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March 10, 2022

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
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RE: LC 77— PacifiCorp's Response in Opposition to NewSun Energy LLC and Sierra Club's Joint Motion to Stay, or in the Alternative, Amend the Procedural Schedule

PacifiCorp d/b/a Pacific Power encloses for filing its Response in Opposition to NewSun Energy LLC and Sierra Club's Joint Motion to Stay, or in the Alternative, Amend the Procedural Schedule in the above-referenced docket.

Informal inquiries may be directed to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,

Shelley McCoy
Director, Regulation

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 77

In the Matter of
PACIFICORP, dba PACIFIC POWER,
2021 Integrated Resource Plan.

**PACIFICORP’S RESPONSE IN
OPPOSITION TO NEWSUN ENERGY
LLC AND SIERRA CLUB’S JOINT
MOTION TO STAY, OR IN THE
ALTERNATIVE, AMEND THE
PROCEDURAL SCHEDULE**

I. INTRODUCTION

In accordance with OAR 860-001-0420(4), PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) submits this response in opposition to the Motion to Stay Proceedings and Toll the Procedural Schedule, or in the Alternative, Amend the Procedural Schedule (Motion to Stay) filed by NewSun Energy LLC (NewSun) and Sierra Club (together, the Parties) on March 3, 2022. The Public Utility Commission of Oregon (Commission) should deny the Motion to Stay and proceed with the Commission decision on acknowledgement of PacifiCorp’s 2021 Integrated Resource Plan (IRP) as scheduled at the Special Public Meeting on March 22, 2022, and continuing on to March 29, 2022.¹

In seeking to stay or delay the schedule in this case, Parties misapprehend the Commission’s IRP process, which is informational in nature. It is not a contested case process to litigate and resolve specific issues raised by stakeholders. For this reason, and because IRPs are issued on an on-going two-year cycle (with an annual update in the off-year), the Commission’s guidelines contemplate a truncated review period. Under OAR 860-027-0400(5)—a rule that Parties fail to cite in their motion—Staff and intervenors must file their comments and recommendations within six months of the IRP filing. Contrary to Parties’ allegations that the schedule in this case is expedited and compressed, the schedule already exceeds the timelines

¹ This response applies equally to the comments filed by Community Renewable Energy Association on March 8, 2022, which offers no new arguments.

contained in the Commission's IRP rules and should not be extended further based on the Parties' interest in litigating issues in this IRP.

Second, a stay or schedule extension would be prejudicial to PacifiCorp and its customers because it may delay issuance of the 2022 All Source Request for Proposals (2022AS RFP), now scheduled for April 26, 2022, subject to Commission approval on April 14, 2022.² Delay would make it more challenging for developers to elect to participate in PacifiCorp's next generator interconnection cluster study by the deadline of May 15, 2022. Delay could ultimately make it more difficult or costly for PacifiCorp to address its resource capacity deficit and risk the time-limited opportunity to attract resources that qualify for tax credits.

Third, Parties have not articulated any compelling reason to stay this proceeding. NewSun skipped the opportunity to file opening comments before it even began seeking access to the confidential data disc. NewSun's remaining opportunity to file comments is now on March 11, 2022, in response to Staff's Final Report and Recommendations. NewSun has not explained why it cannot respond to Staff's Report (like all other developers) based on the robust non-confidential record here and in the pre-filing stakeholder public-input process. As for Sierra Club, included in Staff's comments in docket UM 2193 filed on February 11, 2022, Staff requested that PacifiCorp provide a coal sensitivity before the Commission workshop on February 24, 2022. The Company did not unreasonably delay the provision of the coal sensitivity by filing on March 3, 2022. The modeling was complex, and the task was made more challenging by the Company's need to concurrently respond to bench requests from the Commission about that sensitivity. In any event, the Company's provision of the model sensitivity and responses to the related bench requests on March 3 (the same day Sierra Club joined in the motion to stay and more than a week before final comments are due) largely moots Sierra Club's complaints.

² *In the Matter of PacifiCorp, dba Pacific Power, Application for Approval of 2022 All Source Request for Proposals*, Docket No. UM 2193, Conference Memorandum (Jan. 18, 2022). It is also subject to approvals by the Washington and Utah state commissions.

For all these reasons, PacifiCorp respectfully requests that the Commission deny the Motion to Stay.

