October 15, 2025

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
P.O. Box 1088
Salem, OR 97308-1088

RE: Docket No. AR 641
NewSun Energy's Module Scoping and Sequencing Comments

Pursuant to the Administrative Law Judge's ("ALJ") Memorandum dated September 8, 2025, NewSun Energy LLC ("NewSun") hereby respectfully submits these Comments in response to the questions posed and in preparation for the October 27, 2025 Workshop #1: Modules and Sequencing. NewSun responds to each of the questions.

Are there any subjects not covered by the existing Division 001 rules that should be discussed during one or more modules? For example, I have added potential new rules related to orders in other than contested cases under the Oregon Administrative Procedures Act ("APA").

Process and Content for Commission Orders

NewSun appreciates the inclusion of potential new rules for other than contested cases within Module 3. Given the additional note added to the question above, i.e., that these rules are to address orders in other than contested cases under the Oregon APA, NewSun understands this line item to address the issues presented in HB 2985, which was before the Oregon Legislature this last 2025 Legislative Session.[1] If that is the case, it should be noted that the issue presented by that bill is broader than orders in other than contested case proceedings.

There is a significant need to revisit how the Public Utilities Commission ("Commission") addresses and responds to stakeholder arguments and comments in **all** types of Commission proceedings (rulemaking, contested cases, other than contested cases, hybrid proceedings, declaratory rulings). Commission orders often leave issues raised and briefed by parties unaddressed or deferred until a future proceeding, leading to parties and stakeholders repeatedly bringing up their concerns in docket after docket. A more efficient process would be to consider and address a stakeholder concern the first time it is raised, establishing a precedent under the facts presented and helping to reduce the need to re-raise issues time and again unless there is a significant factual distinction or change of law.

This concern is illustrated by my presentation to the legislature on HB 2985 where I compare the Commission's process to that of the Federal Energy Regulatory Commission ("FERC") where FERC addresses each issue presented and how that impacted FERC's ultimate decision no matter

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[1] HB 2985, 83rd Or. Legislative Assembly, 2025 Regular Session (2025).

how small or insignificant the issue might seem.[2] My concerns were echoed in the testimony submitted on HB 2985 by other stakeholders who noted for example that in the land use context in Oregon, a decision can be overturned if all points of consideration raised are not addressed.[3] While the Commission often summarizes party positions and states its ultimate conclusions, one stakeholder flagged that what is more frustrating is "the failure to persuade the Commission . . . to cabin the PUC discretion one way or the other, but explicitly and on the merits so that arguments are not repeated over and over and interpretative rules are established."[4] One suggestion was raised to address this issue before reconsideration or appeal options are being contemplated by using the proposed order process outlined in the Oregon APA in ORS 183.464, a provision of the APA which the PUC is expressly exempted from.[5] Ultimately, and at a minimum the "PUC's procedural processes are ripe for review."[6]

As such, NewSun recommends that this item be expanded to address the Commission process for entering orders as well as the content of those orders. This issue is likely to present in multiple Modules as it could relate to the Module 2 case management topics and also spans across all Commission proceeding types including contested cases (Modules 2 and 3), rulemakings (Module 4), and could also be considered within the general and administrative requirements (Module 1).

Attorney General's Model Rules for Administrative Procedure

NewSun would like to pose the question of whether the Commission should consider adopting the Attorney General's Model Rules for Administrative Procedure[7] or at least using those to

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2 Marie Barlow, *Oregon Public Utility Commission – Administrative Procedure Act Reform Bill HB 2985,* Presentation to the House Committee on Climate, Energy, and Environment (Feb. 20, 2025) power point available https://olis.oregonlegislature.gov/liz/2025R1/Downloads/CommitteeMeetingDocument/291724; written testimony available https://olis.oregonlegislature.gov/liz/2025R1/Downloads/PublicTestimonyDocument/132882.

3 CREA Testimony in Support of HB-2985 (Feb. 19, 2925) available https://olis.oregonlegislature.gov/liz/2025R1/Downloads/PublicTestimonyDocument/132163.

4 Tonia L. Moro, Attorney at Law Testimony (Feb. 22, 2025) available https://olis.oregonlegislature.gov/liz/2025R1/Downloads/PublicTestimonyDocument/133270.

5 Fair Oregon Utility Rates Testimony (Feb. 20, 2025) available https://olis.oregonlegislature.gov/liz/2025R1/Downloads/PublicTestimonyDocument/133292.

6 Citizen's Utility Board, HB 2985 – CUB's Neutral Testimony (Feb. 22, 2025) available https://olis.oregonlegislature.gov/liz/2025R1/Downloads/PublicTestimonyDocument/133295.

7 Available online at https://www.doj.state.or.us/oregon-department-of-justice/client-resources/attorney-general-model-rules/.

inform the rules. The Oregon APA generally applies to all state agencies and the Commission noted in testimony to the legislature that even though it is exempted from many provisions of the APA, it still believes that its processes largely comply with the APA's statutory requirements aside from some form, notice and nomenclature differences.[8] Pursuant to that APA, the Oregon Attorney General has promulgated model rules for administrative procedure that govern rulemakings, declaratory rulings, contested cases and other than contested cases—i.e., generally the same types of proceedings the Commission uses. Agencies can choose to adopt and follow these model rules or develop their own rules. As such, there is a threshold question before delving into each of the modules, which is whether the Commission should outright adopt the Attorney General's model rules. At a minimum the model rules should be reviewed and guide discussion of the Commission's own procedural rules. Deviations from the model rules ought to be expressly justified by circumstances unique to the Commission.

Confidentiality and Protective Orders

The ALJ Memorandum notes that the Administrative Hearings Division intends to address rules regarding protective orders and Justice Funding in other dockets soon and/or may re-address those rule sections later in this docket for the purpose renaming or renumbering and implementing consistency edits. Data confidentiality and protective orders are an important issue to resolve either in this docket or another docket, but ideally in the near-term.

First, the Commission needs better definitions regarding what is confidential vs. highly confidential. The blanket general protective order provides that information meets the definition if it:

> (a) Falls within the scope of ORCP 36(C)(l) (a trade secret or other confidential research, development, or commercial information); or the exemptions under Oregon Public Records Law, ORS 192.345 and 192.355 (OPRL) and
> (b) Is not publicly available.[9]

Modified protective orders have often provided for coverage of essentially the identical information with the addition that the information:

> (c) Is not adequately protected by the general protective order.[10]

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8 *Public Hearing on HB 2985*, 83rd Or. Legislative Assembly, 2025 Regular Session (Feb. 20, 2025) (statement of Commission Executive Director Nolan Moser commencing at 57:49) available https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2025021241.

9 *In re Pub. Util. Comm'n of Or., Modifications to the General Protective Order*, Docket No. UM 2054, Order No. 23-132 (Apr. 10, 2023).

10 *See e.g.*, *In re Pub. Util. Comm'n of Or., Investigation into PURPA Implementation*, Docket No. UM 2000, Order No. 25-131 (Apr. 8, 2025).

That does not provide much more. For a stakeholder that is generally prohibited from signing modified protective orders, we do not know what we cannot see. Therefore, without a solid definition of what is highly confidential, we have no idea what that information might be aside from what the designating party unilaterally decides it does not want us to see. This makes engagement in Commission proceedings highly challenging. While an ALJ has recently required a more particularized articulation of what is/is not highly confidential in at least one Commission docket,[11] however, it may be more constructive to address this issue in a wholesale fashion or at least provide some guidance and guardrails.

Second, parity in access to confidential and highly confidential information needs to be addressed. In Docket No. AR 669, the proposed rules would extend the period by which separation must be maintained between the request for proposals ("RFP") evaluation team and the benchmark team to cover a period of three years,[12] but modified protective orders still protect data for a period of five years following the final order in the docket in which the protective order was issued. NewSun has long advocated for parity between these two periods because when a shorter period applies to the benchmark team, the greater the competitive advantage that team may achieve over independent third-party bidders. If the Commission fails to bring the AR 669 rules in line with the current protective order timelines, then the Commission should bring the protective order timelines in line with the AR 669 rules.

NewSun flags this as an important Division 1 rule to address, although, whether that be accomplished in this docket or another one can be open to discussion.

Should any rules be addressed in more than one module?

Data confidentiality and protective orders are likely to overlap with the Testimony and Discovery issues flagged to be discussed within Module 3.

In addition as noted above, potential revisions to the process for issuing Commission orders and the content of Commission orders is likely to present in multiple Modules.

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11 *In re Alliance for Western Energy Consumers*, *Petition for Investigation into Long-Term Direct Access Programs*, Docket No. UM 2024, Ruling (Aug/ 13, 2025) (directing the party seeking a protective order to "supplement its motion to address the exact nature of the information and the legal basis for its claim for protection.").

12 *In re Updates to IRP Requirements and Competitive Bidding Rules*, Docket No. AR 669, Notice of Proposed Rulemaking at 14 (originally filed Oct. 1, 2025, corrected filing Oct. 9, 2025).

How should the modules be sequenced?

NewSun believes that the process and content for Commission orders are the most important to resolve in light of the Commission's commitment to Representative Helm that it would address the HB 2985 issue in rulemaking.[13]

How can we make these workshops more accessible to stakeholders?

Given that this docket has sat inactive for some time, if the Commission has not already done so, it should re-notice the process to the general notice service lists as there may be new participants to Commission processes that are not on the service or interested person lists and unaware that this docket exists.

What other factors should I consider as I work to schedule workshops and comment deadlines?

In addition to considering legislative timelines and conflicting Commission processes, the ALJ should also seek to avoid scheduling conflicts with Bonneville Power Administration's TC-27, Grid Access Transformation process.[14]

Conclusion

NewSun appreciates the opportunity to submit these comments and looks forward to future conversations on these topics.

Thank you,

s/ Marie Barlow
Marie Barlow
Email: mbarlow@newsunenergy.net

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13 *Informational Meeting, Overview of the Oregon Public Utility Commission's Roles and Responsibilities*, 83rd Or. Legislative Assembly, 2025 Regular Session (Apr. 15, 2025) (discussion between Representative Helm and Commission Executive Director Nolan Moser commencing at 40:00) available https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2025041227.

14 The current process contemplates full-day workshops on October 28-29, Dec, 18-19, Jan 15, and Feb. 25-26 but BPA notes that this schedule is subject to change which will likely be posted here: https://www.bpa.gov/energy-and-services/rate-and-tariff-proceedings/tc-27-tariff-proceeding.