



June 20, 2024

*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 Response Brief on Phase 2 Questions**

NewSun Energy LLC ("NewSun") offers this response brief regarding Public Utility Commission of Oregon ("Commission")'s Phase 2 questions for docket UM 2273. NewSun appreciates the opportunity to respond to the opening briefs.

As an initial matter, it is critical that the Commission implement the cost-cap provisions of HB 2021 in a way that renders the statute's core emissions-reduction targets possible. It is apparent that the over-inclusion of transmission project costs is perhaps the greatest threat to achieving the Legislature's mission in HB 2021.

The Joint Utilities (Portland General Electric and PacifiCorp) offer a framework for determining what costs are included in the cost cap using "three broad categories": (1) costs that are wholly excluded from the cost cap; (2) costs that are partially included and partially excluded; and (3) costs that are wholly included in the cost cap.

The Utilities propose a two-step process to identify which investments apply to the cost cap. First, the Utilities would have to show whether the investment or cost was incurred "for the purpose of compliance." To evaluate this issue, the Utilities propose to develop a counterfactual that models their IRP portfolios "as if HB 2021 did not exist." If an investment is in both the acknowledged IRP/CEP and the counterfactual portfolio, then it would categorically not count toward the cost cap since the utility would have incurred that cost notwithstanding its obligations under HB 2021. The Utilities propose to exclude investments that are "not made for the purpose of reducing emissions consistent with HB 2021 compliance but are made for a different purpose that do not reduce emissions." As examples, the Utilities identify costs for resources used to meet load growth over HB 2021's pre-compliance period, costs for demand-side actions, and energy efficiency costs.

Second, for costs that are in the acknowledged IRP/CEP but not in the counterfactual model, the Utilities would have to show whether the investment or cost "contributes to compliance". The Utility would have the burden of showing that "compliance is at least partly the reason for the investment" with the Commission ultimately determining "what portion or percentage of the investment or cost assists the utility in reducing emissions consistent with the targets even if required by a separate, underlying statutory requirement."

June 20, 2024

## NewSun Energy Phase 2 Response Brief

NewSun appreciates the Utilities' suggestion of establishing a counterfactual model as a starting point for analyzing whether an investment is made "for the purpose of" or "contributes to" HB 2021 compliance. However, significant questions remain as to how that model will be developed and applied, and NewSun is concerned by the few examples provided by the Utilities. For example, while NewSun agrees that investments for pre-2030 load growth should not count toward the cost cap, NewSun believes that *all* costs incurred to serve utility load growth – even after 2030 – should be excluded from the cost cap, since those costs would have been incurred whether or not the utility faced HB 2021 compliance obligations. Under the Utilities' proposed two-step framework, such load-growth investments should appear in the IRP counterfactual (i.e., assuming no HB 2021 compliance obligation), and therefore be excluded from the cost cap. However, the Utilities appear to argue that costs to accommodate post-2030 load growth – including costs for non-emitting power under Oregon's RPS – would be within the cost cap.

The Utilities also argue that costs for developing new transmission infrastructure – if "motivated by HB 2021 compliance" – should count toward the cost cap. However, a transmission investment that would have been made notwithstanding HB 2021's requirements – such as for reliability upgrades – should not fall within the cap. NewSun would be curious how the Utilities would treat various transmission projects under the proposed IRP counterfactual. The Utilities' pending investments in projects such as Boardman to Hemingway, PacifiCorp's Gateway projects, Snow Goose-Corral, Bethel-Round Butte, Grassland, and Corral-Ochoco are potential big-ticket items that could undermine the purposes of HB 2021 if counted toward the cost cap. Similarly, projects identified in the Utilities' FERC Attachment K plans before the end of this calendar year should be excluded from the cost cap.

Further, there should also be an analysis about whether the costs were reasonably incurred and justified before they should be counted towards the cap. It goes without saying that an imprudently incurred cost excluded from rates is also excluded from the calculation of the cost cap because it would not be part of the rate impact calculation required under the cost cap analysis. However, ORS 469A.445(3)(c) directs the Commission to "[a]llow parties to the [cost cap] proceeding to propose alternative rate or accounting treatment of the investment or cost to limit the potential rate impact of the investment or cost." Therefore, the Commission should not simply shoehorn costs or cost estimates into the analysis but also review the justification for those costs (e.g., is PGE justified in building a new transmission line when BPA already planned or built system expansions to serve the same need?).

Finally, the Utilities contend that costs for compliance with ORS 469A.210 should be "entirely includable within the cost cap." ORS 469A.210 is the requirement that at least 10 percent of the utilities' aggregate electrical capacity be from certain categories of small-scale renewable energy projects by the year 2030. Section 210 was established in law before HB 2021, and HB 2021 only increased the requirement from 8 to 10 percent and modified the target year from 2025 to 2030. The cost cap, however, only applies "for investments made, costs incurred or forecasted costs estimated by the electric company for the purpose of compliance with ORS 469A.400 to 469A.475" which are the core greenhouse gas emissions reductions provisions in statute and does not include costs for compliance with ORS 469A.210. ORS 469A.445(1). The only references to community-based renewable energy within those provisions are: (1) the definition of "Community-based renewable energy" in ORS 469A.400(2); and (2) the requirement in ORS

June 20, 2024

NewSun Energy Phase 2 Response Brief

469A.415(4)(d) that clean energy plans “[e]xamine the costs and opportunities of offsetting energy generated from fossil fuels with community-based renewable energy.” Since ORS 469A.210 is statutorily not subject to the cost cap, then the utilities cannot count costs incurred in compliance with that section toward the cost cap.<sup>1</sup>

NewSun recognizes that the determination of whether a cost or investment counts toward the cost cap will be fact-specific. However, early guidance from the Commission on how these determinations might play out with certain categories of costs will be helpful for all parties. NewSun would therefore appreciate the opportunity to more closely examine the Utilities’ proposed framework in a workshop, including presentations by all interested parties and a demonstration of various hypotheticals against the Utilities’ proposed counterfactual, before the Commission enters an order on this issue. NewSun suggests that the parties be permitted to submit supplemental comments following such workshop(s).

Thank you for the opportunity to submit these comments.

Thank you,

*s/ Marie Barlow*

Marie Barlow

Email: [mbarlow@newsunenergy.net](mailto:mbarlow@newsunenergy.net)

---

<sup>1</sup> While ORS 469A.210 uses the words “community-based renewable energy,” it is also important to note that as used in that section 210 those words are used in their ordinary or plain sense and not as the term is technically defined in ORS 469A.400. The definitions in ORS 469A.400, by their express language, only apply as those terms are used in ORS 469A.400 to 469A.475. This is also important to note because the community-based renewable energy requirement in ORS 469A.210 has its own, different definition for what kinds of project qualify for meeting the 10 percent requirement, i.e., “(a) Small-scale renewable energy projects with a generating capacity of 20 megawatts or less that generate electricity utilizing a type of energy described in ORS 469A.025; or (b) Facilities that generate electricity using biomass that also generate thermal energy for a secondary purpose.” And the Commission itself has further refined the types of projects that qualify under its Division 91 rules, and set out a separate compliance reporting obligation for compliance with ORS 469A.210. ORS 860-091-0040 (“No later than July 1, 2029, and no later than July 1 for each year thereafter, the electric company must file a report with the Commission demonstrating compliance or explaining in detail any failure to comply, with the standard in ORS 469A.210(2)”).