PGE transmission rights proposed for use in the alternative transmission plan were neither made available to other bidders nor described as part of the RFP development process as utility resources that would be used to support benchmark bids with the appropriate analysis.”<sup>66</sup>

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<sup>64</sup> See *In the Matter of Portland General Electric Company, 2021 All-Source Request for Proposals*, UM 2166, General Protective Order, App. A at 2 (May 21, 2021) (defining “Qualified Persons” with access to all redacted information as including “Commission employees”).

<sup>65</sup> See e.g. *In the Matter of PacifiCorp, dba Pacific Power, 2019 Renewable Adjustment Clause*, UE 352, Order No. 19-262 at 2-3 (Aug. 8, 2019); *In the Matter of the Application of PacifiCorp for an Accounting Order Regarding Excess Net Power Costs*, UM 995, UE 121, UC 578, Order No. 01-411 at 7 (May 11, 2001).

<sup>66</sup> NewSun Application at 8.

- “Two projects with similar transmission deficiencies were told that they could downsize the project to get them to conform. Both instead chose to withdraw.”<sup>67</sup>
- At least one bidder with transmission deficiencies “was informed, at the initial screening stage of the RFP process, that to comply with the RFP and pass the minimum requirement screening, it should downsize the project or offer only its solar component.” Instead, the bidder withdrew from the process. The Staff Report confirmed that, “...had the project and its alternative plan been treated like Clearwater, it could have passed the minimum requirement screening and moved on for further evaluation.”<sup>68</sup>

In framing these statements, NewSun omits key context from the Bates White Memo and spins the quoted text to manufacture allegations that Bates White “propped up” the Clearwater bid.<sup>69</sup> These allegations are plainly wrong. To the extent that the Commission considers the material quoted by NewSun at all, it must also consider the full context provided in the Bates White Memo. Regarding the statement that PGE’s transmission resources included in the alternative transmission plan were not made available, that is because PGE did not make those transmission rights available to *any* bidder, including the Benchmark.<sup>70</sup> In other words, the PGE transmission rights at issue were proposed by the bidder, were not accepted by PGE, and were not made available to any bidder. The quoted text is a red herring that, when considered in context, does not demonstrate “malfeasance” or “misfeasance” as alleged by NewSun.

Regarding the statement about projects with transmission deficiencies being told to downsize, the record in the Bates White Memo also makes clear that those other projects were not

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<sup>67</sup> NewSun Application at 9.

<sup>68</sup> NewSun Application at 9.

<sup>69</sup> NewSun Application at 9.

<sup>70</sup> Errata at 5: “Ultimately, PGE advises that it did not accept the inclusion of these assets as part of Clearwater’s alternate transmission plan and did not score the bid using such assets.”

even close to being competitive—which is why the IE clarified that the focus was on making those projects more cost competitive.<sup>71</sup> Specifically, regarding the two bids at issue (and without disclosing any highly confidential information), the IE commented: “it would not have been more competitive than the Clearwater offer” and “there is no reason to believe it would have been more competitive than the Clearwater offer.”<sup>72</sup> When considering the context for the quoted statements, NewSun’s claim that Clearwater was “propped up” at the expense of other bids falls flat.

### **3. The Errata provides no basis to remove Bates White as the IE.**

Based on its erroneous claims of bias, NewSun asserts that the IE, Bates White, should be removed. Contrary to NewSun’s claims, the Errata does not provide any evidence of bias in support of PGE’s Benchmark. Instead, between the information provided in the Final Report, Bates White Memo, and Errata, the UM 2166 record demonstrates that the other referenced bids were not competitive, that the selection of Clearwater advanced the final goal of securing cost effective supply for customers, and that the exercise of discretion associated with Clearwater in the 2021 RFP was consistent with standard practice in the industry to allow for flexible administration with the end goal of procuring resources.<sup>73</sup> Moreover, Bates White explained in its memo that if RFPs are too rigidly administered, there is risk of failing to achieve the ultimate goal of procuring resources.<sup>74</sup> Here, it bears noting that in the cost recovery proceeding for Clearwater customers ultimately received a rate *decrease*.<sup>75</sup> It is doubtful that selection of a different resource in the 2021 RFP would have provided the same benefits for customers.

