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VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

Re: Docket UM 2032 – Investigation into the Treatment of Network Upgrade Costs for Qualifying Facilities

Attention Filing Center:

Attached for filing in the above-captioned docket is the Joint Utilities' Response to NewSun Energy LLC's Motion to Allow Brittany Andrus as a Witness.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2032

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into Treatment of Network
Upgrade Costs for QFs

**JOINT UTILITIES'S RESPONSE TO
NEWSUN ENERGY LLC'S MOTION
TO ALLOW BRITTANY ANDRUS
AS A WITNESS**

1 Pursuant to OAR 860-001-0420(4), Portland General Electric Company (PGE),
2 PacifiCorp dba Pacific Power (PacifiCorp), and Idaho Power Company (Idaho Power) (together,
3 the Joint Utilities) submit this response to NewSun Energy LLC's (NewSun) Motion to Allow
4 Brittany Andrus as a Witness. Ms. Andrus's participation as a witness in this case raises serious
5 concerns regarding the integrity and perceived fairness of these proceedings. Ms. Andrus was a
6 Senior Utility Analyst with the Public Utility Commission of Oregon Staff (Staff) until
7 November 2019, and was the principal Staff person responsible for Public Utility Regulatory
8 Policies Act (PURPA) policies and regulations in Oregon.¹ On October 30, 2020, Ms. Andrus
9 filed testimony on behalf of NewSun in docket UM 2032 that was expressly "[b]ased on [her]
10 experience as OPUC Staff."² The Joint Utilities defer to the Commission to interpret and apply
11 its rules in resolving NewSun's motion. However, the Joint Utilities have concerns about the
12 appearance of impropriety and the troubling precedent that would result if Ms. Andrus is
13 permitted to file testimony on behalf of another party in docket UM 2032, when she actively

¹ NewSun/200, Andrus/1; NewSun Energy LLC's Motion to Allow Brittany Andrus as a Witness at 2 (Nov. 17, 2020) (hereinafter "NewSun's Motion").

² NewSun/200, Andrus/16.

1 assisted with the development of this docket on behalf of Staff and assisted Staff in another
2 docket regarding the very issues presented here.

I. BACKGROUND

3 The purpose of this docket is to investigate the Commission’s interconnection service
4 requirements and cost-allocation policies for state-jurisdictional qualifying facility (QF)
5 interconnections. Ms. Andrus states that in her capacity as Commission Staff, she gained
6 substantial expertise in interconnection issues, including “costs that may be imposed on
7 consumers and others as a result of interconnections.”³ In 2019, Ms. Andrus participated in
8 developing the scope and process for the Commission’s generic PURPA investigation in docket
9 UM 2000, which eventually led to the opening of docket UM 2032 and other dockets to
10 investigate specific issues.⁴ She also was involved in closely related interconnection issues that
11 arose in the Community Solar Program (CSP), docket UM 1930, in 2019.⁵ Ms. Andrus gained
12 further experience with QF interconnections through facilitating the docket UM 2001
13 Interconnection Data Workgroup in 2019.⁶

14 In docket UM 2032, Ms. Andrus testifies on behalf of NewSun regarding the evolution of
15 Oregon interconnection rules and policies and their impacts on QF interconnections in Oregon.⁷
16 Ms. Andrus’s testimony describes in detail the prior dockets in which the Commission initially
17 developed its interconnection rules and policies.⁸ In doing so, she offers her interpretation of

³ Andrus Declaration ¶ 12.

⁴ See NewSun’s Motion at 2; Andrus Declaration ¶ 9; *In the Matter of Public Utility Commission of Oregon, Investigation into PURPA Implementation*, Docket UM 2000, Order No. 19-051, App’x A at 2 (Feb. 19, 2019); Docket UM 2000, July 22, 2019 Staff Report at 1, 3 (July 24, 2019).

⁵ See NewSun’s Motion at 2; Andrus Declaration ¶ 11.

⁶ NewSun/200, Andrus/1.

⁷ NewSun/200, Andrus/3.

⁸ NewSun/200, Andrus/4-14.

1 the Commission’s decisions, based on her experience with Oregon’s implementation of
2 PURPA.⁹ Ms. Andrus then testifies regarding the impacts of the current Commission policies
3 on QFs, and her testimony includes statements that are explicitly based on her prior experience
4 with Staff:

- 5 • “*Based on my experience as OPUC Staff*, I believe that it would be an incredibly
6 burdensome process for the QF to obtain adequate information from the utility in
7 order to pursue a complaint against the utility and demonstrate system-wide
8 benefits.”¹⁰

- 9 • “Q. Would you characterize the requirement to interconnect with NRIS without the
10 option to interconnect with ERIS as a significant hurdle to QFs in Oregon?

