

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2032

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into the Treatment of Network
Upgrade Costs for Qualifying Facilities

NEWSUN ENERGY LLC’S REPLY IN
SUPPORT OF MOTION TO COMPEL
DISCOVERY

I. INTRODUCTION

Pursuant to OAR 860-001-0420 and the Administrative Law Judge (“ALJ”) Ruling dated June 8, 2021, NewSun Energy LLC (“NewSun”) hereby submits this Reply in Support of its Motion To Compel filed with the Public Utility Commission of Oregon (the “OPUC” or “Commission”) on May 28, 2021. As articulated in that Motion to Compel and herein, the Commission should compel each of PacifiCorp (“PAC” or “PacifiCorp”), Portland General Electric Company (“PGE”), and Idaho Power Company (“IPC” or “Idaho Power,” collectively with PacifiCorp and PGE, the “Joint Utilities”) to produce the requested data.

NewSun’s data requests are not only relevant to the issues in this docket but central to the policy decisions the Commission is being asked to make, and therefore commensurate with the needs of this case. Specifically, the issues presented for resolution in this case are:

1. Who should be required to pay for Network Upgrades necessary to interconnect the QF to the host utility?
2. Should on-system QFs be required to interconnect to the host utility with Network Resource Interconnection (NRIS) or should QFs have the option to interconnect with Energy Resource Interconnection Service (ERIS) or an interconnection service similar to ERIS?

Depending on the resolution of these two questions, a second phase of the docket may be necessary, Staff indicates, to address implementation issues:

3. If the answer to Issue No. 1 is that users and beneficiaries of Network Upgrades (which typically are primarily utility customers) should pay for the Network Upgrades necessary to interconnect the QF to the host utility, how should that policy be implemented? For example, should utility customers, and other beneficiaries and/or users, fund the cost of the Network Upgrades upfront, or should the QF provide the funding for the Network Upgrade subject to reimbursement from utility customers? Should the QF, utility customers, and other beneficiaries and users, if any, share the costs of Network Upgrades?¹

It is NewSun's understanding that this docket was structured in two phases so that if the Commission decided to require QFs to pay for network upgrades, then Phase II could be eliminated. Therefore, to even reach Phase II, the Commission likely needs to conclude that users and beneficiaries other than the QF should share in or pay for upgrade costs. What NewSun seeks to illustrate with its data requests is how other users and beneficiaries could and, in fact, do benefit from various types of transmission system upgrades, which is probative of and could help justify requiring those users and beneficiaries to pay. This is the central question at issue in this phase of the docket.

Further, NewSun's requests are also targeted at illustrating how the Commission's current policies and the utilities' current practices of requiring NRIS and 100% funding of network upgrades without reimbursement by QFs is discriminatory against QFs and discourages or impedes QF development in Oregon, an issue of compliance with state and federal statute and regulations. These requests help illustrate the basic, intrinsic contradiction of the Joint Utilities' positions: That *identical* infrastructural facilities—substations, power lines, disconnect switches, etc.—in two analogous circumstances, identical save the attachment of the words “qualifying

¹ ALJ Ruling (May 22, 2020).

facility,” or in some cases through application to “load” instead of “generation” somehow do not provide “system benefits” or whose costs should not be shared as a result of those labels. This includes in cases where such facilities (“upgrades”) are caused to support a specific, singular utility customer, but similarly attached to the surrounding overall utility grid. This conundrum is central to the dispute. These requests, among other things, are primarily to show specific examples and facts to draw out related contradictions of the Joint Utilities’ positions—and thereby inform this Commission’s related decision(s). They are quintessentially germane to the case.

Moreover, these data requests apply, in many instances, to matters and facilities where the utilities have—based on a justification to this Commission of the greater benefit of utilities’ customers—requested and received rate recovery for these same applications. It is not unreasonable to assume the utilities thus have at their disposal the capacity to document the merits, actions, and justifications for the expense of ratepayer dollars—which they presumably have already done in incurring such expenses. It is also particularly concerning if the utilities were able to evade scrutiny, disclosure, and discussion of those same expenses, to its regulator, through non-responsiveness to germane and reasonable requests, given their past, present, and future application of the same logic and justifications—system benefits, among others—for such multi-million dollar recurring and regular expenses.

