

**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 MOTION TO
ALLOW BRITTANY ANDRUS AS A
WITNESS

I. INTRODUCTION

Pursuant to OAR 860-001-0420 and OAR 860-001-0330(2), NewSun Energy LLC (“NewSun”) respectfully requests permission from the Oregon Public Utility Commission (the “Commission”) to allow Brittany Andrus to be a witness on its behalf in this case. While it is NewSun’s understanding that Ms. Andrus did not take an active part in this docket on the Commission’s behalf, NewSun makes this request out of an abundance of caution to the Commission since Ms. Andrus was previously on the service list on behalf of the Staff in the docket.

NewSun has conferred with the other Parties to this docket. The Northwest and Intermountain Power Producer’s Coalition, Renewable Energy Coalition and Community Renewable Energy Association support this motion. Staff has no objection to Ms. Andrus’ involvement in this docket as she was not involved in the docket except at the kick-off, which was prior to any substantive discussion or analysis by Staff on this issue. PacifiCorp and Portland General Electric Company had concerns but took no position on this motion as of the time of filing. Portland General Electric Company disputes that this motion is procedural in

nature. NewSun attempted to reach but has not heard back from the Alliance for Western Energy Consumers, and Idaho Power Company on their positions on this motion.

II. BACKGROUND

This docket was opened on September 9, 2019. Brittany Andrus was employed by Staff at that time, but to her knowledge never took an active role in this docket and was never the principal staff person on this docket.¹ Ms. Andrus left the PUC effective November 15, 2019.² At that time, the only activities in the docket was the filing of four petitions to intervene by the Community Renewable Energy Association, PacifiCorp, the Renewable Energy Coalition, and Portland General Electric Company. Other interconnection-related activities Ms. Andrus participated in while on Staff included Docket No. UM 2000, which led to the opening of this docket and other QF dockets.³ She also led the Docket No. UM 2001 interconnection data transparency effort, and given that interconnection issues came up in Docket No. UM 1930, the Community Solar docket, she was involved in internal discussions with other staff on interconnection issues within the Energy Resource and Planning group.⁴ Commission Staff removed Ms. Andrus from the service list on January 8, 2020. In Ms. Andrus' role at Commission Staff, she did not draft or issue any data requests or take any part in preparing any testimony in this docket.⁵

On May 22, 2020, ALJ Kirkpatrick set the issues list for this docket⁶ and issued a prehearing conference memorandum on July 1, 2020 noting that at the prehearing conference on June 29, 2020 the “question was asked about whether the adopted issues should be addressed

¹ Attachment A, Declaration of Brittany Andrus.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Ruling (May 22, 2020).

using a contested case process, or with comments alone,” and the ALJ “was persuaded that a contested case process should be used.”⁷ The Joint Utilities filed direct testimony in this docket on August 8, 2020. NewSun intervened in this docket on October 14, 2020. On October 30, 2020, Commission Staff, the Interconnection Customer Coalition, and NewSun filed response testimony, including the testimony of Brittany Andrus on behalf of NewSun.

NewSun intervened in this docket to ensure that its interests are adequately represented and in part because the Interconnection Customer Coalition sought but was denied intervenor funding. While the Commission found that the Interconnection Customer Coalition was eligible for intervenor funding, the only thing leading to the denial of it was the fact that there was no intervenor funding agreement with the utilities.⁸ NewSun’s ability to adequately protect its interests in this docket depends on its ability to secure qualified experts, like Ms. Andrus. Finally, allowing Ms. Andrus to appear as a witness on behalf of NewSun in this docket is in the public interest because Ms. Andrus did not substantially participate in the docket on behalf of Staff and it will help allow a balanced perspective where intervenor funding has been denied to the Interconnection Customer Coalition.

III. DISCUSSION

OAR 860-001-0330 permits former Commission employees to appear as a witness on behalf of other parties in contested case proceedings in which the former employee took an active part on the Commission’s behalf, as long as the Commission grants written permission. The purpose of this rule is in part to protect the integrity and perceived fairness of Commission

⁷ Prehearing Conference Memorandum (July 1, 2020).

⁸ Order No. 20-180 (June 3, 2020).

proceedings.⁹ But if a former employee took no “active part” in the contested case, the rule permits that employee to testify in that contested case without Commission permission.