11 A. Yes, I believe it is, *based on my experience as OPUC Staff*.”¹¹

12 Ms. Andrus also offers testimony regarding the interconnection issues that occurred in the
13 CSP and the simplified CSP interconnection process that Staff recommended and the
14 Commission adopted.¹² Finally, she discusses the relationship between the Commission’s
15 interconnection and avoided cost policies and recommends that the Commission change its
16 current QF interconnection policies.¹³

II. LEGAL STANDARD

17 OAR 860-001-0330(2) prohibits a former Commission employee from appearing as a
18 witness on behalf of another party in a contested case in which the former employee “took an

⁹ NewSun/200, Andrus/6-7, 11, 14.

¹⁰ NewSun/200, Andrus/16 (emphasis added).

¹¹ NewSun/200, Andrus/16 (emphasis added).

¹² NewSun/200, Andrus/16-17.

¹³ NewSun/200, Andrus/18-21.

1 active part on the Commission’s behalf,” except with the Commission’s written permission.
2 While this rule is decades old, the Commission has only formally interpreted and applied it on
3 one occasion where the Commission denied a former Staff person’s request to appear on behalf
4 of another party.¹⁴ On that occasion, the Commission explained that the purpose of the rule is
5 to avoid the appearance of impropriety that would result if former Commission employees used
6 the knowledge or relationships they gained during public service to advantage a private party.¹⁵
7 The Commission also clarified that the phrase “took an active part on the Commission’s behalf”
8 should be “broadly construed to protect the integrity and perceived fairness of the Commission
9 proceedings” and interpreted the rule to “apply to any former employee that participated
10 personally on any assigned matter during his or her employment.”¹⁶

11 If an employee took an active part on the Commission’s behalf, then the Commission
12 considers four factors in determining whether the former employee who actively participated on
13 behalf of the Commission should nevertheless be allowed to participate on behalf of another
14 party: (1) the nature of the former employee’s prior role with the Commission; (2) the type of
15 proceeding in which the former employee seeks to participate; (3) the length of time since the
16 former employee left the Commission; and (4) the agreement or disagreement of other parties to
17 the proceeding.¹⁷

¹⁴ See *In the Matter of Portland General Electric Company’s Proposal to Restructure and Reprice its Services in Accordance with the Provisions of SB 1149 and In the Matter of PacifiCorp’s Proposal to Restructure and Reprice its Services in Accordance with the Provisions of SB 1149*, Dockets UE 115 and UE 116, Order No. 01-249 at 3 (Mar. 21, 2001) (noting that the Commission adopted the predecessor to OAR 860-001-0330 more than 50 years prior but had never formally interpreted it). PGE is not aware of, and NewSun did not cite, any other instances of the Commission interpreting or applying this rule since the 2001 order.

¹⁵ Order No. 01-249 at 3.

¹⁶ Order No. 01-249 at 4.

¹⁷ Order No. 01-249 at 5.

III. ARGUMENT

1 **A. Ms. Andrus took an active role in developing docket UM 2032 and in closely related**
2 **dockets.**

3 NewSun asserts that Ms. Andrus did not take an active role in docket UM 2032 because
4 the docket had “essentially only just been established” and the only activities that had occurred
5 in this docket by the time she left Staff were petitions to intervene.¹⁸ NewSun acknowledges,
6 however, that Ms. Andrus participated in other related dockets, including dockets UM 2000 and
7 UM 1930.¹⁹ NewSun’s position relies on an overly narrow interpretation of a rule that the
8 Commission has stated should be construed liberally.²⁰ Although Ms. Andrus’s participation
9 after docket UM 2032 formally opened was limited, the Commission should also consider her
10 participation in dockets UM 2000 and UM 1930 when determining whether Ms. Andrus “took
11 an active part on the Commission’s behalf” in this proceeding.²¹ Applying Commission
12 precedent, it is clear that Ms. Andrus actively participated in these other, inherently intertwined
13 proceedings.

14 Docket UM 2032 originated in a Staff Report co-authored by Ms. Andrus that
15 recommended the Commission open an investigation into PURPA implementation in Oregon.²²
16 The investigation was docketed as UM 2000, and Staff conducted a lengthy scoping process that
17 included workshops and comments.²³ Staff stated that the issue raised by the majority of non-
18 utility commenters in its first workshop was the high cost of interconnection and noted that

¹⁸ NewSun’s Motion at 2, 4.

¹⁹ NewSun’s Motion at 4.

²⁰ Order No. 01-249 at 4.

²¹ See OAR 860-001-0330(2).

²² Order No. 19-051 & App’x A at 1.

²³ See Order No. 19-051, App’x A at 2, 9.

1 interconnection costs were one issue Staff planned to address in the investigation.²⁴ At that time,
2 Staff “envision[ed] a phased approach to addressing issues” in the generic investigation.²⁵ Staff
3 then developed a whitepaper, with which Ms. Andrus assisted, to guide the PURPA
4 investigation.²⁶ The Staff whitepaper recommended the scope and process for the PURPA
5 investigation, which included splitting the investigation into separate dockets and opening a
6 docket to investigate treatment of network upgrade costs for QFs.²⁷ The Commission adopted
7 the Staff recommendation and opened docket UM 2032 on July 31, 2019.²⁸

8 Docket UM 2032 is inherently interconnected with docket UM 2000, and the two should
9 be viewed as a single proceeding for purposes of applying OAR 860-001-0330. If the PURPA
10 investigation had proceeded in docket UM 2000 with the phased approach that Staff originally
11 envisioned, there would be no question that Ms. Andrus participated. The conclusion should not
12 be different simply because the Commission decided to split the investigation into multiple
13 separate dockets. The Commission routinely opens separate dockets to further investigate
14 specific issues for purpose of administrative efficiency, and in many such instances the separate
15 investigation is effectively a continuation or branch of the first proceeding. The Commission
16 should interpret OAR 860-001-0330 broadly to encompass such circumstances in order to give
17 effect to the intent of the rule.

18 Ms. Andrus also participated in internal Staff discussions regarding closely related issues
19 in the ongoing CSP docket, UM 1930.²⁹ And Staff has indicated that it will look to the CSP

²⁴ Order No. 19-051, App’x A at 2, 11.

²⁵ Order No. 19-051 App’x A at 9.

²⁶ Docket UM 2000, July 22, 2019 Staff Report.

²⁷ Docket UM 2000, July 22, 2019 Staff Report at 1.

²⁸ Docket UM 2000, Order No. 19-254 at 1, App’x A at 1 (July 31, 2019).

²⁹ See NewSun’s Motion at 2; Andrus Declaration ¶ 11.

1 process as potentially informative in its network upgrade investigation.³⁰ In the CSP docket,
2 Staff initially recommended that CSP QFs be allowed to interconnect with Energy Resource
3 Interconnection Service (ERIS) and that the costs of network upgrades be allocated to
4 transmission customers, rather than to the QF.³¹ Whether QFs should be permitted to obtain
5 ERIS and how network upgrade costs for QFs should be allocated are *the very same questions*
6 *currently being examined in docket UM 2032*.³² It would undermine the intent of OAR 860-
7 001-0330 to allow a former Staff person to testify for a private client on the very same policy
8 questions that person consulted on as Staff simply because the same questions are presented
9 under a different docket number.

10 Having established that dockets UM 2032, UM 2000, and UM 1930 should be viewed as
11 the same proceeding for purposes of OAR 860-001-0330, there can be no doubt that Ms. Andrus
12 took an active part for Staff in this proceeding. In its prior decision applying OAR 860-001-
13 0330, the Commission found that the former employee was actively involved on the
14 Commission's behalf because he was Staff's lead policy witness on cost of capital issues, in
15 which role he attended Staff meetings, initiated and reviewed data requests, advised other Staff
16 members, and developed a memorandum used in the dockets in which he later sought to appear
17 on behalf of another party.³³ Here, Ms. Andrus was the principal Staff person on PURPA matters
18 for six years.³⁴ In that role, she assisted in developing the recommendation to investigate

³⁰ Docket UM 2000, July 22, 2019 Staff Report at 3.

³¹ *In the Matter of Public Utility Commission of Oregon, Community Solar Program Implementation*, Docket UM 1930, Staff's Draft Proposal for Community Solar Interconnection at 13 (June 19, 2019).

³² Docket UM 2032, ALJ Ruling Adopting Issues List at 2 (May 22, 2020) ("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?").

³³ Order No. 01-249 at 5.

³⁴ NewSun/200, Andrus/1.