In short, as concise conceptual examples, if a utility reimburses a hypothetical sub-80 MW solar facility for a new 3-ring bus substation, as network upgrades benefiting the system (as is customary for such facilities), how is an identical interconnection facility that applies the label “qualifying facility” not also beneficial to the system? The electrons do not care how the facility is labeled. Similarly, if an excess of capacity is constructed, say for an oversized power line

related to the most immediate incremental need, and a utility requests rate recovery for it, based on assertion of system benefits, even though a specific need does not yet apply to those costs, but grid capacity is enhanced, how is that logic not comparable to another identical grid facility, even if not one triggered by the utility's own discretion to overbuild it. These requests seek to draw out facts that inform such dichotomies in the application of the utility's actions and discretion, and ultimately how that informs the required policy application.

Finally, the requests are timely and sufficiently clear for the Joint Utilities to respond.

II. REPLY

A. The Question of “Who Benefits” from Transmission System Upgrades Is Central to the Question of “Who Pays” for Those Upgrades and Therefore Both Highly Relevant and Commensurate with the Needs of This Case

As articulated in the Motion to Compel, the first and central question in this Phase I of the docket of “who should pay” for network upgrades is informed by “who benefits” from those upgrades. Aside from any legal reason in the Public Utility Regulatory Policies Act (“PURPA”) or otherwise that might compel a particular outcome, the Commission should at least have some factual basis in this docket regarding what benefits accrue (or do not accrue) to the system or other users and beneficiaries from the same types of upgrades that may be required by a QF interconnection.

The Joint Utilities note that “the Commission understands the benefits of constructing new facilities for retail customer load service,”² presumably because the Commission examines those issues in rate cases. Therefore, there is no reason not to require the Joint Utilities to disclose the factual evidence of such benefits in this docket where the central issue is whether retail customers (or other users/beneficiaries) should pay for the benefit they receive from

² Joint Utilities' Response to NewSun's Motion to Compel Discovery (hereafter “Joint Utilities' Response”) at 30 (Jun. 28, 2021).

comparable facilities triggered by a QF. The Joint Utilities steadfastly refuse to answer NewSun's data requests regarding the benefits to the system or other users and beneficiaries of "Network Upgrades" specifically funded by QFs, stating that they do not perform such analysis or because they have never understood what the Commission means by "quantifiable system-wide benefits." However, it does not take a huge stretch of the imagination to understand that the exact same types of upgrades may be required for load service or for another reason, and for which the Joint Utilities may have sought rate recovery and therefore may have completed some analysis regarding the benefit to the system or to their retail customers. As such, NewSun has sought to put in the record *in this docket* information about comparable types of upgrades on which the utilities have information about the benefits it provides, including how the upgrade was identified, how it was funded, whether it was included in rates, what rate of return the utility received for it, and whether it resulted in any increase or decrease in transmission rates.

Because this docket is solely focused on the issue of upgrades to the transmission system, NewSun's data requests are appropriate in scope. Specifically, NewSun data requests PGE 9, PAC 10 and IPC 8 ask for the cost of the upgrade, where the need for the upgrade was first identified, how it was funded, whether it was included in rate base or is intended to be included in rate base, the rate of returned earned on it, the incremental transmission operations resulting from the upgrade, and the change in transmission customer rates as a result of the upgrade. NewSun specifically requested these pieces of information so that it can compare the results against the utilities claims that ratepayers will be harmed if similar QF-triggered upgrades are included in transmission rates. As detailed below, the Joint Utilities' responses were insufficient.

PGE provided an attachment, which it says lists its major transmission system upgrades constructed over the last three years.³ This spreadsheet simply lists the project name with some columns for cost broken down by year and a sum column.⁴ The spreadsheet does not identify where the need for the upgrade was first identified, how it was funded, whether it was included in rate base or is intended to be included in rate base, the rate of return earned on it, the incremental transmission operations resulting from it, or any change in transmission rates. It also does not provide a sufficient description of the project to identify what type of upgrade it is. For example, PGE just says “Round Butte Transmission Upgrades,” without further identifying whether it, for example, included a new transmission line, reconductoring, constructing a new substation, or adding breakers, disconnects, or communications equipment. PGE noted in its supplemental response that it understood NewSun’s request was targeted at understanding these types of upgrades, yet PGE does not provide adequate descriptors of the upgrades.⁵

PacifiCorp provided an attachment, which provides more information than PGE, but still does not fully answer the question. PacifiCorp lists a project name, cost estimate, and a column for “[p]roject [d]escription including explanation of system benefit and any cost overruns.”⁶ Here too, PacifiCorp does not always identify where the need for the upgrade was first identified, how it was funded, whether it was included in rate base or is intended to be included in rate base, the rate of return earned on it, the incremental transmission operations resulting from it, or any change in transmission rates.

³ Joint Utilities’ Response, Attachment B at 4.

⁴ *Id.* at 5.

⁵ *Id.* at 3.

⁶ Joint Utilities’ Response, Attachment C at 9-21.

Idaho Power provided an attachment, which lists a year, project description, cost, and category for Oregon-sited transmission upgrades.⁷ This response suffers from the same issues as PGE’s response. The descriptions are also insufficient to identify the type of upgrade and Idaho Power does not identify where the need for the upgrade was first identified, how it was funded, whether it was included in rate base or is intended to be included in rate base, the rate of return earned on it, the incremental transmission operations resulting from it, or any change in transmission rates.

If the Joint Utilities do not possess the factual evidence to fully answer NewSun’s requests, then it is unclear how they can testify with certainty that retail customers will experience increased transmission rates if QF-triggered upgrades are refundable. The Joint Utilities say that it will be “incredibly onerous and, in some cases, impossible to answer” these data requests.⁸ Yet, while NewSun is not seeking to establish what the Commission means by its “quantifiable system-wide benefits” test, the information NewSun seeks is the very same type of information that a QF might seek if it were to attempt to prove “quantifiable system-wide benefits.” This is so because benefits that accrue to the system which may justify requiring other users and beneficiaries to pay may be the same or similar to the benefits Commission might consider in implementing that test. And as such, if it truly is *impossible* to answer these questions, then that in and of itself is relevant evidence for the Commission to consider in determining whether QFs should still be required to bear this *impossible* burden of proving what benefits its system upgrades provide. The Joint Utilities are in the better position to provide this

⁷ Joint Utilities’ Response, Attachment A at 11.

⁸ Joint Utilities’ Response at 7.

information as they possess the data and they bear the burden in their rate cases of proving that similar upgrades provide a benefit to ratepayers.

Further, NewSun understands that constructing certain transmission system upgrades may sometimes actually decrease transmission rates because of the nature of how the grid operates as a single synchronized grid, the rate structures, and the interaction of a variety of other factors. It may not be the case that retail customers will always lose out as the Joint Utilities assert, and NewSun should get the opportunity to review the evidence to prove that retail customers may receive benefits from (and therefore should share in the cost of) such transmission system upgrades. As such, NewSun's data requests are not only relevant but central to the question of who should pay and are commensurate with the needs of this case.

B. NewSun's Requests are Timely and Sufficiently Clear

NewSun's data requests are timely. Joint Utilities assert that NewSun's requests were "either premature or too late."⁹ They were neither. First, NewSun could not have known that the Joint Utilities would not address the "system benefits" issues until after they filed their second round of testimony. The Joint Utilities' first round of testimony was largely focused on policy despite their assertions earlier in this docket that it would benefit from a robust factual record. NewSun submitted its own testimony and awaited the Joint Utilities' response. In their second round of testimony, it became clear to NewSun that the Joint Utilities would not submit further factual evidence. The press of business prevented NewSun from immediately reviewing the Joint Utility testimony and drafting its data requests, and similarly after the Joint Utilities provided their supplemental responses the press of business prevented NewSun from immediately being able to review those. Surely, the Joint Utilities can understand that

⁹ *Id.* at 8.

sometimes additional time to respond is necessary even for the Joint Utilities who are large corporations with multiple in-house and outside counsel working on this matter. NewSun appreciates the opportunity to fully present its case in this docket and does not seek to delay this proceeding. In fact, current Commission policy is a burden for many QFs and the issues in this docket are matters with consequential impacts to the financeability of QFs in Oregon. It is imperative to ensure that any decision made in this docket is compliant with PURPA and cognizant of the impacts to QFs.

Second, NewSun's requests are not premature. The Joint Utilities assert that Phase II of this docket should address what the Commission means by its "quantifiable system-wide benefits" test.¹⁰ NewSun does not dispute that Phase II is intended to be used to develop a mechanism that implements whatever the cost-allocation policy the Commission sets in this Phase I. However, the result of this Phase I could be that the Commission completely eliminates the concept of a "quantifiable system-wide benefits" test and instead simply requires users and beneficiaries to pay in full. Further, while it may include similar types of information that a QF might seek in proving "quantifiable system-wide benefits," NewSun is not specifically seeking to define that "test" but just about system benefits more generally. And as discussed above and more fully in the Motion to Compel, the question of what benefits a particular upgrade can provide to the system is relevant to the question of who should pay for it. Therefore, NewSun's requests are not premature and entirely relevant to this phase of the docket.

Further, NewSun's data requests are sufficiently clear as the Joint Utilities themselves articulate multiples times in their Response. The Joint Utilities assert that NewSun's data requests were not sufficiently clear because NewSun used the term "network upgrades" in its

¹⁰ *Id.* at 11.

request rather than some broader term such as “investments in a utility’s transmission system.”¹¹ Notably NewSun did not capitalize the term “network upgrades” in its data request as one would typically do with a defined term but even so, the request itself should have clued the Joint Utilities into the fact that the request was meant to cover a broader set of upgrades than just those triggered by an interconnection because it specifically asks for them to identify where the utility first identified the need for the upgrade such as for “load growth, interconnection request, transmission request, integrated resource plan, or other.”¹² NewSun has understood the term network upgrades to sometimes refer to upgrades that occur on the transmission system regardless of how they were identified because the transmission system is a cohesive, integrated “network.” Further, as the Joint Utilities make abundantly clear multiple times in their response, NewSun clarified the scope of its request in the conferral process.¹³ Finally, as noted in the Motion to Compel, the Joint Utilities should understand what NewSun is asking for when it asks about the incremental transmission operations resulting from the upgrade. In drafting this request NewSun use terms that are the same as or similar to terms used by the Joint Utilities’ transmission experts in their rate case testimony when discussing the benefits of various upgrades including “increased throughput, increased load serving capability, enhanced reliability, improved transfer capability within the existing system, relief of existing congestion on the transmission system, or others.”¹⁴ Therefore, because NewSun’s data requests are sufficiently clear, the Joint Utilities should be compelled to respond.

¹¹ See e.g., *Id.* at 15.

¹² *Id.* at 14 (quoting NewSun’s data request).

¹³ See e.g., *Id.* at 15.

¹⁴ *Id.* at 14 (quoting NewSun’s data request).

C. NewSun's Requests Regarding the Prineville Area of PacifiCorp's System are Relevant

NewSun's targeted requests regarding the Prineville area are designed to illustrate for the Commission how transmission upgrades regardless of how they are triggered can benefit the entire system and to show how the Commission's current policies may be discriminatory against or at a minimum discourage or impede QF development. As articulated in the Motion to Compel, this part of PacifiCorp's system has seen significant interconnection activity both from generator interconnection requests and loads. There have been a number of upgrades to the system, which could provide benefits to all users in the area. Given the importance of this load center in PacifiCorp's Oregon service territory, it provides a useful example for the Commission to review how upgrades to the transmission system could provide benefits to multiple users. Contrary to the Joint Utilities' assertions, NewSun did not propound this data request for the purpose of somehow furthering its commercial interests in that area. This Response is the first time the Joint Utilities have raised the concern about NewSun potentially using this data to somehow further its commercial interests. NewSun executed the protective order in this case and understands that pursuant to such order any confidential information disclosed in this docket cannot be disclosed for any purpose other than participating in these proceedings, unless there is written permission of the designating party.¹⁵ NewSun merely has expertise in that area of PacifiCorp's system and believes that it would be a useful case study. It is not even clear how NewSun would use the data requested to further its commercial interests because NewSun or its counsel has not seen any of the data that PacifiCorp would supposedly disclose in response to this request. In any event, should there be commercially sensitive information, NewSun is open to discussing how best to handle it.

¹⁵ Order No. 20-301, Appendix A at §17.

Finally, as articulated in the Motion To Compel choosing to help focus examples on a single area of PacifiCorp's system is, in effect, a reduction of burden, and an attempt to help reduce the scope of requests and discovery response burden, rather than seeking comprehensive answers (at this time) on *all* the areas of PacifiCorp's broad system. NewSun effectively has already helped limit the scope and burden by this focus, as well as brought the Commission and other Stakeholders the benefits of knowledge of issues in this particular system area.

NewSun notes that PacifiCorp has recently constructed tens of millions of dollars of network facilities in this area, materially exceeding current load (though justified to serve future load), while simultaneously seeing materially differential treatment of outcomes for substantially identical generation facilities (save the name "QF"). This has occurred where, according to PacifiCorp's own public positions that QFs get paid 'too much' or more than non-QFs, other QF-*sized* solar facilities, contracted by PacifiCorp directly, succeeded while QFs failed—with very major differences in cost (i.e. network upgrade burdens and non-reimbursability) outcomes resultant from proposed facilities on the exact same system, despite (apparently, by implication) being paid less than the QFs might have been paid. Those non-QFs did not receive \$300 MM upgrades, as a result of differential policies, that their equivalents received at the same location on the same compact "load pocket" system.

D. The Joint Utility Responses to NewSun's Requests Concerning the Relationship Between PPAs, Interconnections, and Transmission Arrangements are Still Incomplete

Following the filing of NewSun's Motion to Compel, PGE supplemented its response to NewSun's DR 6 to PGE, but PGE's response still falls short. In conferral, NewSun indicated that the goal of this question was to be able to trace generators through the interconnection and transmission processes. PacifiCorp had previously supplemented its response to a comparable DR by providing a list of all power purchase agreements ("PPAs") for generators located in

Oregon and indicating both the interconnection and transmission queue numbers.¹⁶ While this is not directly responsive to NewSun's requests, NewSun is satisfied that providing the interconnection and transmission queue numbers for each PPA is helpful in understanding the relationship between these processes because NewSun can look up those queue numbers on the utility OASIS pages. PGE's supplemental responses provided on June 2, 2021 and June 16, 2021 only provide the interconnection queue numbers for QFs that have small generator interconnections.¹⁷ PGE did not provide interconnection queue numbers for large generators or transmission queue numbers for any of the generators. PGE further indicates that for non-QF PPAs, they are all either off-system or pre-date the queue concept and so therefore do not have interconnection queue numbers.¹⁸ However, it is NewSun's understanding that off-system generators will still have an associated transmission service request. In order to trace generators through the interconnection and transmission processes and validate utility claims that network upgrades not identified in the interconnection process will necessarily be picked up in the transmission process, NewSun requires PGE to provide the queue numbers for both processes.

PacifiCorp and Idaho Power should be compelled to supplement their responses for all generators rather than just those sited in Oregon. PacifiCorp's response, as noted above, provides a lot more information than PGE but only for generators located in Oregon.¹⁹

Similarly, Idaho Power also only listed Oregon-sited projects.²⁰ NewSun simply requests that

¹⁶ Joint Utilities' Response, Attachment C at 65-68.

¹⁷ Joint Utilities' Response, Attachment B at 11-12, 25-26, 122-123. Note that rather than providing a spreadsheet of all PPAs in response to NewSun's request, PGE's response to NewSun refers to PGE's responses to NIPPC DR 1 (which asks PGE to identify each contracted QF and whether it is designated as a network resource) and NIPPC DR 33 (which asks PGE to identify PPAs with non-QF generators).

¹⁸ Joint Utilities' Response, Attachment B at 12.

¹⁹ Joint Utilities' Response, Attachment C at 65-68.

²⁰ Joint Utilities' Response, Attachment A at 24-25.

PacifiCorp and Idaho Power be compelled to fully respond by providing the same information for all generators, not just ones located in Oregon. The differential treatment of interconnections in different states is an issue in this case as the Joint Utilities claim that “[b]oth PacifiCorp and Idaho Power interconnect QFs using NRIS consistently across their service territories and require QFs to fund the cost of Network Upgrades without reimbursement.”²¹ NewSun seeks to validate this claim but also to compare that practice to other non-QF generators in those states to illustrate for the Commission how such a policy may be discriminatory against QFs or otherwise discourage or impede QF development, and ultimately determine compliance of Oregon policies not just with fairness, and in light of surrounding state clean energy policies, but also with Oregon statute and regulations, and federal statute and regulations. As such, these requests are entirely relevant and the Joint Utilities should be compelled to respond.

III. CONCLUSION

This docket is a contested case in part due to the Joint Utilities’ assertions that resolution of the policy issues in this docket would benefit from a robust factual record. Given that and that the issues also may have substantial financeability consequences for QFs, it is entirely appropriate for the Joint utilities to provide data that would enable NewSun to validate their claims and to show the Commission how certain policy decisions may result in discriminatory treatment of QFs or otherwise discourage or impede their development. As such, NewSun respectfully requests that the Commission compel the Joint Utilities to provide complete responses to the data requests.

²¹ Joint Utilities/400, Vail-Bremer-Foster-Larsen-Ellsworth/8.

Dated this 20th day of July 2021.

Respectfully submitted,

NewSun Energy LLC

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