

**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 Qualifying Facilities.

ORDER

DISPOSITION: MOTION TO COMPEL DENIED; REMAINING PROCEDURAL
SCHEDULE ESTABLISHED

I. OVERVIEW

This order denies the motion to compel filed by NewSun Energy LLC (NewSun) as overly broad in scope under OAR 860-001-0500(2), and not commensurate with the current needs of the case pursuant to OAR 860-001-0500(1). A prehearing conference will be held to establish the remaining procedural schedule.

II. BACKGROUND

A ruling dated May 22, 2020, divided these proceedings into two phases, with the issues identified for each phase. Issues addressed in the first phase 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 similar to ERIS?¹

The ruling noted that a second phase may be necessary, depending on resolution of the issues in the first phase, to address more detailed implementation issues. Staff identified possible questions to address in a second phase, but the list is not comprehensive.

¹ Administrative Law Judge Ruling (May 22, 2020).

NewSun was granted intervention in these proceedings on October 28, 2020, after these proceedings were already underway. Revised direct testimony had just been filed by Portland General Electric Company, PacifiCorp dba Pacific Power, and Idaho Power Company (collectively the Joint Utilities) on October 19, 2020. Staff filed response testimony on October 30, 2020, as did NewSun and the Interconnection Customer Coalition (which includes the Renewable Energy Coalition, the Northwest & Intermountain Power Producers Coalition, and the Community Renewable Energy Association). All parties other than NewSun filed a first round of reply testimony on December 11, 2020. Before a second round of reply testimony was due, NewSun filed a motion to extend the time to file such and to adjust the remaining schedule accordingly. On January 21, 2021, based on NewSun's advisement that it intended to file a motion to compel regarding outstanding data requests, the procedural schedule was temporarily suspended.

III. MOTION TO COMPEL

On May 28, 2021, NewSun filed the motion to compel, and suspension of the procedural schedule was subsequently lifted. On June 28, 2021, NIPPC, the Coalition, and CREA filed a response supporting NewSun's motion to compel. The Joint Utilities also filed a response. On July 20, 2021, NewSun filed a reply.

The data requests at issue are identified by the parties, as follows:

Data Requests	NewSun's Description	Joint Utilities' Description
PGE DR 9 PAC DR 10 IPC DR 8	DRs seeking basic information on upgrades to the transmission system related to both interconnection-driven network upgrades and upgrades caused by other system needs (<i>i.e.</i> , load service) and including what benefits each upgrade offers the system.	System Benefits DRs
PGE DR 10 PAC DR 11 IPC DR 9	DRs that seek identification of QF-driven network upgrades that provided no benefit to the system.	No System Benefits DRs
PAC DR 19	DRs seeking information about the Prineville area of PacifiCorp's system where there is substantial interaction between	Prineville Load-Service Study DR

	upgrades made pursuant to both load service needs, and interconnection generator needs.	
PGE DR 6 7, 19 PAC DR 6, 8, 24 IPC DR 5, 7, 18	DRs seeking to validate practical differences and/or similarities between QFs and non-QFs in terms of their power purchase agreements (“PPAs”), interconnections, and transmission arrangements.	

A. Legal Standard

OAR 860-001-0450 provides that relevant evidence tends to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence and is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs, but allows for exclusion if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. OAR 860-001-0500 provides that discovery that is unreasonably cumulative, duplicative, burdensome, or overly broad is not allowed, and that a party is not required to develop information or prepare a study unless that capability is unique to that party. Discovery must also be commensurate with the needs of the case, the resources available to the parties, and the importance of the issues involved pursuant to OAR 860-001-0500(1). OAR 860-001-0500(5) provides that parties should make every effort to engage in cooperative informal discovery and to resolve disputes themselves, including informing one another of a probable dispute as soon as practicable.

B. Overview of Parties’ Positions

1. *NewSun*

NewSun’s motion to compel concerns the data requests identified above, seeking information NewSun contends would facilitate the development of a better understanding of who benefits from network upgrades in order to answer the first question in the first phase of these proceedings. A decision cannot be made that users and beneficiaries other than the QF with a project that requires network upgrades should help pay for the network upgrades without understanding whether and how the other users and beneficiaries *benefit* from such upgrades, NewSun explains. NewSun further indicates that although the parties agree that the Federal Energy Regulatory Commission (FERC) presumes that as all users and beneficiaries benefit from network upgrades, all should also pay, but because the Joint Utilities claim this is a policy decision not based on facts, they discount the relevance here. The discovery requests at issue would allow a decision

in this docket about who benefits from network upgrades to be based on facts, NewSun argues, and should be allowed for this fundamental reason.