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<sup>71</sup> Bates White Memo at 7.

<sup>72</sup> Bates White Memo at 8.

<sup>73</sup> See Attachment 1 (Column labeled “Context for Statements Referenced by NewSun”).

<sup>74</sup> Bates White Memo at 9-10.

<sup>75</sup> See *In the Matter of Portland General Electric Company, Renewable Resource Automatic Adjustment Clause (Schedule 122) (Clearwater Wind Project)*, UE 427, Joint Testimony in Support of Stipulation, Stipulating Parties/100, White-Jenks-Batzler/3 (Mar. 5, 2024) (underscoring that the stipulation functions in part to achieve “providing a *decrease* to customer bills soon [ ]”) (emphasis added).



NewSun also fails to appreciate that the Final Report and attached Bates White Memo reflect an observation on the part of the IE that there is room for improvement in the next RFP. Through the process of vetting the results of the 2021 RFP, all parties—including especially the IE, Commission, and Staff—have taken away lessons learned. Based on this experience, it is doubtful that any other IE could be as well-positioned as Bates White to recognize and appreciate the issues experienced in the 2021 RFP and learn from them in overseeing the 2023 RFP.

**B. NewSun’s allegations of bias in PGE’s prior RFPs are unfounded, and to the contrary, recent RFP results indicate increasing diversity in resource ownership.**

NewSun further argues that the results of PGE’s RFPs in 2012, 2018, and 2021 illustrate bias by virtue of the fact that PGE has selected projects in which it has an ownership stake in nearly every RFP.<sup>76</sup> As an initial matter, the information concerning PGE’s prior RFPs could not possibly be construed as new evidence and provides no basis for reconsideration or rehearing. Moreover, NewSun’s contentions are without merit and plainly contradicted by the more recent trends in PGE’s resource ownership resulting from competitive procurement—and ignore the value for customers in having a Benchmark bid in the RFP.

*First*, NewSun’s argument appears to assume that utility ownership should be relevant in assessing RFP bids when instead the Competitive Bidding Rules (CBRs) are designed to ensure scoring that is the same for ownership and non-ownership bids alike. The fundamental purpose of the RFP is to produce competitive bids to drive costs down for resource procurement. Any RFP that guarantees a certain percentage of utility owned or non-owned resources would potentially harm customers.

*Second*, a review of the projects resulting from the 2012 through 2021 RFPs in fact illustrates a trend of increasingly diverse ownership in more recent RFPs. While PGE’s 2012 RFPs

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<sup>76</sup> NewSun’s Application at 10.

resulted in 100 percent utility ownership, the two most recent RFPs mark a departure to include more jointly owned resources. In these recent RFPs, the resulting nameplate capacity is split closer to 50-50, where ownership nameplate capacity is 575 MW, whereas PPA nameplate capacity is 550 MW.<sup>77</sup> NewSun’s allegations that these results illustrate utility bias simply do not bear out, particularly when considering more recent examples. The Commission has recognized that use of PGE’s affiliate “may result in lower cost proposals being put before PGE in RFPs, to the advantage of customers,”<sup>78</sup> and excluding PGE and NextEra (and affiliates) from the RFP would reduce competition, to the detriment of customers. Thus, NewSun’s proposal should be rejected as inconsistent with the CBRs and inconsistent with the interest of PGE’s customers.

**Third**, it is important to note that PGE’s approach to Benchmark Bids submission does not necessarily translate to 100 percent utility ownership, because the Benchmark Bids may involve partnership with other developers. In the past, PGE has been able to successfully partner with NextEra to prepare Benchmark Bids and excluding NextEra and its affiliates from the 2023 RFP would diminish competition and potentially chill developer participation in PGE’s Benchmark Bids.

**Finally**, in PGE’s experience, there are benefits associated with having well-vetted Benchmark Bids included in the RFP to ensure that the resources sought in the RFP can actually

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<sup>77</sup> See *In the Matter of Portland General Electric Company, Renewable Resource Automatic Adjustment Clause (Schedule 122) (Wheatridge Renewable Energy Farm)*, UE 370, PGE’s Direct Testimony and Exhibits, PGE 100/Armstrong-Batzler/11 (Dec. 3, 2019) (explaining that the nameplate capacity of the Wheatridge wind/solar facility is 350MW, that PGE owns 100 MW, and NextEra Energy, LLC owns 250 MW); *In the Matter of Portland General Electric Company, Request for a General Rate Revision*, UE 435, PGE’s Direct Testimony and Exhibits, PGE/200, Batzler-Ferchland/5 (Feb. 29, 2024) (testifying that the Troutdale project is a 200-MW battery storage project owned by NextEra Energy Resources); PGE/500, Felton/21, 25-26 (indicating that the Constable is 75 MW owned by PGE, and the Seaside project is 200 MW entirely owned by PGE); *In the Matter of Portland General Electric Company, Renewable Resource Automatic Adjustment Clause (Schedule 122) (Clearwater Wind Project)*, UE 427, PGE’s Direct Testimony and Exhibits, PGE/100, Abel-Batzler/16 (Oct. 30, 2023) (testifying that PGE will own approximately 300 MW of the Clearwater capacity with NextEra owning the remainder).

<sup>78</sup> *In the Matter of Portland General Electric Company, Application for Affiliated Interest Transaction with Portland Renewable Resource Company, LLC*, UI 489, Order No. 23-294 at 2 (Aug. 10, 2023).

be delivered for customers. As PGE noted in its cost recovery proceeding for Wheatridge, in that RFP, there were three bids that made the final shortlist, but two out three shortlisted bidders could not deliver on their submitted bids.<sup>79</sup> Particularly in a time of increasing resource procurement needs, it is critical to allow PGE to continue to submit Benchmark Bids as a backstop to developers that may withdraw from the process.

**C. There is no legal or policy rationale for reconsideration or rehearing.**

NewSun alleges that in light of the Commission’s Division 89 Rules, as well as the record in UM 2166 and in this docket, Order No. 24-011 does not meet the standards required by the Commission.<sup>80</sup> NewSun alleges that Order No. 24-011 does not ensure a “fair, objective, and transparent competitive bidding process” because PGE and NextEra may still offer Benchmark bids, and Bates White will continue to serve as the IE. NewSun also argues that certain aspects of “price” scoring are not objective and transparent to bidders. In fact, the 2023 RFP has been extensively vetted by stakeholders and is consistent with the CBRs, so there is no legal or policy basis for the Commission to reconsider or rehear Order No. 24-011.

*First*, contrary to NewSun’s claims, the Commission’s Order No. 24-011 meets the requirements of the CBRs and in some instances exceeds those standards. The Commission, Staff, and stakeholders engaged in a robust review of the 2023 RFP and carefully considered Staff and stakeholder recommendations for modifications to the 2023 RFP. The Commission’s Order No. 24-011 includes a total of 39 separate conditions—11 of 12 SMM Conditions proposed by Staff, 12 out of 12 RFP Conditions proposed by Staff, and 12 out of 13 conditions proposed by Staff related to use of the PGE’s affiliate and adopted four out of seven of NIPPC’s proposed conditions. Additionally, the Commission directed changes to five of seven terms in the Form Contract. The

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<sup>79</sup> See UE 370, PGE’s Reply Testimony and Exhibits, PGE/300, Armstrong-Batzler/11 (Apr. 24, 2020).

<sup>80</sup> NewSun Application at 4.

Commission acknowledged PGE’s comments that certain conditions, such as RFP Condition 6, go beyond the requirements of the CBRs.<sup>81</sup> NewSun’s contrived allegations of unfairness and bias do not provide a basis for the Commission to revisit its prior thorough review of the 2023 RFP.

