BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2225

In the Matter of STAFF HB 2021 INVESTIGATION INTO CLEAN ENERGY PLANS.	NEWSUN ENERGY LLC SUPPLEMENT TO APPLICATION FOR REHEARING OR RECONSIDERATION

I. INTRODUCTION

NewSun Energy LLC ("NewSun") respectfully submits this supplement to its application for rehearing or reconsideration filed jointly this same date with the Oregon Solar and Storage Industries Association ("OSSIA") and the Community Renewable Energy Association ("CREA") (collectively, the "Applicants") of the Public Utility Commission of Oregon's ("Commission" or "OPUC") Order Nos. 22-390, 22-446 and 22-477.

II. ARGUMENT

NewSun requests rehearing or reconsideration on the grounds that the Orders contain errors of law and fact that are essential to the Commission's decision, exceed the Commission's authority, and that multiple further good causes exist, individually, and in cumulative effect, as relates the Commissions actions, inactions, and insufficiency, inappropriateness and inadequacy of action, relative to the explicit and implicit obligations of the Commission to implement the HB 2021 statute, including as relates failure to provide for and support the Commission's own future functional ability to implement and regulate implementation of the statute, and appropriate address issues affecting ratepayers relative to the statue, to reconsider the decision. As explained below, the Application challenges a number of aspects of the Commissions recent related decisions in UM 2225, including as relates their inadequacy.

This motion also provides an initial set of recommended, practicable, readily actionable actions by the Commission—sideboards, clarifications, definitions of minimum sufficient conditions for CEPs, transparency and reporting obligations, and additional actions—which we believe (1) the Commission could readily implement in response to this motion, which would materially improve (2) the efficacy of the statute *and its probability of timely success*, (3) the Commission's ability to oversee successful implementation of the statute's many individual and cumulative and mutually interacting and reinforcing requirements, and thus (4) be substantially more likely to realize the explicit mandates, policies, and intentions of the Oregon legislature. (5) These proposals are well within the Commission's authority both under the statute and (6) as otherwise provided, and in many cases as arguably are required of, the Commission relative to its role and obligations in regulating Oregon's affected public utilities and protecting ratepayers. (7) Implementation of these recommendations (and any other further appropriate changes, clarifications, and actions the Commission may appropriately deem beneficial) have the potential not just to strengthen and improve probability of outcomes on Oregon's decarbonization mandates and HB 2021 statute, but desirably avoid and reduce the inevitable:

(a) exploitation of the ambiguity and permissiveness by its regulated utilities which the Commission's current vague, non-proscriptive, and under-acting, under-implementing Orders inevitable litigation that will lead to, including related ratepayer cost exposures and impacts on HB 2021 timeline (and other) requirements being achievable;

(b) conflicts and disputes during the first CEP plans about to be filed, among stakeholders, staff, and utilities, relative to the sufficiency or not, and basic minimum

expectations of CEPs to be acknowledgeable by the Commission;

(c) eminent litigation before and after these Orders and the initial CEPs, which the parties which to not believe is necessary to achieve success under HB 2021.

Conversely, absent these changes and actions, and particularly given *well known, currently foreseen and foreseeable challenges, issues, and conditions*—including on (A) infrastructure obviously critically needed for decarbonization transmission, interconnection, and project development timelines, as well as (B) rather spectacularly large holes in reporting, transparency, tracking, and forecasting (both backwards and forwards looking) on various pivotal key matters related to emissions and their reduction, such as on emissions and RECs for existing and future power plants and procurements, and including all fossil plants of the utilities.

Perverse, inappropriate results contrary to statutory and legislative intent is very possible absent these disclosure and reporting requirements, including that the fossil gas plants owned by PacifiCorp and PGE, and funded by their ratepayers to exist, might actually run more, cause more emissions, than before the law was passed. Oregonians could end up funding increases in emissions, or lack of net actual change in emissions (at the scale of entire gas power plants) for large portions of their generation, due to utilities "swapping" clean and dirty power and/or stripping off RECs that represent emissions reductions and allowing other 3rd parties to count those RECs as emissions reductions, when they actually are being counted for HB 2021 compliance. These are absurd and inappropriate outcomes, but they are wholly plausible to occur under HB 2021 implementation based on the Commission's orders' inadequacy, permissiveness, and/or failure to provide Oregon and the Commission basic obvious data around the same, and to fail to require REC retirement the Oregon's have procured and mandated to reduce emissions. Such cannot be permissible and is negligent relative to known issues. Worse,

such could be exploited by utilities for shareholder benefit with ratepayers footing-the-bill for these behaviors outcomes, which essentially the Commission's guidance would permit and condone while suppressing the reporting and transparency to even know that such was occurring.

Further, the parties believe that the Commission's gross lack of adequate action, relative to the scale and nature of the situation surrounding HB 2021, which comprises a generational exploitation opportunity of the utilities it regulates, to abuse the HB 2021 statute opportunities created for their gain—a fundamental abuse area this Commission *exists to protect against*, as a primary mission fundamental to the very nature of why investor-owned utilities granted monopolies and other privileges are uniquely regulated (because of their ability to impose costs on ratepayers by rate-basing generation and transmission assets) by public utility commissions such as yourself, the Commission has fundamentally, through failing to appropriately (and indeed hardly at all) constrain the expectations and limitations of what will comprise accept Clean Energy Plans ("CEPs") in ways that will prevent gross abuse by the regulated utilities for their financial gain, at the expense and harm of the ratepayers and market. Unchecked and insufficiently constrained, and particularly given the overwhelmingly deferential attitude of the Commission to its regulated utilities in its core regulatory processes (RFPs and IRPs), *Oregon ratepayers are exposed to (not only massive failures on the decarbonization and other policy goals and requirements of HB 2021) massive exploitation by PacifiCorp and Portland General Electric, as they propose CEPs and IRPs which bias and favor outcomes to their desired disproportional gain.*

The scale of resources necessary to comply with HB 2021 is colossal. The 2021 Northwest Power Plan estimated 3,500 MW by 2027 and 14,000 MW by 2040 *without accounting for the effect of Oregon HB 2021*, and a separate study by Evolve Energy Research

found that deeply decarbonizing all sectors in the Northwest would require 100,000 MW of new resources by 2050.[1]

Thus, at stake are many, many **billions of dollars of infrastructure**, and the potential for regulated utilities to eventually ratepayers 9-10% type rates of annual return on investment on such infrastructure. To the extent such infrastructure ends up being owned by Portland General Electric or PacifiCorp in disproportionate amounts, or otherwise amounts that would have occurred if proper sideboards and implementation plans (IRPs and CEPs) were required by the Commission if it acted fully and appropriately under statutory requirements for these process and under the statutes, the ratepayers are proportionately exposed to those harms. The Commission's initial directives and discussions categorically fail to address these exposures at all, which is an error and neglect of its core responsibilities, particularly given well known orientations and preferences of at least one utility (PacifiCorp) to seek to develop massive to generation resources, such as a new nuclear power plants and extensive transmission lines—each of which are well known to be predisposed to massive schedule and cost overruns which if unchecked and/or insufficiently regulated and scrutinized are highly likely to fundamentally undermine HB 2021 objectives' and requirements' achievability—and with commensurate ratepayer abuse exposures to the extent CEPs and IRPs are not appropriately constrained and bounded, for example by ensuring critical transparency on and examination on all related cost and schedule assumptions.

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[1] Jason Eisdorfer, NIPPC Policy Brief: The Role of Competition in the Pacific Northwest Clean Energy Transition at 15 (July 2022) available at https://nippc.org/wp-content/uploads/2022/07/NIPPC-Brief-Competition-in-NW-Clean-Energy-Transition-July-2022.pdf (Citing The 2021 Northwest Power Plan, pages 71-76, available at 2021powerplan_2022-3.pdf (nwcouncil.org) and Evolved Energy Research, Northwest Deep Decarbonization Pathways Study at 73-74 (May 2019), available at Clean Energy Transition Institution (cleanenergytransition.org)).

Meanwhile, HB 2021 directs that the lion's share of emissions reductions be achieved by 2030 (80%). The vast majority of these emissions reductions unavoidable should be associated with the first CEPs required, due to the natural (known!) development, procurement, and action timelines unavoidable for power generation development, as well as the need to identify and promptly act upon the alternatives (such as energy efficiency ("EE"), on-system distributed generation ("DG"), and alternative resource locations and types (such as west-of-Cascades solar), that will likely be unavoidable necessary as part of the portfolios of solutions that actually can meet and achieve HB 2021's requirements. Those options and alternatives—and their costs and schedules—**must be forced into comparison with the business-as-usual choices**, particularly ones which utility ownership outcomes (i.e. rate-basing profit opportunities) will bias and favor. Utilities abilities, absent sufficient sideboards, scrutiny, and minimum sufficient conditions, to self deal and abuse this opportunity—to control the modeling and assumptions to create and manipulate in favor of outcomes they would prefer, is a clear and present danger to the ratepayers and to the statute's ability to achieve timely success in its many objectives. And the timeline and cost risks of their naturally preferred outcomes are well-known to have decade-scale risks (for example due to NEPA related transmission permit realities) and multi-hundred million dollar cost overrun exposures and likelihoods—*as the parties to this motion have repeatedly raised in Commission workshops and written and oral comments.*