Here, Ms. Andrus is a former Commission employee who was on the service list for this docket prior to the time any contested case notices had been issued, yet it is NewSun’s understanding that she did not take an active part in this docket on the Commission’s behalf prior to her departure from Commission Staff. As noted above, Ms. Andrus was not the lead staff person on this docket and the only events that occurred in the docket while she was with staff included four motions to intervene. The docket had essentially only just been established, and there had not been substantial activity in the docket or any contested cases notices. In fact, it was not until May and July of 2020 when the docket really started move forward substantively. Finally, even though Ms. Andrus’ Staff email remained on the service list following her departure from Staff until January 8, 2020, this sort of “zombie” participation is not active participation in the docket. However, given that Ms. Andrus was on the service list and participated in other related dockets, NewSun seeks Commission approval out of an abundance of caution.

The Commission can still protect the integrity and perceived fairness of its proceedings and allow Ms. Andrus to submit testimony on behalf of NewSun in this docket. Ms. Andrus’ did not substantially participate on behalf of Staff in this docket. This docket was in its infancy when she was listed on the service list, and it has been nearly a year since her departure from Staff. Therefore, this case is unlike other instances where a Commission Staff person was

⁹ *In re Portland Gen. Elec. Co. Proposal to Restructure and Reprice Its Services in Accordance With the Provisions of SB 1149 (UE 115) In re PacifiCorp’s Proposal to Restructure and Reprice Its Services in Accordance With the Provisions of SB 1149 (UE 116)*, Docket Nos. UE 115 and UE 116, Order 01-249 at 5 (Nov. 16, 2020).

substantially and actively involved in drafting testimony in a docket, and little time had passed before the person left the Commission and served as a witness for another party in the same case. As such, the Commission can still protect the integrity and perceived fairness of Commission proceedings and allow NewSun to present Ms. Andrus testimony in this docket.

Finally, it is in the public interest to allow a qualified expert like Ms. Andrus to be retained as an expert in this docket. It is specifically important in this docket because the Interconnection Customer Coalition was denied intervenor funding, even after being found to be eligible for it, and NewSun intervened partly in response to that decision, but also to help ensure that its interests would be adequately represented.

IV. CONCLUSION

NewSun respectfully requests that the Commission allow Ms. Andrus to be witness on its behalf on this case.

Dated this 17th day of November, 2020.

Respectfully submitted,

NewSun Energy LLC



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In the Matter of

PUBLIC UTILITY COMMISSION OF
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DECLARATION OF BRITTANY ANDRUS IN
SUPPORT OF NEWSUN ENERGY LLC'S
MOTION TO ALLOW BRITTANY ANDRUS
AS A WITNESS

I, Brittany Andrus, declare under the penalty of perjury as follows:

1. This declaration is based on my personal knowledge and, if called to testify to the following facts, I could and would competently do so. I submit his declaration in support of NewSun Energy LLC's Motion to Allow Brittany Andrus (myself) as a Witness.

2. This docket was opened on September 9, 2019.

3. I was employed with Commission Staff until November 15, 2019.

4. I was listed on the service list for this docket as a Commission Staff person.

5. Following my departure from the Commission, I did not receive any emails as a result of being on the service list because my OPUC email address was terminated upon my departure from the Commission.

6. The only activities that had occurred in this docket at the time of my departure from Commission Staff included four petitions to intervene filed by the Community Renewable Energy Association, PacifiCorp, the Renewable Energy Coalition, and Portland General Electric Company

7. I did not draft or issue any data requests or take any part in preparing any testimony in this docket while employed as Commission Staff.

8. I was engaged in other interconnection-related dockets while employed as Commission Staff.

9. While employed as Commission Staff, I participated Docket No. UM 2000, which led to the opening of this docket and other QF dockets.


10. While employed as Commission Staff, I also led the Docket No. UM 2001 interconnection data transparency effort.

11. While employed as Commission Staff, I was involved in internal discussions with other staff on interconnection issues within the Energy Resource and Planning group, including in regards to Docket No. UM 1930, the Community Solar docket.

12. In my capacity as Commission Staff in those proceedings, I gained substantial expertise in the operations of the electric transmission and distribution systems in Oregon, including how interconnections with new generators may affect both the operation of those systems and the costs that may be imposed on consumers and others as a result of interconnections. However, I had no access to protected Commission information that would compromise either my ability to testify as an expert on behalf of NewSun in this docket or that would compromise the Commission's deliberative process.

13. I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for sue as evidence in the Oregon Public Utility Commission and are subject to penalty of perjury.

DATED this 17th day of November, 2020.



Brittany Andrus