**Second**, NewSun argues that “price” scoring is not transparent to bidders who do not have access to PGE’s models—in particular, the Company’s revenue requirement model, Aurora model for storage and dispatchable resources, and the Sequoia model to value capacity contributions.<sup>82</sup> Importantly, however, the combination of models and specific inputs used by the RFP team are available only to the RFP team, the IE, and Staff, and are not made available to any bidders—and for good reason. If a bidder could use the RFP team’s models to precisely determine the value associated with the resource need, bidders could price their projects exactly to meet PGE’s criteria—to the detriment of the competitive process and to the detriment of customers. The whole point of the competitive bidding process is to obtain the lowest cost, lowest risk resource, for the benefit of customers, and bidders should be focusing on lowering their bid prices and creating the most competitive bid they can. Competition necessarily will drive prices down, which is particularly critical at this point in time when PGE is continuing to procure additional resources to meet the State’s emissions reduction mandates.

**Third**, while NewSun complains about not having access to these models, it is important to also bear in mind that it is not just Staff, the IE, and PGE that have access to these models. NIPPC’s attorneys and CUB also can access the inputs and outputs of these models and may provide further oversight of the application in the RFP.

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<sup>81</sup> Order No. 24-011 at 2.

<sup>82</sup> NewSun Application at 8.

*Finally*, PGE has committed to providing feedback to bidders to provide further insight into bid competitiveness, which will be provided after executing agreements with successful bidders.<sup>83</sup> By providing bidder feedback, PGE provides more transparency to bidders around bid scoring (without disclosing any highly confidential information about other bids) and bidders may learn more about how to make bids more competitive without compromising the integrity of the RFP.

**D. NewSun’s proposed modifications to 2023 RFP are offered too late and are unwarranted.**

NewSun also includes a “Straw Proposal” to modify the RFP scoring criteria. However, the time for offering suggestions for RFP design has long passed. Consistent with the schedule in this proceeding, NewSun filed comments on December 21, 2023 (December Comments),<sup>84</sup> responding to the Staff Report on the RFP and scoring methodology. There is significant overlap between NewSun’s December Comments and its Straw Proposal, and it appears that NewSun’s Straw Proposal is simply a more polished take on its initial suggestions.<sup>85</sup> NewSun had ample opportunity to provide comments to inform the 2023 RFP, and it is too late for NewSun to sharpen its pencils and refine its prior proposals. There is no reason why NewSun could not have submitted

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<sup>83</sup> Portland General Electric, 2023 All-Source RFP at 15 (Feb. 2, 2024) (available at [https://assets.ctfassets.net/416ywc11aqmd/2MBWofNsLQmI7WnqLLwqXa/8f926fca56136a247a654ce0c1fa8e5a/UM\\_2274\\_2023\\_All-Source\\_RFP\\_Main\\_Document\\_02.02.2024.pdf](https://assets.ctfassets.net/416ywc11aqmd/2MBWofNsLQmI7WnqLLwqXa/8f926fca56136a247a654ce0c1fa8e5a/UM_2274_2023_All-Source_RFP_Main_Document_02.02.2024.pdf)).

<sup>84</sup> See UM 2274, NewSun’s December Comments.

<sup>85</sup> For example, in its December Comments, NewSun proposed PGE score projects using “objective, numeric scores,” (NewSun’s December Comments at 9), identical to the numeric scores included in its Straw Proposal (NewSun’s Application, Exhibit A at 1 (containing a proposal for numeric scores on a scale of six to ten for bidders); *compare* NewSun’s December Comments at 7-12 (discussing giving numeric scores to transmission rights, commercial operation date compliance, and interconnection studies categories) *with* NewSun Application, Exhibit A at 1-2 (proposing specific numeric scores for transmission rights, commercial operation date compliance, and interconnection studies categories). NewSun’s December Comments also suggest allotting points for compliance with Oregon “policy goals” that appear in ORS 469A.405 (NewSun’s December Comments at 12-13); *compare* NewSun’s December Comments at 13 (“The scoring and modeling methodology should allocate points to projects that [prioritize] . . . creating and sustaining meaningful living wage jobs, promoting workforce equity and increasing energy security and resiliency”) *with* NewSun’s Application, Exhibit A at 3 (NewSun proposed some number of points be added to the score methodology for community benefits, such as “creating and sustaining living wage jobs, promoting workforce equity, and increasing energy security and resiliency.”)

the more detailed Straw Proposal back in December 2023. The Commission should reject NewSun’s request for a second bite at the apple.