II. BACKGROUND

PacifiCorp filed its 2021 IRP in this docket on September 1, 2021. NewSun petitioned to intervene on September 27, 2021, pledging that its “participation in this docket will not unreasonably broaden the issues, burden the record, or unreasonably delay this proceeding.”³ For its part, Sierra Club petitioned to intervene on March 10, 2021, and the Commission granted this intervention for limited purposes only.⁴

The “parties agreed to a procedural schedule in this case,” as set forth in Prehearing Conference Memorandum, dated October 4, 2021.⁵ Under that schedule, parties were to file their opening comments on December 3, 2021, approximately three months from the date PacifiCorp filed the 2021 IRP. NewSun failed to file any opening comments; Sierra Club sought an extension and filed their comments on December 6, 2021, after the filing deadline.⁶ PacifiCorp timely filed its reply comments on December 23, 2021, and Staff timely filed its Final Report and Recommendations on February 11, 2022. Only two major milestones now remain in the schedule: parties’ responses to Staff’s Final Report on March 11, 2022, and the Commission Public Meeting on Acknowledgement, scheduled on March 22, 2022, and continuing to March 29, 2022.⁷

³ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, Petition to Intervene by NewSun Energy LLC at 2 (Sept. 27, 2021). The Commission granted this petition, for limited purposes only, in its Prehearing Conference Memorandum dated October 4, 2021.

⁴ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, Ruling (March 21, 2021) (noting that Sierra Club’s party status does not confer the same general rights and duties as those of parties to a contested case proceeding).

⁵ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, Prehearing Conference Memorandum at 1 (Oct. 4, 2021).

⁶ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, Sierra Club’s Unopposed Expedited Motion for Extension for Sierra Club to File Opening Comments and Exhibits (Dec. 2, 2021).

⁷ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, Prehearing Conference Memorandum at 1 (Oct. 4, 2021).

The schedule in this case generally follows the timelines in OAR 860-027-0400(5), contemplating a 6-month review period by Staff and intervenors.⁸ Adhering to the required review period is important in this case because of the pendency of the Company's request to issue the 2022AS RFP in docket UM 2193.⁹ The Commission is scheduled to hear this request at a special public meeting on April 14, 2022.¹⁰ Assuming the Commission approves the 2022AS RFP, the Company intends to issue the RFP on April 26, 2022. This issue date affords developers enough time to decide whether to join PacifiCorp's Federal Energy Regulatory Commission (FERC) generator interconnection cluster study by May 15, 2022.

If this proceeding is stayed or delayed 30 days as Parties propose—with Commission IRP acknowledgement on April 21, 2022—the Commission would need to either decide its issuance in advance of IRP acknowledgement or delay the RFP. Either approach could deter bidders from participating in the 2022AS RFP and the May 15 generator interconnection cluster study. While NewSun has intervened in docket UM 2193 and presumably understands both the linkage to docket LC 77 and the importance of an IRP acknowledgement decision prior to proceeding with the RFP issuance, the Parties fail to address these issues in their Motion to Stay.

NewSun signed the general protective order on December 6, 2021, and thereafter sought the confidential data disc. On December 23, 2021, PacifiCorp filed an objection to NewSun's request to access confidential information,¹¹ which the ALJ denied in a Ruling issued on January 21, 2022.¹² PacifiCorp timely requested certification of this Ruling on February 7, 2022,¹³ and other

⁸ OAR 860-027-0400(5) (“Commission staff and parties must file their comments and recommendations within six months of IRP filing.”)

⁹ PacifiCorp filed this request in accordance with OAR 860-089-0250.

¹⁰ *In the Matter of PacifiCorp, dba Pacific Power, Application for Approval of 2022 All Source Request for Proposals*, Docket UM 2193, Conference Memorandum (Jan. 18, 2022).

¹¹ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, PacifiCorp's Objection to NewSun Energy's Designation of Qualified Persons (Dec. 23, 2021).

¹² *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, Disposition: PacifiCorp Objection Denied (Jan. 21, 2022).

¹³ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, PacifiCorp's Request for Certification of ALJ Ruling (Feb. 7, 2022).

developers joined in support of certification.¹⁴ NewSun sought an extension of one week to respond;¹⁵ PacifiCorp timely filed its reply on March 8, 2022, and the issue is now before the Commission.¹⁶ Alarming, while NewSun complains that it has never had access to confidential information in this docket, as explained in PacifiCorp’s reply in support of its request for certification, it now appears that, through a clerical oversight, NewSun had available to it through Huddle for several months confidential information, including the confidential data disc, and appears to have downloaded confidential data request responses.¹⁷ Thus, without disclosing this fact in its Motion to Stay, NewSun has apparently utilized its Huddle access to download confidential documents.

