

September 29, 2025

Via Electronic Filing

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

**RE: Docket No. UM 2273
NewSun Energy's Reply Comments on the Draft Order**

Pursuant to the Administrative Law Judge's ("ALJ") Ruling dated September 5, 2025, NewSun Energy LLC ("NewSun") hereby respectfully submits these Reply Comments in response to other party Opening Comments regarding Public Utility Commission of Oregon ("Commission")'s Draft Order in docket UM 2273 and the questions posed in the ALJ Memorandum dated September 2, 2025.

Define What Costs are Not HB 2021 Compliance Costs – Low Hanging Fruit

The Commission should offer guidance now on what costs are expressly *excluded* from HB 2021 compliance costs. Such guidance would be used to inform development of the counterfactual. Further, these simplifying assumptions are much simpler to implement than PacifiCorp's request for clarity and guidance on the "types of co-benefits [the Commission] might consider and how those co-benefits might be quantified."¹ NewSun believes that "co-benefits" of any particular investment is likely to be a highly contentious and fact-intensive inquiry and therefore would benefit from the robust evidence gathering and contested case process contemplated by the cost cap statute. NewSun suggests as a starting point that the following low-hanging fruit items be expressly excluded from HB 2021 compliance costs:

- **Costs Incurred to Comply with the Renewable Portfolio Standard ("RPS")** – NewSun agrees with party comments that expressly exclude costs to comply with the RPS. As the Citizens' Utility Board ("CUB") asks: "Say Commission implements a pause due to HB 2021 requirements because the anticipated rate impact indicates it will exceed six percent, but an action contributing to that pause would still be required due to the RPS, would the utility have to make the RPS investment?"² The answer to this question is "yes" because the utility has not been exempted from compliance with the RPS. If the utility is still required to make an investment regardless of HB 2021, then the investment should not count towards the cost cap.
- **Costs Incurred to Comply with Coal, Gas, Nuclear Restrictions** – NewSun agrees that HB 2021 compliance should exclude costs incurred to remove coal from customer rates

¹ PacifiCorp Opening Phase 2 Comments at 1, 2-3.

² CUB Opening Comments on Draft Order at 2.

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under Oregon’s “Coal to Clean” bill and costs to comply with the Oregon nuclear and gas siting restrictions (note the gas siting restriction is located in Section 28 of HB 2021, so expressly not part of sections 1-15 that are contemplated under the cost cap provision).³

- **Transmission Plans Already in Place** – Transmission plans that were already in place prior to HB 2021 like the Boardman to Hemingway line and PacifiCorp’s Gateway projects are great examples of items that can easily be excluded from the HB 2021 cost of compliance cap.
- **Compliance with Other Laws or Policies** – Portland General Electric Company (“PGE”) notes that the passage of the POWER Act and the performance-based ratemaking bill in the 2025 legislature should be “contemplated” by the Commission in its consideration of the cost cap.⁴ As with the above bullet, NewSun notes that compliance with other laws and policies should generally be excluded, including for policies passed after HB 2021, but suggests that specifically on the issue of data centers, the Commission could benefit from additional focused briefing on this topic.
- **Costs that are Higher than Anticipated Regardless of HB 2021** – To the extent that a baseline of costs is established but then updated in the future, any costs increases for inflation, tariffs, tax credit changes or any other increases that occur in the normal course of business absent HB 2021, such costs should be excluded from the HB 2021 compliance costs. PacifiCorp suggests that “changes to the numerator” include where actual costs for an action are higher than anticipated such as due to new tariffs or a cultural find during excavation that cause mitigation and cost increases, or due to the acceleration of the project to take advantage of “life-time” net cost savings.⁵ NewSun agrees with that characterization to the extent that PacifiCorp’s suggestion is that such costs would adjust both components of the numerator—i.e. the HB 2021 compliant costs and the counterfactual.⁶
- **Basic Distribution System Upgrades to Serve Load** – Basic distribution system upgrades needed to serve load should be excluded.

³ See PGE’s Comments on Draft Order at 11 (“Notably, there are still several other laws which constrain portfolio construction, including Renewable Portfolio Standards, a prohibition on building new gas, coal, or nuclear plants in Oregon, along with energy efficiency and small scale renewable requirements. We would remove the HB 2021 specific requirements from our capacity expansion model, while retaining other legal requirements.”).

⁴ PGE’s Comments on Draft Order at 11.

⁵ PacifiCorp Opening Phase 2 Comments at 9.

⁶ NewSun understand that the numerator equals essentially the difference between the HB 2021 compliant portfolio and the counterfactual. The updates suggested here would need to be accounted for in both portfolios because they would be in effect regardless of HB 2021.