It is thus hard to overstate the importance of the first CEPs. The sufficiency and appropriateness of what is examined, what is permitted as sufficient, what assumptions will be deemed acceptable, what alternatives will (or will not) be examined, and *due scrutiny of the timeline dynamics and inputs*, become the lion's share of HB 2021's fate.

Inadequate compression and criteria on the same, inadequate data reporting and

transparency, and inadequate minimum acceptable conditions, these all undermine the law's ability to be successful, undermine the Commission's own ability to facilitate, ensure, and regulate success (and those regulated thereunder), and undermine the ability of Oregonians to achieve the critical intended outcomes, as relates global warming and intended environmental justice and economic benefits to Oregon. Worse, absent sufficiency, exploitation of the bill to cause counter-intuitive and counter-to-intention outcomes becomes probable—and, at a minimum, insufficiently scrutinized to know and/or mitigate such issues as they occur or in advance.

Consistent with and in addition to the recommendations in the Application for Rehearing or Reconsideration, NewSun provides the below several initial recommendations of actions by the Commission are outlined in the following table, we believe could be further developed to achieve the necessary clarity, compression, definition and scope of consequences and transparency to achieve HB 2021's objectives and requirements:

Issue	Topic	Requested Changes
1	Binding nature of HB 2021, its emissions reduction targets, and combined effects	• Explicitly state in a written order that the Commission views HB 2021 as binding, in particular the emissions reduction targets. • Immediately launch a rulemaking docket to address compliance obligations.
2	REC Accounting	• Require that RECs be retired for renewable resources used to comply with HB 2021 or at a minimum to expeditiously resolve this issue in the near-term.
3	REC Reporting	• Revert back to the Staff recommendation to direct that utilities report on RECs sold to other entities or banked and then sold.
4	Emissions from all Thermal Resources	• Direct utilities to report emissions for thermal resources not being used to serve Oregon retail loads to address the issue of "leakage."
5	"Technical Feasibility" for CEP Acknowledgement	• Direct that to be "technically feasible," a CEP must rely on realistic assumptions and consider the uncertainty and known risks around interconnection, transmission, permitting, and development timelines and that utilities should plan for

		contingencies in the event of delay or failure of any of the above criteria. • Immediately launch a rulemaking to determine what additional criteria the PUC intends to consider under ORS 469A.420(2)(f) in determining whether the clean energy plan is in the public interest and should be acknowledged.
6	Guidance vs. Requirements	• Revise its CEP "guidance" issued in its various orders to turn them into requirements. • Alternatively, to clarify the consequences of failure to meet the expectations outlined in each of the Commission's orders.
7	Continual Progress	• Explain that "continual progress" means a linear trajectory of GHG emissions reductions.
8	Actions Windows to 2030	• Initial CEPs need fully address a path to the first milestone 2030, not just the first 2-4 years, given criticality of actions and timing needed to successfully reach 2030 80% emissions reductions, and will be scrutinized accordingly.
9	Assurance of "at scale" options in CBRE and CBI options	• Utilities must be required to properly examine options that achieve economies of scale for resources, such as MW and multi-MW, distributed generation and storage that fully comply with and realized that permitted by Sections 1, 2, and 3 of HB 2021 (not just small scale options which likely underperform in models by inherent and unnecessary cost challenges).
10	Assurance of full suite of resource types for traditionally excluded options	• Include analysis of DG, EE, Demand side management and solar resources on the west side of the cascades, among others.

IV. CONCLUSION

For the reasons articulated in the Application for Rehearing and Reconsideration in addition to the arguments made herein, the Commission grant rehearing or reconsideration of Orders No. 22-390, 22-446, and 22-477.

Respectfully submitted on this 23rd day of December 2022.

/s Jacob Stephens
CEO
NewSun Energy