1 network upgrade costs for QFs that eventually resulted in this docket, and she participated in
2 internal discussions regarding interconnection issues in the CSP, which involved the same issues
3 currently under investigation in this docket.³⁵ Because of her prior active participation in closely
4 related dockets, the Joint Utilities are concerned that Ms. Andrus’s appearance in this docket on
5 behalf of NewSun is not in the public interest and would cast doubt on the integrity and perceived
6 fairness of the Commission’s process.³⁶

7 **B. Application of the Commission’s four factors suggests that Ms. Andrus’s**
8 **participation on behalf of NewSun would give the perception of impropriety.**

9 The first factor the Commission applies when determining whether a former employee who
10 actively participated on behalf of the Commission should be permitted to testify on behalf of
11 another party is the nature of the former employee’s prior role.³⁷ Ms. Andrus was a Staff member
12 for eight years and was the “*principal* Staff on OPUC cases involving [PURPA] policies and
13 regulations” for six years.³⁸ The Commission previously found that the primary Staff expert on
14 cost of capital issues held a “substantial” role at the Commission.³⁹

15 The second factor looks to the type of proceeding.⁴⁰ Docket UM 2032 is a significant
16 contested case proceeding that involves highly contentious issues regarding the rights and
17 obligations of all three Oregon investor-owned electric utilities and all QFs. The outcome of this
18 case could also have potentially significant and long-lasting impacts on retail customers; the
19 network upgrade costs at issue could be hundreds of millions of dollars or more.⁴¹ The

³⁵ Andrus Declaration ¶ 11.

³⁶ See Order No. 01-249 at 6.

³⁷ Order No. 01-249 at 5.

³⁸ NewSun/200, Andrus/1 (emphasis added).

³⁹ Order No. 01-249 at 5-6.

⁴⁰ Order No. 01-249 at 5.

⁴¹ See Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/20 & n.25.

1 Commission previously found that a case involving highly contested issues, the value of which
2 issues exceeded \$100 million, was a significant proceeding.⁴²

3 The third factor is the length of time that has passed since the former employee left.⁴³ Here,
4 less than one year passed between the time that Ms. Andrus left Staff and when she filed
5 testimony on behalf of NewSun. While this is longer than the three weeks that the Commission
6 previously found gave rise to an appearance of impropriety,⁴⁴ it is not sufficiently long to erase
7 the implication that Ms. Andrus may still have information or relationships from her time at Staff
8 that could influence her participation, or the Commission's decision-making, in this case.⁴⁵ This
9 is particularly true when the intertwined dockets at issue—UM 1930 and UM 2000—are still
10 open and active.

11 The fourth factor is the agreement or disagreement of other parties.⁴⁶ As explained in this
12 response, the Joint Utilities have concerns regarding the perception of Ms. Andrus filing
13 testimony in this docket on behalf of NewSun that is expressly based on her experience as a Staff
14 person. In sum, application of the Commission's factors weighs against granting NewSun's
15 motion.

16 To be clear, denying NewSun's motion does not preclude Ms. Andrus from consulting with
17 NewSun or others regarding the issues raised in docket UM 2032 or appearing as a witness on
18 these issues in another forum—both activities that are not addressed in OAR 860-001-0330.
19 Denying the motion simply precludes Ms. Andrus from appearing as a witness in this docket and

⁴² Order No. 01-249 at 6.

⁴³ Order No. 01-249 at 5.

⁴⁴ Order No. 01-249 at 6.

⁴⁵ See Order No. 01-249 at 3.

⁴⁶ Order No. 01-249 at 5.

1 relying on her former position and work with Staff on this and closely related dockets to gain
2 credibility.

3 **C. The Commission’s intervenor funding decision is irrelevant to this motion.**

4 Finally, NewSun asserts that it is participating in this docket in part because the
5 Interconnection Customer Coalition was denied intervenor funding and argues that Ms. Andrus
6 should be allowed to appear on its behalf to “help allow a balanced perspective where intervenor
7 funding has been denied.”⁴⁷ The Joint Utilities do not understand the relationship between the
8 denial of intervenor funding and the present motion regarding Ms. Andrus’s participation.
9 Indeed, the Joint Utilities are not aware of any nexus between the two events or of any reason
10 why the intervenor funding decision should have any bearing on Ms. Andrus’s participation in
11 this docket. To the extent NewSun is suggesting that Ms. Andrus should be allowed to use her
12 Staff knowledge and expertise on its behalf because NewSun was disadvantaged by the denial
13 of intervenor funding, the Joint Utilities strongly disagree with both the premise and substance
14 of this argument. The Joint Utilities note that NewSun’s presentation of testimony by three
15 expert witnesses in this docket suggests an ability to robustly participate, despite the denial of
16 intervenor funding.

IV. CONCLUSION

17 While the Joint Utilities defers to the Commission to apply OAR 860-001-0330 in this
18 case, they are concerned that allowing Ms. Andrus to file testimony in this docket would lead to
19 the appearance of impropriety, thereby damaging the perception of integrity and fairness in the
20 Commission process. The Joint Utilities respectfully request that the Commission offer clear

⁴⁷ NewSun’s Motion at 3 and 5.

1 guidance for parties to help avoid such concerns in the future.

DATED: November 24, 2020.

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