

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

3 **UE 427**

4 In the Matter of
5 PORTLAND GENERAL ELECTRIC
6 COMPANY,
7 Renewable Resource Automatic Adjustment
8 Clause (Schedule 122) Clearwater Wind
Project.

STAFF RESPONSE TO NEW SUN ENERGY, LLC
MOTION TO MODIFY PROCEDURAL
SCHEDULE AND REQUEST TO FILE OUT OF
TIME

9 On April 4, 2024, the Commission rejected a stipulation executed by Portland General
10 Electric Company (PGE), Staff, and the Oregon Citizens' Utility Board (CUB). The stipulation
11 addressed PGE's request to include the revenue requirement associated with the Clearwater II
12 and Clearwater East phases of the Clearwater Wind Project (Clearwater), including net variable
13 power costs (NVPC), in rates through its Renewable Resources Automatic Adjustment Clause
14 (Schedule 122). Among the issues resolved by the stipulation were Staff concerns related to the
15 Request for Proposal (RFP) process leading to the acquisition of the project. After review of the
16 stipulation, the Commission concluded,

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18 While the annual performance reporting requirements under the stipulation
19 would allow us to monitor performance and deliverability, we find that the
20 parties did not demonstrate that the limited and temporary capacity factor
21 adjustment, effective from 2024 through 2027, is sufficient to protect against
22 ratepayer impacts from potentially higher delivery costs associated with
Clearwater. Although we have not received reply testimony from PGE
explaining its perspective on the RFP, we are at this point unsure that the
stipulation provides enough encouragement to PGE to improve the fairness
of its conduct in future RFPs.

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24 Therefore, before we reach a resolution in this docket, we wish to see reply
25 testimony from PGE addressing the concerns raised by Staff in opening
testimony and discussed in this order. Accordingly, we reject the stipulation.¹

26 ¹ Order No. 24-091, p. 5 (April 4, 2024).

1 After the Commission issued its order rejecting the stipulation, New Sun Energy, LLC (New
2 Sun) petitioned to intervene in this case. After the administrative judge (ALJ) granted the
3 request, New Sun asked to delay and modify the procedural schedule to allow another round of
4 testimony by Staff and intervenors before PGE filed its final round of testimony on June 27,
5 2024, instead of April 25, 2024, as contemplated by the current schedule. The ALJ denied the
6 request to extend the due date for testimony, but invited parties to respond no later than April 30,
7 2024, to New Sun’s request for additional round of testimony and with proposals a procedural
8 schedule to bring this docket to a close.

9 Request to file out of time.

10 Staff asks the ALJ to accept Staff’s filing although it was not made within business hours on
11 April 30, 2024. Staff counsel was occupied preparing for and participating in oral argument in
12 another docket and did not remember to make this filing in time. Staff counsel has attempted to
13 address any prejudice in the delay of this filing by e-mailing a copy of this filing directly to the
14 parties to the docket, rather than waiting for the AHD’s system.

15 Response to New Sun’s request to modify procedural schedule.

16 Staff opposes New Sun’s request to add additional rounds of testimony, which New Sun
17 bases on its assertion “the Order raises new and significant issues that have not been fully
18 developed in the record.”² Staff disagrees the issues identified by the Commission in its order
19 rejecting the stipulation are “new.” Staff raised these issues in its testimony filed on February 26,
20 2024, and proposed ratemaking treatment for Clearwater to address Staff’s concerns with the
21 RFP process. To the extent New Sun was unaware of the issues identified by Staff with respect
22 to PGE’s RFP, it should have been aware of them in February 2024 when Staff filed its
23 testimony. However, New Sun apparently did not feel these issues warranted its attention at that
24 time.

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² New Sun’s Motion for Revised Procedural Schedule, p. 4.

1 New Sun's suggestion the Commission should amend the procedural schedule to allow a
2 new intervenor the opportunity to conduct its own independent investigation into PGE's RFP
3 approximately two months after the due date for Staff and intervenor testimony is inconsistent
4 with ORS 756.525 and the Commission's Internal Operating Guidelines and could set a
5 concerning precedent. ORS 756.525 provides:

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7 (1) The Public Utility Commission may permit any person to become a
8 party who might, on the institution of the proceeding, have been such
9 a party, if application therefor is made before the final taking of
10 evidence in the proceeding.

11 (2) At any time before the final taking of evidence in a proceeding, any
12 person may apply to the commission for permission to appear and
13 participate in the proceeding. The commission shall determine the
14 interest of the applicant in the proceeding and shall grant the
15 application, subject to appropriate conditions, if the commission
16 determines that such appearance and participation will not
17 unreasonably broaden the issues or burden the record, and otherwise
18 may deny the application.

19 In its Internal Operating Guidelines, the Commission has specified:

20 Any person may petition to intervene as a party in any contested case.
21 [ORS 756.525.] The ALJ will grant the petition if the petitioner has
22 sufficient interest in the proceeding and petitioner's participation will
23 not unreasonably broaden the issues, burden the record, or delay the
24 proceedings.³

25 Allowing a party to intervene in a docket at the end of the evidentiary phase and extend the
26 evidentiary phase to investigate issues raised several weeks earlier is inconsistent with ORS
27 757.525, not administratively efficient, and unfair to the parties that participated fully in the
28 proceeding according to the schedule set by the Administrative Law Judge (ALJ).

29 New Sun will have the opportunity to cross-examine witnesses at a hearing and brief the
30 issues presented in this docket legal briefs. This participation is consistent with the condition

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32 ³ *In the Matter of Public Utility Commission of Oregon*, UM 2055, Order No. 30-386, p. 14
(October 27, 2020) (Amending Internal Operating Guidelines).

1 placed on late intervention in ORS 757.525 and the Commission’s Internal Operating Guidelines.
2 Allowing New Sun to participate without allowing additional testimony is also consistent with
3 the Commission’s interest in minimizing any delay in implementing the rate decrease associated
4 with PGE’s filing.

5 Finally, Staff has conferred with CUB and PGE regarding the remaining schedule in this
6 docket and supports the schedule provided in PGE’s response to New Sun’s motion to modify
7 the procedural schedule.

8 SIGNED this 30th day of April, 2024.

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