NewSun’s data requests seek to “illustrate the basic, intrinsic contradiction of the Joint Utilities’ positions: [t]hat *identical* infrastructural facilities—substations, power lines, disconnect switches, etc.—in two analogous circumstances, identical save the attachment of the words ‘qualifying 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 *.*.*. 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).”²

Significant discussion occurred among NewSun and the Joint Utilities regarding discovery, and NewSun represents that the scope of the motion to compel is reduced from what was initially anticipated. Fundamentally, the parties disagree about how much discovery is appropriate in the first phase, NewSun indicates. NewSun explains with a conceptual example, “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?”³

2. *Interconnection Customer Coalition’s Position*

The Interconnection Customer Coalition supports NewSun’s motion to compel. They argue that the requested discovery response from the Joint Utilities seeks information about the beneficiaries of transmission system upgrades that is relevant to the first issue regarding who should pay for such upgrades. “If NewSun and the Interconnection Customer Coalition can present evidence that other users of the transmission system besides the interconnecting QF commonly benefit from network upgrades, the Commission will be more likely to conclude in Phase I of this docket that the interconnecting QF should not be solely responsible for funding such upgrades.”⁴ The Interconnection Customer Coalition argues that it is inappropriate to delay the requested recovery until a second phase that may not happen unless a determination is made that customers and not just QFs benefit from network upgrades made to interconnect QFs. As the Joint Utilities wanted these proceedings to be contested in nature, the Interconnection Customer Coalition observes, they should not protest responding to discovery questions on the basis that the issues are primarily policy in nature.

3. *Joint Utilities*

Despite the requirement, and NewSun’s affirmation, that NewSun’s late intervention in the docket would not delay the proceedings, the Joint Utilities assert that the proceedings have been very delayed. The Joint Utilities explain: “New Sun issued an initial discovery request to each of the Joint Utilities on January 6, 2021, only 16 days before

² NewSun Energy LLC’s Reply in Support of Motion to Compel Discover at 2-3.

³ *Id.* at 3.

⁴ NIPPC, REC, and CREA’s Response In Support of NewSun Energy’s Motion to Compel at 3-4.

parties were scheduled to file a final round of testimony; this initial discovery request directed 47 data requests to PacifiCorp, 46 to PGE, and 40 to Idaho Power, with some of the individual requests having as many as 16 subparts.”⁵ Plans to object or seek clarification were communicated to NewSun, and the Joint Utilities and NewSun initially conferred on January 19, 2021. NewSun filed a motion the same day seeking additional time to file testimony. The Joint Utilities provided data request responses on January 20, 2021. On January 21, 2021, NewSun provided notice of an intention to file a motion to compel, and the procedural schedule was suspended the same day pending resolution of the impending motion. NewSun and the Joint Utilities conferred during February, and the Joint Utilities provided supplemental information in March, they indicate. On May 11, 2021, the Joint Utilities indicate that NewSun emailed several clarifying questions, and on May 28, 2021, NewSun filed the motion to compel.

The Joint Utilities assert that the System Benefits data requests are onerous, difficult and even impossible to answer, or outside the docket’s scope. They explain:

The data requests effectively ask the Joint Utilities to perform detailed audits of their historical transmission system investments going back nearly a decade; to provide NewSun with more detail on those transmission system investments than the Commission requires in order to evaluate their prudence in a rate case; and to conduct detailed studies on individual transmission system investments that, in some cases, the utilities have never performed.⁶

Another data request directed to PacifiCorp about one load area would require an audit of the company’s historical transmission investments made for load service, not generator interconnection. The Joint Utilities argue that such an effort would be outside the docket’s scope. Regarding NewSun’s No System Benefit data requests, each of the Joint Utilities responded essentially the same: no Network Upgrades funded by QFs have provided transmission system benefits.

Nevertheless, despite objections and obstacles, the Joint Utilities provided NewSun with extensive responses that include all information reasonable for the scope of this phase, they assert. The Joint Utilities indicate that further development of issues regarding systems benefits requires Commission guidance and should be done in the second phase.

IV. RESOLUTION

Before NewSun intervened in these proceedings, the proceedings were divided into two phases. As identified above, the first phase was scoped to address two questions, with the pertinent one now being, “[w]ho should be required to pay for Network Upgrades necessary to interconnect the QF to the host utility?” This question requires some evidence and elucidation to evaluate, but the scoping ruling essentially designated it as a

⁵ Joint Utilities’ Response to NewSun’s Motion to Compel Discovery at 3, citing Attachment D, NewSun’s Data Requests to the Joint Utilities.

⁶ *Id.* at 7.

general policy question to be initially addressed in this first phase, with a second phase available to address associated issues that are more detailed, technical, and nuanced.

Thus, we review NewSun's motion to compel in the context of the information needed to generally evaluate who should pay for the network upgrades necessary to interconnect a QF and a utility. In this context, we find the data requests at issue in NewSun's motion to compel to be overly broad in their scope pursuant to OAR 860-001-0500(2), and not commensurate with the current needs of the case under OAR 860-001-0500(1); we deny NewSun's motion to compel in its entirety for these reasons. We make these conclusions based on the testimony already submitted in this proceeding. We conclude that pending submission of a second round of reply testimony from the parties, including NewSun, a hearing (should parties desire one), and briefing, we will have sufficient information to answer the first question in the first phase of these proceeding.

We will then also have an opportunity to determine further issues to address, if appropriate, in a second phase and to properly define its scope. To the extent that issues raised by NewSun's motion to compel are deemed relevant to the second phase's defined scope, they will be addressed then. We note that this staging of the issues is also appropriate with regard to the late intervention of NewSun, and the associated pledges that NewSun's participation would not unreasonably broaden the issues or burden the record.

When these proceedings were stayed pending NewSun's motion to compel, a second round of simultaneous reply testimony was scheduled to occur, followed by the filing of prehearing briefs, cross-examination statements and exhibits, a hearing, and two rounds of simultaneous post-hearing briefs. A prehearing conference will be scheduled by the administrative law judge to reschedule these events.

Made, entered, and effective Oct 22 2021.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner

