

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 427

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Renewable Resource Automatic
Adjustment Clause (Schedule 122)
(Clearwater Wind Project).

ORDER

DISPOSITION: ADMINISTRATIVE LAW JUDGE RULING AFFIRMED.

On August 9, 2024, NewSun Energy LLC filed a motion to certify the Administrative Law Judge's (ALJ) July 25, 2024 ruling in this proceeding. In particular, NewSun requests that the ALJ certify two questions to the Commission. The first is whether an answer should be compelled to its Data Request No. 43. The second is whether the list of employees who were assigned to the 2021 All-Source Request for Proposal (RFP) Team and Benchmark Team for the same RFP is properly designated as confidential under the General Protective Order. The ALJ finds good cause to certify these issues to the Commission. We affirm the ALJ's ruling on both counts.

I. DATA REQUEST NO. 43

Data Request No. 43 seeks:

[A]ll correspondence between PGE employees relating to the Clearwater project from 2018 to present.

The ALJ denied NewSun's motion to compel an answer to this data request, finding that the request is overbroad, and that the effort required to comply with this request would outweigh the likelihood that it would lead to the discovery of relevant evidence not produced in answer to another question.

NewSun argues in its motion for certification that the request is neither overly broad nor unduly burdensome. It notes that the Commission has identified UE 427 as the docket for

questions about the prudence of PGE’s selection of the Clearwater Project and that the needs of the case “demand a thorough inquiry into what, when, and with whom PGE was communicating about the Clearwater Project in the time period leading up to the selection of that benchmark resource.”¹

We deny NewSun’s motion. Our discovery standards state that “[d]iscovery must be commensurate with the needs of the case, the resources available to the parties, and the importance of the issues to which the discovery relates.”² We are not persuaded that requiring PGE to search all its communications for mention of the Clearwater Project is a use of resources commensurate with the needs of the case. While this is the docket to investigate prudence of the Clearwater Project, that does not mean that unlimited lengths are appropriate for that investigation. In this case, we think the discovery asked for by NewSun would lead to production of many irrelevant documents and, likely, relatively few documents that are not captured by other of NewSun’s requests. For instance, DR 5 asked for all correspondence between PGE and the IE or NextEra concerning Clearwater—this is more targeted to receive relevant information.

We emphasize that PGE does not appear blameless—it appears its discovery has been late and, in some cases, incomplete, which we do not condone. That fact may justify the ALJ intervening to ensure that discovery responses are answered fully and completely. However, it does not justify expanding the scope of discovery beyond what we would otherwise order.

II. CONFIDENTIALITY OF PGE EMPLOYEE NAMES

PGE produced the names and titles of employees on its Benchmark and RFP teams but designated that information as confidential under the General Protective Order. NewSun challenges the designation of that information as confidential, stating that the information is not protected under ORCP 36(C)(1) or the Oregon Public Records Law.

We affirm the ALJ’s decision. Under ordinary circumstances we may not deem the names of particular employees as confidential. However, we consider the circumstances of this case in determining the application of ORCP 36(C)(1), which allows the court to “make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” NewSun has not demonstrated a reason why its advocacy on the specific issues in this case would be advanced by making the names public, and instead has pointed primarily to the use of the names in future proceedings. Without a justification related specifically to our determination of

¹ NewSun Motion at 8.

² OAR 860-001-0500(1).

whether the Clearwater project is prudent, we are concerned about the consequences of making the names of employees public at this time. Publicly naming employees raises the possibility that their character may be publicly impugned or that they may otherwise be opened up to harassment. The end result is that we are not convinced that this information should be public at this time and ORCP 36(C)(1) gives us discretion to maintain confidentiality.

We may revisit this decision at the time of the next RFP or in a generic RFP policy docket and determine that it is important that Commission Staff and stakeholders be able to track publicly who is working on what team at what time. If protecting that information as confidential makes tracking difficult, then confidentiality may no longer be appropriate. But in this proceeding, we will not overturn the ALJ's determination that the information in question should be confidential.

III. ORDER

IT IS ORDERED that the Administrative Law Judge Ruling dated July 25, 2024, is affirmed.

Made, entered, and effective Aug 21 2024.



Megan W. Decker
Chair

Unavailable to sign

Letha Tawney
Commissioner



Les Perkins
Commissioner