**E. NewSun asks that the Commission actively supervise the RFP, especially where there may be an exercise of discretion by PGE/IE.**

NewSun also asks the Commission to exercise additional scrutiny over PGE and the IE in their evaluation of at least two minimum bidder requirements (MBRs): (1) the MBR requiring bidders to provide “an achievable plan to meet the . . . transmission requirements,” and (2) the MBR requiring various permitting requirements to be met by different points in the RFP process, or “[i]n the event a specific permit is not required at all or during this RFP process for the resource(s) that are bid into this RFP, the Bidder may provide a narrative explanation on the bid form regarding why it is not applicable.” NewSun asserts that additional scrutiny is warranted given that evaluation of these terms may involve an exercise of discretion.

*First*, it is important to note that these terms were generally received favorably by Staff, the IE, and NIPPC.<sup>86</sup> The flexibility built into these MBRs is intended to allow more projects to pass the initial screening and compete in the RFP, ultimately driving down costs for customers.

*Second*, the CBRs explicitly contemplate that non-price scoring will be converted to minimum bidding requirements where possible.<sup>87</sup> Thus, the MBRs described here are consistent with the CBRs.

*Finally*, PGE fully expects that the Commission, Staff, and the IE will carefully scrutinize the application of the MBR terms. There is no need for additional Commission direction on this point.

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<sup>86</sup> UM 2274, Independent Evaluator’s Second Assessment of PGE’s Draft 2023 All Source RFP at 8 (Jul. 14, 2023); Staff Report for the January 4, 2024, Special Public Meeting at 3, 10, 14-15; NIPPC’s Final Comments at 48 (Dec. 21, 2023); see also UM 2166, NIPPC’s Comments at 3 (Aug. 23, 2021).

<sup>87</sup> OAR 860-089-0400(2)(c).

**F. There is no good cause for reconsideration.**

NewSun has failed to meet the standard for reconsideration or rehearing. The “new evidence” that NewSun relies on is not “new,” and in any event, would not warrant modification of the Commission’s order. NewSun has not provided any legal or policy rationale for reconsideration, as the RFP was thoroughly vetted and is consistent with the CBRs. As a catchall, NewSun asserts that for the reasons stated in its Application, good cause exists for the Commission to reconsider Order No. 24-011, but NewSun did not further refine this argument.<sup>88</sup> No modification to the RFP is warranted, and NewSun’s request for reconsideration or rehearing should be denied.

**G. No delay is warranted.**

NewSun asks that the Commission delay the RFP to incorporate the changes it has proposed. NewSun previously asked for a delay in this proceeding, and its request was denied. Although NewSun has repackaged its proposals, they still are without merit and should be rejected, and accordingly, NewSun’s related proposal to delay the 2023 RFP should be rejected.

As provided in OAR 860-001-0270(5), absent an order from the Commission under OAR 860-001-0700, compliance with the original order is not stayed or postponed by an order granting an application for rehearing or reconsideration (or while consideration of reconsideration is pending). PGE has continued to proceed with its RFP, including scoring benchmark bids, and expects to continue to do so notwithstanding NewSun’s Application. PGE respectfully requests the Commission deny NewSun’s proposal to delay the 2023 RFP.

**V. CONCLUSION**

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<sup>88</sup> NewSun Application at 15.

PGE appreciates the opportunity to respond to NewSun's application for rehearing or reconsideration and respectfully requests the Commission deny NewSun's application.

PGE also notes that NewSun made a supplemental filing addressing these same issues, posted on April 4, 2024, seeking comments to their letter, and asking for a workshop. NewSun's filing is untimely and procedurally improper. PGE respectfully requests that the Commission disregard NewSun's request for yet additional process on the issues raised in their request for reconsideration.

DATED this 4<sup>th</sup> day of April, 2024.

Respectfully submitted.



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