In its final comments on February 11, 2022, Staff asked PacifiCorp to provide a coal sensitivity that removes any “take or pay” assumptions in any years after there is an expiring contract. Staff requested this study prior to the Commission’s February 24, 2022, workshop.¹⁸ PacifiCorp was diligently working on the coal sensitivity and anticipated being able to share it with parties by February 21. Subsequently, the Commission issued seven bench requests on February 17 and requested responses by mid-day on February 23, 2022.¹⁹ PacifiCorp’s responses to bench requests 2 through 5 were provided on February 23, 2022. PacifiCorp sought an extension to respond to bench requests 1 (including the sensitivity), 6 and 7 by March 4, 2022.²⁰ PacifiCorp completed the sensitivity and bench request responses 6 and 7 early and served them on March 3, 2022.

¹⁴ On February 7, 2022, comments were filed by Invenenergy LLC (Invenenergy) and Clearway Energy Group (Clearway). PacifiCorp also attached letters from NextEra Energy Resources LLC (NEER) and Longroad Development Company, LLC (Longroad) to its request for certification as Attachment C.

¹⁵ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, NewSun’s Request for Extension of Time to Respond to Request for Certification (Feb. 22, 2022).

¹⁶ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, PacifiCorp’s Reply to NewSun’s Response to Request for Certification (Mar. 8, 2022).

¹⁷ *Id.* at 2-3 and Attachment A.

¹⁸ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, Final Staff Comments at 47 (Feb. 11, 2022).

¹⁹ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, Bench Requests (Feb. 17, 2022).

²⁰ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, ALJ Ruling (Feb. 25, 2022).

PacifiCorp has worked diligently and in good faith with Staff and other stakeholders since filing its IRP in September 2021. For example, PacifiCorp has responded to over 460 data requests, including subparts, in this proceeding and modeled additional sensitivities at the parties' request, such as the take-or-pay sensitivity. This is an extraordinary level of discovery and information sharing in an informal, non-contested case process and contradicts Parties' complaints about a lack of transparency in this proceeding.

III. DISCUSSION

The Commission has discretion to grant a motion to stay “when the interests of justice” demand it.²¹ Generally, Oregon’s practice of granting stays appears to be consistent with the federal standard,²² under which the reviewing court balances (1) the interests of the parties, (2) efficiency, and (3) the interests of nonlitigants and the public.²³ A review of these factors demonstrates that this Commission should deny the Motion to Stay and proceed to resolve this case under the current schedule.

First, the Parties failed to show any legal basis for deviating from the Commission’s well-established process for considering and acknowledging utility IRPs. The IRP is an informational proceeding that leads to Commission acknowledgment, not a contested case that adjudicates parties’ rights. As the Commission’s Internal Operating Guidelines provide:

Commission acknowledgement of an IRP means only that the Commission finds that the utility's proposed actions are reasonable at the time of acknowledgment, and does not constitute ratemaking. The Commission views the IRP process as a means to inform a subsequent review of a utility request to include new resources in rates. Because the Commission does not finally determine the individual rights, duties, or privileges of any

²¹ *Sawyer v. Real Estate Agency*, 268 Or App 42, 52 (2014) (internal citations omitted). The Commission follows the procedural rules set forth in the ORCP where not specifically enumerated in the OAR; there are no specific administrative rules governing the standard for approving a motion to stay.

²² *Seneca Sustainable Energy, LLC v. Dep’t of Revenue*, Or Tax Ct, TC 5323 (2018) (noting that “Oregon’s practice seems consistent with the federal courts’ general recognition that a ‘court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.’”) (quoting *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F2d 1458, 1465 (9th Cir 1983)). Note, while the tax court’s decision is plainly not binding, that tribunal receives motions to stay “relatively often,” yet noted that it had “not found an Oregon opinion listing specific factors to be considered in whether to place a case in abeyance,” and so relied on restated federal factors.

