

**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.

ORDER

DISPOSITION: ORDER NO. 21-343 CLARIFIED

I. INTRODUCTION

Order No. 21-343, entered on October 22, 2021, denied the motion to compel filed by NewSun Energy LLC (NewSun).¹ On December 21, 2021, NewSun filed a motion for clarification or reconsideration of Order No. 21-343. NewSun asks for clarification regarding whether Order No. 21-343 is a final order, as defined by ORS 183.310(6)(b). If it is a final order, NewSun asks for reconsideration. NewSun represents that it conferred with the other parties: 1) the Community Renewable Energy Association, Renewable Energy Coalition, and Northwest and Intermountain Power Producers Coalition support this motion; 2) Obsidian Renewables does not object; 3) the Alliance for Western Energy Consumers takes no position; 4) Portland General Electric Company, PacifiCorp, dba Pacific Power, and Idaho Power Company (the Joint Utilities) do not take a position but reserve the right to provide comments; and 5) Staff did not respond. On January 5, 2022, the Joint Utilities filed a response to NewSun's motion.

II. NEWSUN'S MOTION AND JOINT UTILITIES' RESPONSE

This docket is being handled as a contested case, which means that parties have discovery rights and decisions are made based on evidence in the record, NewSun asserts. Order No. 21-343 denied a motion to compel utility data about benefits to the transmission system from transmission upgrades. NewSun asks for an order clarifying that Order No. 21-343 is not a "final order" that "would preclude further agency consideration of the subject matter."² NewSun indicates that the order's determination of a procedural issue created "uncertainty as to whether the PUC views it as simply an interim ruling supervising and controlling discovery or whether the PUC views it as a final

¹ NewSun Motion to Compel (May 28, 2021).

² *Id.* at 3, citing ORS 183.310(6)(b).

determination denying or terminating NewSun’s participation in this proceeding (at least in part).”³

Order No. 21-343 is a preliminary step in reaching a later, ultimate decision on the issues in this docket, the Joint Utilities argue, as it only addresses procedural matters such as confirming the scope and phasing of the investigation and enforcing discovery rules. NewSun remains a full party able to submit evidence and legal argument within the defined scope, the Joint Utilities advise. They further comment that as an administrative law judge could have issued a ruling on the matters addressed by Order No. 21-343, it is not a final order.

In the alternative, if Order No. 21-343 is deemed a final order, NewSun requests reconsideration. Good cause exists to reconsider Order No. 21-343, NewSun argues, on the basis that it is “erroneous and incomplete in that it does not clearly state that it is a final order and does not articulate its findings of fact and conclusions of law as to each of NewSun’s data requests at issue in the motion to compel.”⁴

The Joint Utilities respond that NewSun provides insufficient justification for reconsideration. They point out that NewSun’s motion to compel discussed data requests in broad categories rather than individually. In any case, since Order No. 21-343 is not a final order, NewSun’s alternative request for reconsideration need not be addressed, the Joint Utilities assert.

III. RESOLUTION

We clarify Order No. 21-343 to note that by taking up the matters raised in NewSun’s motion to compel, they were effectively certified to us by the administrative law judge. As resolution of a motion to compel is procedural in nature, Order No. 21-343 does not “preclude further agency consideration of the subject matter of the statement or declaration,” and is not, therefore, a final order.⁵ Although we denied NewSun’s motion to compel in its entirety—*i.e.*, as to each data request within each category identified by NewSun on the basis of being overly broad under OAR 860-001-0500(1) and not commensurate with current needs under OAR 860-001-0500(1) in context of our confirmation of the scope of the case’s phase one, we did not otherwise limit or constrain NewSun’s participation in either the first, or the (possible) second, phase of this docket. Indeed, we directed that establishment of a procedural schedule should not be further delayed so that all parties, including NewSun, would have the opportunity to present further evidence and argument within the scope of phase one.


³ *Id.* at 3.

⁴ *Id.* at 5.

⁵ *See* ORS 183.310(6)(b)(B).

NewSun requests reconsideration of Order No. 21-343 only if we identify it as a final order by statute. As we did not, we do not address the reconsideration arguments.

Made, entered, and effective Jan 12 2022.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner

