October 6, 2025

Via Electronic Filing

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

RE: Docket No. AR 679
NewSun Energy's Comments on the Proposed Changes to the Governing Alternative Dispute Resolution

Pursuant to the Administrative Law Judge's ("ALJ") Ruling dated September 30, 2025, NewSun Energy LLC ("NewSun") hereby respectfully submits these Comments in response to the proposed changes to the rules governing Alternative Dispute Resolution ("ADR").

Rule 860-002-0000 (1)

The proposed rule recommends the striking of "ORS 756.500" and replacing it with consumer complaints. The reference to ORS 756.500 should be kept as there are many other types of complaints filed under that section that are not consumer complaints, the biggest examples of which are complaints to establish a legally enforceable obligation under the Public Utility Regulatory Policies Act ("PURPA"), complaints filed under established utility PURPA schedules by qualifying facilities ("QFs") attempting to enforce the procedural protections in those schedules, and complaints to enforce interconnection study requirements. The other two rules noted in the proposed rule regard other types of complaints: OAR 860-029-0100 references complaints filed "regarding the negotiation of [QF][PPA] for facilities with a capacity *greater than* the eligibility threshold for standard contracts" (emphasis added); and OAR 860-082-0085 references complaints "for the enforcement of an interconnection agreement" (rather than disputes that might arise prior to the signing of the agreement). Since additional types of complaints exist the rule should include reference to the general statute.

Rule 860-002-0000 (2)

There is a grammatical error here. I believe it is meant to say, "fair and timely dispute resolution" rather than "fair, timely, and dispute resolution."

Rules 860-002-0000 (3) and 860-002-0030

The draft rules propose to strike the process where a party can petition for ADR and the other party must respond, and that all docket deadlines are automatically stayed while the parties consider whether to proceed with ADR. Understanding that ADR is a voluntary process, the formal option to petition and respond while filing deadlines are stayed is an important efficiency measure. It requires the party that filed the complaint to give a definitive response on whether it will engage in ADR before requiring the other party to obtain legal counsel, appear, and respond

to the complaint. Without a formal process, a party could simply decline to agree to ADR (or fail to respond to a request to engage in ADR) to force the other party to file an answer, at which point parties are likely to become more entrenched in their litigation positions and therefore less likely to pursue ADR or for ADR to be successful. The formal process should not be complex—a simple one-page form indicating that a party would like to engage in ADR and a simple response. Making the filings public can also facilitate administrative efficiency because people generally do not want to be perceived as being unreasonable or obstructionist so when publicly asked whether to engage in ADR, people are more likely to say yes, thus facilitating the conversations and more constructive and administratively efficient outcomes.

Pre-Complaint ADR and Staff Consultation Rule

The ADR process should also be made available before a party files a complaint. As noted above, once a complaint is drafted and filed, a party may become more entrenched in its litigation position, so the process should facilitate engaging ADR as early in the dispute as possible. As such, the formal ADR process should be made available before complaints are filed.

In addition, NewSun recommends the Commission codify a staff informal consultation rule prior to filing a complaint and as an additional alternative to formally initiating the ADR process. There are certain PUC staff or counsel that have considerable expertise around issues, particularly in the PURPA arena and can act as a sounding board and moderating force in communications with parties before disputes arise. NewSun proposed adoption of a similar rule in AR 629 which was ultimately not adopted because the Commission found that it would codify something that is already available and out of a concern that "codifying the proposal may obligate Staff to provide a form of ADR to an extent they are not currently prepared to undertake and may not be positioned to undertake given their role."[1]

The staff consultation rule that was under consideration is copied below for reference, which was the version prepared by the Administrative Hearings Division after hearing NewSun's initial proposal and party discussion. In light of the Commission's rationale for rejecting the rule, it could be revised to clarify that Staff is not providing ADR but rather that it is available to provide informal guidance and further that Staff's participation is voluntary. NewSun continues to believe that it is important to codify this option because many parties who do not regularly engage with the Commission may not otherwise know that this option is available. The rule could also be amended to clarify that parties may also always reach out to staff individually. These conversations already happen. Regular participants in Commission proceedings should not get an upper hand by knowing that this valuable resource is available, while newcomers are left wondering if they are even allowed to call staff about an issue.

> **OAR 860-____-____ Staff Issue Consultations**
> (1) Any party may request in writing a consultation with Commission Staff at any time prior to the filing of a complaint or a petition for alternative dispute resolution, to review statutory or regulatory obligations as well as policy issues.

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[1] *In re Rulemaking to Address Dispute Resolution for PURPA Contracts*, Docket No. AR 629, Order No. 21-087 at 9 (Mar. 25, 2021).

(2) Upon such a request, both parties to the issue shall participate in the consultation, and Staff shall facilitate such consultation. Both parties shall have the opportunity to present its overview of the applicable issue(s), and educate Staff on their perspective and proposed solutions. All parties shall participate in the consultation in good faith.
(3) The consultation shall take place within 14 days of the request, and is reasonably expected to last one to two hours, depending on the scope and complexity of the issues, unless the parties agree otherwise.
(4) Consistent with OAR 860-_____-_____ Staff participating in the consultation will not participate in any related complainant or petition for declaratory ruling.
(5) The confidentiality provisions of OAR 860-_____ -_____ shall apply to Staff issue consultations.[2]

Conclusion

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

Thank you,

s/ Marie Barlow
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[2] AR 629, Administrative Hearings Division Report at 8 (Aug. 14, 2020).