²³ *Keating v. Office of Thrift Supervision*, 45 F3d 322, 325 (9th Cir 1995).

party during the IRP process and...does not use contested case procedures, IRP dockets are not considered contested cases under the APA....The procedural schedules for these filings are intended to educate the Commission and interested persons about the utility's proposed actions and to allow comment or objection.²⁴

The Commission has designed IRP reviews as a “hybrid process” which helps “balance the need for an informal process while providing participants with certain rights to help facilitate their participation and access to information.”²⁵ The Commission’s rules for utility IRP filing, review, and updates contemplate a relatively quick process²⁶ that utilities must repeat every two years.²⁷ A utility also must submit an annual update²⁸ and may need to file updates more often if it anticipates a significant deviation from its acknowledged IRP,²⁹ both of which help explain why the rules contemplate a truncated review period. If the IRP review period were extended too long, the entire process by which a utility identifies its resource needs and satisfies those needs through a subsequent RFP process would get backed up and cease to function as designed.

Staff recognized as much when it previously characterized the IRP as “informational” and expressed its concern that “adding litigation of inputs would *make it difficult to complete an IRP process within the six months contemplated by the Commission’s IRP guidelines.*”³⁰ To be clear, the Company’s 2021 IRP is not a permanent, static plan for resource acquisition; PacifiCorp is already working on its 2023 IRP and Parties and other stakeholders will have an opportunity to review its 2022AS RFP, comment on the bidder shortlist, respond to the next annual IRP update, and participate in the 2023 IRP process. Even if assuming Parties’ concerns about the IRP schedule are well-founded (which they are not), Parties have failed to show why they cannot be remedied through their continued participation in PacifiCorp’s ongoing IRP and RFP cycles.

²⁴*In the Matter of Public Utility Commission of Oregon Amending Internal Operating Guidelines*, Docket UM 2055, Order No. 20-386 at 25 (Oct. 27, 2020).

²⁵ *Id.* at 24.

²⁶ OAR 860-027-0400.

²⁷ OAR 860-027-0400(3).

²⁸ OAR 860-027-0400(8).

²⁹ OAR 860-027-0400(9).

³⁰ *In re Pub. Util. Comm’n of Or., Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 12 (May 13, 2016) (emphasis added).

Second, the Commission’s Rules provide two tracks for approval of the design of an RFP in OAR 860-089-0250. “Track one” contemplates inclusion of a draft RFP as part of a utility’s IRP filing with the Commission; under “track one” the Commission acknowledges a resource need as part of the utility’s IRP and simultaneously approves the associated RFP design, scoring methodology, and associated modeling process. “Track two” allows a utility to pursue an RFP outside of the IRP process by seeking approval of the RFP scoring and associated modeling through the IE docket. The Company followed the Commission’s “Track two” process in filing its 2022AS RFP. Even though under Commission rules the Company followed the “Track two” process, the Company understands the Commission’s preference to analyze the IRP prior to approving a draft RFP. This was most recently articulated by Staff in its Report recommending its approval of the independent evaluator for the 2022AS RFP. Specifically, Staff stated:

... as this is the third consecutive occurrence of an RFP being filed concurrently with an IRP, it would appear that the purpose of the RFP being complementary to an IRP process has been somewhat encompassed by the RFP process instead.

The pressures and complications from running these two types of dockets concurrently are manifest in past orders, reports, and comments in both UM 1845 and UM 2059. For example, in the UM 1845 Order No. 18-178, Commissioners noted that the IRP running concurrently with the RFP resulted in surprises that were not easy to deal with in the RFP docket.³¹

In docket UM 2193, the Company originally requested a more expedited schedule that would have requested Commission approval well before the 2021 IRP deliberations. However, following feedback from Staff, the Company revised the schedule that allowed more time for stakeholder review and sequenced the consideration of the RFP to come after the 2021 IRP deliberations. Furthermore, the current schedule for the 2022AS RFP addresses multiple considerations, such as a need to satisfy the procurement rules in three jurisdictions, the timing of the interconnection cluster study, and the lead time for projects to be selected, contracted for, and constructed to be

³¹ Docket No. UM 2193, Staff Report dated Oct. 14, 2021.

online by a date certain.³² Given the Commission’s concerns regarding sequencing of these two proceedings, it is appropriate for the RFP to follow the IRP. If delaying the IRP delays review and issuance of the 2020AS RFP, there is a negative impact to all of these scheduling considerations. Potential bidders need time to review the RFP and decide whether to opt-in to the next generator interconnection cluster study by May 15. The May 15 date is set by FERC and cannot be pushed back. As the Parties and stakeholders are aware, there is a capacity shortage in the region and delays in the resource acquisition process could expose the Company and its customers to greater market risk and higher-priced resources—potentially without the benefits of time-limited tax credits.

Third, the Parties have failed to demonstrate how any of PacifiCorp’s actions—including the Company’s unwillingness to share confidential competitively sensitive information from its 2021 IRP confidential data disc—have prevented them from meaningfully participating in this proceeding. Staff has provided extensive analysis of the 2021 IRP in its Final Report and Recommendations and responding to Staff’s Final Report is the last milestone in this case for Parties. NewSun has not explained why it needs PacifiCorp’s confidential data disc to respond to Staff’s Final Report, which does not directly reference the confidential workpapers. Instead, it appears that NewSun’s goal is to use discovery in this docket to obtain bidders’ competitively sensitive data to inform its bids in upcoming RFPs. NewSun admitted as much when it said that “the public and ratepayers would likely benefit from indicators which better focus the competitiveness of bids in future solicitations if it helped more bidders (which generally otherwise bid in the dark) submit more aggressively priced bids to become competitive in future solicitations, thereby creating a more aggressively competitive procurement.”³³ NewSun’s position is the exact inappropriate behavior feared by the developers who filed comments in this proceeding supportive of the Company’s efforts to protect the confidential data disc and competitively sensitive

³² *In the Matter of PacifiCorp, dba Pacific Power, Application for Approval of 2022 All Source Request for Proposals*, Docket UM 2193, PacifiCorp’s Comments at 6 (Oct. 20, 2021).

³³ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, NewSun’s Response to the Company’s Request to Certify at 11 (Mar. 1, 2022).

information contained therein.³⁴ NewSun's arguments regarding its ability to participate in this proceeding are even less credible considering that NewSun may have had access to PacifiCorp's 2021 IRP confidential data disc and did access and download certain confidential data request responses hosted on the Commission's Huddle system since NewSun filed its signatory pages on December 6, 2021.³⁵

Lastly, PacifiCorp provided a coal sensitivity analysis to stakeholders within three weeks of Staff's request for this information in Staff's Final Report.³⁶ While Staff sought the analysis before the February 24, 2022, workshop, this timeline proved impossible to meet when combined with the concurrently served bench requests that also addressed this sensitivity and requested additional information and analysis. PacifiCorp provided the coal sensitivity six business days after the initial due date of the bench requests, and the detrimental effect—if any—caused thereby to the Commission and stakeholders' ability to fully evaluate the Company's IRP was de-minimis. PacifiCorp rejects Parties' claim that the Company's delay in providing the coal sensitivity materially affects the Commission's ability to issue an acknowledgement decision on March 22, 2022 or March 29, 2022. The short delay in providing this sensitivity has not prevented the full development of the record or the opportunity for meaningful participation in this proceeding. Parties now have until March 11, 2022, to file comments on Staff's Final Report, and the Company supplied the new coal sensitivity analysis in sufficient time for Parties to refer to the analysis in these comments.

³⁴ See *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, Clearway Energy Group's comments; NIPPC's Request for Certification, or in the Alternative, Request for Clarification; and Invenergy LLC's Comments in Support of NIPPC's Request for Certification or, in the Alternative, Request for Clarification (all filed Feb. 7, 2022).


³⁵ PacifiCorp made this discovery on March 1, 2022, and that same day asked the Commission to terminate such access pending the resolution of the Company's objection. While there appears to be no evidence that any of the zip files related to the confidential data disc were downloaded; there is evidence that confidential data request responses were accessed and downloaded as seen in Attachment A to PacifiCorp's Reply in support of its Request for Certification. Specifically, Attachment A demonstrates that Leslie Schauer, New Sun's Executive Assistant, downloaded a confidential attachment to Staff data request 026 on February 9, 2022. PacifiCorp is currently undertaking a review of confidential data requests responses to see if they contain competitively sensitive information that is the subject of the Company's objection to NewSun's access and whether those documents were downloaded.

³⁶ *In the Matter of PacifiCorp, dba Pacific Power, 2021 Integrated Resource Plan*, Docket LC 77, PacifiCorp's Responses to Bench Requests 1 and 6-7 (Mar. 3, 2022).

IV. CONCLUSION

The Commission should deny the Parties' Motion to Stay and maintain the current procedural schedule, which will allow for an orderly resolution of this docket under the Commission's IRP rules and permit the timely deliberation and issuance of the 2022AS RFP in docket UM 2193. Adhering to the current schedules in both dockets will ultimately increase participation in the 2022AS RFP and help PacifiCorp address its generation capacity shortfall in the least-cost, least-risk manner.

Dated: March 10, 2022.

By: 

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