Timing Should Account for the Regulatory Certainty Needed for Investment and the Significant Need for Process

The timing of cost cap proceedings should account for the need for regulatory certainty to facilitate investment in clean resources in this state and the significant need for process in a contested case proceeding. The Alliance for Western Energy Consumers (“AWEC”) suggests that cost cap proceedings be commenced if an IRP shows a likely exceedance of the cap and run in tandem with the IRP proceeding.⁷ PacifiCorp suggests that a cost cap proceeding would be meaningless if it is conducted after the point in time when resources are committed, and instead suggests that the Commission launch an expedited process between RFP final shortlist and contract executions.⁸

NewSun disagrees with both suggestions. First, if a cost cap proceeding is initiated too early before there is certainty about the actual costs of compliance, then it could drive investment out of the state and involve a lot of process for a result that ultimately ends up finding that the cost cap has not been exceeded. Investors in renewable and carbon-free resources want to see relative stability in the markets in which they invest. The mere opening of a cost cap proceeding could drive away these investments. And if investments are abandoned mid-stream that would likely drive up future costs because new projects would likely need to be developed on shorter timelines to meet targets or because they come later in interconnection and transmission queues.

Further, NewSun cautions against relying too heavily on the IRP process as stakeholder opportunities to materially influence utility inputs and assumptions is limited. The IRP process is largely utility driven, opaque, and without procedural protections of the contested case process.

Second, NewSun agrees with AWEC that the initial cost cap proceeding is likely to involve “many. . . potentially more consequential controversies,”⁹ and as such would highly caution against allowing such proceedings to proceed along a 90-120 day timeline as suggested by PacifiCorp. NewSun’s experience in contested case proceedings is that there is a massive information asymmetry as most information that is probative to the case is within the utility’s control. It is extremely challenging to obtain discovery. And dockets with expedited timelines naturally tend to favor the litigation position of the party with more information because they can disclose the information that supports their position and no other party has a meaningful opportunity to contest it. Therefore, the Commission would benefit from expressly excluding costs as noted in the above section and then allow time to process disputed items—especially in any initial cost cap proceedings.

NewSun agrees with commenters that suggest that instead of running in tandem with the IRP or the RFP final Shortlist proceeding, the cost cap proceeding run after the rate case, or in tandem

⁷ AWEC Opening Comments at 7.

⁸ PacifiCorp Opening Phase 2 Comments at 4, 8.

⁹ AWEC Opening Comments at 8.

with a rate case.¹⁰ The law expressly contemplates that if the 6% cost cap is reached, the utility would be given an exemption from “further compliance.”¹¹ In addition, even where an exemption has been granted, the exemption must be “narrowly tailored to otherwise give full force and effect to the requirements of [Section 1-15 of HB 2021] that can be complied with without regard to the cumulative rate impact.”¹² Further, in a cost cap proceeding the Commission shall “[m]ake any adjustments to the cumulative rate impact if the initial rate treatment was calculated on the basis of forecasted rate impact” and to “[a]llow parties...to propose alternative rate or accounting treatment of the investment or cost to limit the potential rate impact of the investment or cost”.¹³ Therefore, the cost cap exemption must consider the actual rate impacts and be narrowly tailored. Relief from “further compliance” is still meaningful relief even if the cost cap might be exceeded in certain years due to committed resources.

Rather, granting cost cap relief without consideration of actual rate impacts would render HB 2021’s key policy objectives meaningless. If a utility investment is disallowed as imprudent then there is no rate impact. Any cost cap exemption granted years earlier at the IRP stage would frustrate HB 2021’s core purpose. For example, commenters note that:

Both [PGE] and PacifiCorp have made actual procurement decisions that diverge widely from their recent IRPs. For example, PGE’s 2023 RFP resulted in what Commission Staff have described as an “energy resource shortfall” – specifically, PGE’s Final Shortlist “only include[d] 85 MWa of the 753 MWa of non-emitting resources the Company was aiming for between 2025-2028 to stay on its anticipated glidepath to meet HB 2021 2030 emission reduction goals” based on IRP modeling. And PacifiCorp canceled its 2022 RFP that, based on IRP modeling, had sought “approximately 1,345 megawatts (MW) of new generating resources and 600 MW of energy storage resources[.]”¹⁴

If it is found that the utility acted imprudently in delaying acquisition of cost effective resources and as a result procured more expensive resources later, the remedy should not be giving an exemption under the cost cap, but disallowing a portion of the more expensive resource that the utility ultimately acquired equal to the difference in the cost between that resource and the less

¹⁰ NW Energy Coalition and Renewable Northwest Opening Comments at 7 (“Utilities and stakeholders with filing rights would only have sufficient information to support a filing once at least one contract with a shortlisted resource has been executed and the utility has initiated the cost-recovery process.”).

¹¹ ORS 469A.445(4).

¹² ORS 469A.445(4)(a).

¹³ ORS 469A.445(3).

¹⁴ NW Energy Coalition and Renewable Northwest Opening Comments at 4-5 (internal citations omitted).

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expensive one the utility could have acquired earlier.¹⁵ The cost cap proceeding therefore should expressly consider these scenarios and be informed by actual numbers and rate impacts.

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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¹⁵ Oregon Solar+Storage Industry Association Opening Comments at 2 (“A process for the Commission to retain discretion to scrutinize utility behavior, including whether the utility has taken reasonable steps to diversify procurement, mitigate risk, and avoid cost spikes through proactive planning, so that counterfactual results are not accepted without verifying that prudent, competitive resource acquisition has occurred.”).