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December 23, 2021

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

Attn: Filing Center

**RE: LC 77—PacifiCorp's Objection to NewSun Energy's Designation of Qualified  
Persons**

PacifiCorp d/b/a Pacific Power encloses for filing its Objection to NewSun Energy's Designation of Qualified Persons 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, d/b/a PACIFIC POWER,  
2021 Integrated Resource Plan

PACIFICORP’S OBJECTION TO  
NEWSUN ENERGY’S DESIGNATION  
OF QUALIFIED PERSONS

Under Section 15 of the General Protective Order adopted in Order 21-271 (General Protective Order) in the above captioned proceeding, PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) objects to NewSun Energy’s (NewSun) request to access confidential information and objects to the designation of the following individuals as qualified persons: Jacob H. Stephens, Marie Barlow, Leslie Schauer, and Brittany Andrus.

On December 6, 2021, NewSun filed signatory pages under the General Protective Order in docket LC 77 for its Chief Executive Officer, Mr. Stephens; In-House Counsel, Policy & Regulatory Affairs, Ms. Barlow; executive assistant, Ms. Schauer; and its consultant, Ms. Andrus.<sup>1</sup> PacifiCorp objects to the designation of these qualified persons under the General Protective Order as they either are employees of a developer of energy resources or are a consultant representing a developer. Disclosure of the protected commercially sensitive information would put PacifiCorp and its customers at a significant commercial disadvantage and would violate commitments made to third-party developers in previous request for proposals (RFPs) for energy resources to maintain the confidentiality of certain information from competitors.

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<sup>1</sup> See Attachment A to this Objection.

PacifiCorp respectfully requests that the Public Utility Commission of Oregon (Commission) deny access of confidential commercially sensitive information to NewSun representatives and its consultant.

## I. BACKGROUND

On September 1, 2021, PacifiCorp filed its 2021 IRP in docket LC 77. The Company provided public and confidential workpapers supporting its 2021 IRP. The confidential workpapers were contained on the 2021 IRP confidential data disc. Only parties that executed the General Protective Order were provided the confidential data disc.

On December 6, 2021, NewSun filed signatory pages for the General Protective Order in docket LC 77 as explained above. The filing of the signatory pages was followed by an email from NewSun counsel to PacifiCorp counsel asking for the 2021 IRP confidential data disc and instructions on where on the disc NewSun could locate certain information that was discussed in a workshop held that day in docket UM 2011,<sup>2</sup> the Commission's investigation into capacity. Following internal discussions at PacifiCorp regarding the appropriateness of providing a developer, such as NewSun, and/or its consultant, the 2021 IRP confidential data disc and providing information relevant to docket UM 2011 in docket LC 77, PacifiCorp requested that NewSun withdraw its signatory pages in docket LC 77 and PacifiCorp would provide the necessary information in docket UM 2011 at the appropriate time subject to any necessary protective orders that would need to be filed. PacifiCorp also discussed the possibility of redacting the confidential data disc. Acknowledging that it is appropriate to receive relevant information for docket UM 2011 in docket UM 2011, NewSun stated that for it to participate meaningfully in docket LC 77, it

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<sup>2</sup> *In the Matter of Public Utility Commission of Oregon, General Capacity Investigation*, Docket No. 2011.

would still need access to the confidential data disc and, if there are restrictions on access, it would like those to be narrowly defined. PacifiCorp notes however, NewSun did not file written comments to the 2021 IRP on December 3, 2021 as set for in the proceeding’s schedule. In a good faith effort, PacifiCorp evaluated the information contained on the 2021 IRP confidential data disc and determined that it would be overly burdensome to adequately scrub the information on the confidential data disc, through redaction and aggregation, in a way to provide the data disc, to a developer such as NewSun.

**II. INFORMATION CONTAINED ON THE 2021 IRP CONFIDENTIAL DATA DISC**

The information contained in the 2021 IRP confidential data disc includes project-specific information related to final shortlist bids acknowledged in the Company’s recently concluded 2020AS RFP<sup>3</sup> and previous Company procurements. This includes cost and operational data for each non-QF PPA and owned asset. Table 1 below summarizes the data at issue for each group of these resources.

**Table 1: Resource Groups and Information**

<u>Resource Group</u>	<u>Information at Issue</u>
RFP bid	IRP inputs include project-specific prices, 8760 capacity factors, and other operating characteristics. IRP outputs include cost and volume.
Non-QF PPAs	IRP inputs include project-specific prices, 8760 capacity factors, and other operating characteristics. IRP outputs include volume.
Owned Assets	IRP inputs include project-specific 8760 capacity factors and other operating characteristics. IRP outputs include volume.

<sup>3</sup> *In the Matter of PacifiCorp, dba Pacific Power, Application for Approval of 2020 All-Source Request for Proposal*, Docket No. UM 2059, Order No. 21-437 (Nov. 24, 2021).

The 2021 IRP confidential data disc contains in excess of 1,500 files. Files related to the preferred portfolio, long-term studies, medium-term studies, short-term studies, PLEXOS inputs, input assumptions, and IRP chapters and appendices would all need to be reviewed and scrubbed of the information contained in Table 1 above. Further, the information often occurs in multiple instances in each file.

### **III. PROVISION OF THE 2021 IRP CONFIDENTIAL DATA DISC TO NEWSUN WOULD BE HARMFUL TO PACIFICORP AND ITS CUSTOMERS**

The information contained on the 2021 IRP confidential data disc if provided to a developer of energy resources that bids into the Company's RFP would provide that developer an unfair advantage in an RFP. It would also violate the Company's commitment to third-party developers in prior RFPs to maintain confidentiality of certain information from competitors.

The information described in Section II of this objection is commercially sensitive information that would give NewSun an unfair advantage over other developers participating in the Company's current 2022AS RFP<sup>4</sup> and future RFPs. Specifically, with information regarding price, capacity factors, other operating characteristics, cost, and volume of its competitors' projects, NewSun would have unfair access to a competitor's project development information potentially impacting their development efforts (e.g. land procurement and/or leasing). Further, it could result in a lack of confidence of the Company's ability to maintain the confidential nature of commercially sensitive information that would have a chilling effect on participation in the Company's RFPs, not only harming

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<sup>4</sup> *In the Matter of PacifiCorp, dba Pacific Power, Application for Approval of 2022 All-Source Request for Proposal*, Docket No. UM 2193.

PacifiCorp's competitive bidding process but also eventually the competitiveness of resources selected for customers.

With respect to third-party developers of projects from the Company's RFPs, PacifiCorp represents that it will attempt to maintain the confidentiality of all bids submitted, to the extent consistent with law or regulatory order. As part of PacifiCorp's current RFP requests, bidders are responsible to clearly indicate in its bid proposals what information it deems to be confidential and subject to the terms of the executed confidentiality agreement. Bidders may not mark an entire proposal as confidential, but bidders must mark specific information on individual pages to be confidential to receive confidential treatment for that information under the terms of the executed confidentiality agreement.

In accordance with Paragraph 15 of the General Protective Order, PacifiCorp attempted to resolve this issue with NewSun prior to filing its objection. However, the alternative of scrubbing the data from the 2021 IRP confidential data disc is unduly burdensome. The Company would need to review over 1,500 files to determine what information would need to be redacted or aggregated so as to scrub the commercially sensitive information.

This appears to be the first instance in one of the Company's IRP proceedings where a developer has sought such access to confidential data. In fact, the Company is not aware of an instance where a developer has been granted such access to an electric utility's confidential IRP data. If initially allowed, signatory pages were subsequently withdrawn. For example, in Portland General Electric's (PGE) 2016 IRP, Invenergy LLC initially filed signatory pages for the protective order but later withdrew its signatory pages noting it no

longer desired access to such information.<sup>5</sup> In that same proceeding, following discussions with PGE counsel, National Grid USA withdrew its signatory pages of the Protective Order.<sup>6</sup> Further, in docket 73, PGE initially objected to providing access to confidential information to a consultant engaged by the Northwest and Intermountain Power Producers Coalition (NIPPC), who at times represented industrial customers, electric service suppliers, and independent power producers, some of whom are PGE's competitors in the wholesale electric market.<sup>7</sup> In that instance, PGE and NIPPC were able to reach agreement on the parameters surrounding the consultant's access to confidential information. This proceeding differs from the circumstances in docket LC 73 and a developer and a consultant representing a developer are requesting access to confidential information.

Furthermore, over the last several IRP filings, parties have been able to participate meaningfully in the Company's IRP dockets without requesting access to confidential data.<sup>8</sup> Thus, not having access to such confidential data would not diminish NewSun's ability to meaningfully participate in docket LC 77, especially in light of the harmful impacts such access if granted could have on the Company's RFPs and its customers.

To the extent NewSun is seeking information in docket LC 77 for its participation in docket UM 2011, the Company has committed to provide analyses as discussed by

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<sup>5</sup> *In the Matter of Portland General Electric Company, 2016 Integrated Resource Plan*, Docket No. LC 66, Letter from Jeffery D. Jeep (Feb. 21, 2017). Initially, it appears signatories included: two Invenergy LLC employees (John W. Weil and Jasmine Ring), a consultant (Charles J. Black), and outside counsel (Jeffery D. Jeep). See signatory pages filed on Dec. 22, 2016. While Invenergy LLC filed comments that did not contain confidential information, it is unclear from the record whether it accessed confidential information to prepare those comments.

<sup>6</sup> Docket LC 66, Letter from Chris Zentz (Mar. 6, 2017).

<sup>7</sup> *In the Matter of Portland General Electric Company, 2019 Integrated Resource Plan*, Docket No. LC 73, Ruling at 1 (June 28, 2019).

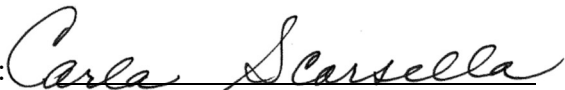
<sup>8</sup> For example, Swan Lake North Hydro LLC has participated in the last two PacifiCorp IRP proceedings, including submitting of comments, without signing the protective order and accessing confidential information. See *In the Matter of PacifiCorp, dba Pacific Power, 2019 Integrated Resource Plan*, Docket No. LC 70 and *In the Matter of PacifiCorp, 2021 Integrated Resource Plan*, Docket No. LC 77.

stakeholders in that proceeding at the end of January 2022. The Company will also continue to work with NewSun and all stakeholders in that proceeding to provide necessary information to allow them to meaningfully participate. The Company anticipates that much of the data to be provided in docket UM 2011 will be non-confidential and thus available to all stakeholders. Additional supporting details and assumptions will need to be presented in a manner that will scrub commercially sensitive information and the Company will need to make the appropriate protective order filings to protect confidential and highly confidential information and will ensure this process is in place for all stakeholders including NewSun. However, providing access to confidential information in docket LC 77 is not the appropriate mechanism for NewSun to participate meaningfully in docket UM 2011.

#### IV. CONCLUSION

For these reasons, given the unreasonable commercial risk and potential harm to its customers, PacifiCorp respectfully request that the Commission deny access to commercial sensitive information in the Company's 2021 IRP to NewSun representatives and its consultant.

Respectfully submitted this 23<sup>rd</sup> day of December 2021.

By: 

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