

**RECEIVED**

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IN THE COURT OF APPEALS OF THE STATE OF OREGON **P.U.C.**

NEWSUN ENERGY LLC,

Petitioner,

v.

PUBLIC UTILITY COMMISSION OF OREGON,

Respondents,

and

ALLIANCE OF WESTERN ENERGY CONSUMERS, CLIMATE SOLUTIONS,  
COALITION OF COMMUNITIES OF COLOR, COLUMBIA RIVER INTER-  
TRIBAL FISH COMMISSION, COLUMBIA RIVERKEEPER, COMMUNITY  
RENEWABLE ENERGY ASSOCIATION, GREEN ENERGY INSTITUTE,  
NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION,  
NW ENERGY COALITION, OREGON CITIZENS' UTILITY BOARD,  
OREGON SOLAR + STORAGE INDUSTRY ASSOCIATION, PACIFICORP,  
PORTLAND GENERAL ELECTRIC, PINE GATE RENEWABLES,  
RENEWABLE NORTHWEST, ROGUE CLIMATE, SIERRA CLUB, STAFF OF  
THE PUBLIC UTILITY COMMISSION OF OREGON, WESTERN POWER  
TRADING FORUM

Intervenors Below,

Public Utility Commission of Oregon Docket No. UM 2273

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**PETITION FOR JUDICIAL REVIEW**

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Pursuant to ORS 183.482, Petitioner NewSun Energy LLC (“NewSun” or  
“Petitioner”) seeks judicial review of the final order of the Public Utility

Commission of Oregon (“OPUC” or the “Commission”) Order No. 24-112, entered on April 29, 2024, in docket number UM 2273.

**A. Designation of Parties**

The parties to the judicial review proceeding before the Court of Appeals are:

Petitioner: NewSun Energy LLC

Respondent: Public Utility Commission of Oregon

Intervenors Below: Alliance of Western Energy Consumers (“AWEC”); Climate Solutions; Coalition of Communities of Color; Columbia River Inter-Tribal Fish Commission (“CRITFC”); Columbia Riverkeeper; Community Renewable Energy Association (“CREA”); Green Energy Institute; Northwest & Intermountain Power Producers Coalition (“NIPPC”); NW Energy Coalition (“NWEC”); Oregon Citizens’ Utility Board; Oregon Solar +Storage Industry Association (“OSSIA”); PacifiCorp; Portland General Electric (“PGE”); Renewable Northwest (“RNW”); Rogue Climate; Sierra Club; Staff of the Public Utility Commission of Oregon; and Western Power Trading Forum (“WPTF”).

**B. Litigant Contact Information**

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Attorneys for Staff of the Oregon Public Utility Commission

### **C. Order Subject to Review.**

Attached to this petition is a copy of the order for which judicial review is sought. OPUC Order No. 24-112, entered on April 29, 2024, was a final order that denied NewSun's application for reconsideration of OPUC Order No. 24-002.

This petition for review is timely because it is filed within sixty (60) days of the date the order denying the petition for rehearing was served. ORS 183.482(1).

**D. Party to Administrative Proceeding Below.**

Petitioner was a party to the administrative proceeding that resulted in the order for which review is sought.

**E. Record.**

Petitioner is not willing to stipulate that the agency record may be shortened.  
Respectfully submitted this 28<sup>th</sup> day of June, 2024.

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*Attorneys for Petitioner  
NewSun Energy LLC*

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2273

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Investigation Into House Bill 2021  
Implementation Issues.

ORDER

DISPOSITION: APPLICATION DENIED

On March 5, 2024, NewSun Energy, LLC filed an application for reconsideration of Order No. 24-002. In this order, we deny NewSun's application.

**I. BACKGROUND**

**A. Order No. 24-002**

On January 5, 2024, we issued Order No. 24-002 resolving several questions regarding the Commission's implementation of HB 2021. These questions related to the treatment of Renewable Energy Certificates in determining compliance with HB 2021, the interpretation of "public interest" criterion for Clean Energy Plan (CEP) acknowledgment, the relevance of HB 2021's policy statements to the Commission's implementation of the law, and the procedural approach the Commission should employ to oversee continual progress and prompt action by utilities in complying with HB 2021 section 4(6). Additionally, Order No. 24-002 initiated a second phase to answer additional questions regarding HB 2021's cost cap provisions.

Relevant here, Order No. 24-002 "confirm[ed] our intention not to define 'continual progress \* \* \* toward meeting the clean energy targets' to require utilities to pursue a linear trajectory of expected emissions reductions."<sup>1</sup> We concluded we would use our existing Integrated Resource Plan (IRP) and CEP review processes "to assess whether utilities are making 'continual progress' and 'taking actions as soon as practicable.'"<sup>2</sup> Further, we indicated our intent "for continual progress determinations to be made as final decisions subject to judicial review."<sup>3</sup>

<sup>1</sup> Order No. 24-002 at 28 (Jan. 5, 2024).

<sup>2</sup> *Id.* at 29.

<sup>3</sup> *Id.*

**B. NewSun's Application for Reconsideration**

On March 5, 2024, NewSun filed an application for reconsideration of Order No. 24-002. Specifically, NewSun sought “reconsideration of one issue: The Commission’s decision that existing [CEP] and [IRP] review processes are the appropriate dockets for ensuring that utilities are achieving ‘continual progress’ at an appropriate pace of action.”<sup>4</sup>

NewSun argues ORS 469A.414(4)(e) and ORS 469A.415(6) impose different requirements on the Commission to assess continual progress. The company asserts that while ORS 469A.414(4)(e) imposes a forward-looking analysis of steps the utility will take towards HB 2021 clean energy targets that is appropriate for review in a IRP/CEP process, ORS 469A.415(6) requires an investigation in whether the utility has “actually and sufficiently made continual progress towards reducing its greenhouse gas emissions” that “should be conducted in separate dockets that require the utilities (and allow other stakeholders) to bring forth factual evidence concerning the utilities’ actual progress towards compliance (or non-compliance) with the clean energy targets.”<sup>5</sup> NewSun asks the Commission to amend Order No. 24-002 “such that the Commission’s fact-based determinations of continual progress pursuant to ORS 469A.415(6) be made through compliance dockets, separate and apart from the existing IRP and CEP dockets.”<sup>6</sup>

NewSun asserts new evidence exists to justify its reconsideration request. The company argues “utility comments, and the Commission’s recent deliberations in docket LC 80 and docket LC 82 make clear that those dockets are ill-suited for review of backward-looking compliance determinations related to the Commission’s obligation to ensure continual progress.”<sup>7</sup>

**C. PGE's Response**

Portland General Electric Company (PGE) was the only party to file a response to NewSun’s application. PGE argues good cause does not exist to grant NewSun’s application. PGE asserts NewSun had sufficient opportunity to raise these issues during briefing and oral argument and did not do so. PGE also asserts another party raised this issue in briefing and that therefore the Commission already had an opportunity to consider it before issuing Order No. 24-002. PGE’s response further argues there is no new evidence sufficient to justify NewSun’s application for reconsideration and that NewSun’s requested relief has already been granted because Order No. 24-002 indicated the Commission may, if necessary, initiate additional proceedings

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<sup>4</sup> NewSun Energy Application for Reconsideration at 1 (Mar. 5, 2024).

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* at 6-7.

<sup>7</sup> *Id.* at 8.



related to continual progress. PGE also makes an alternative argument in the event NewSun's application is granted.

**D. Legal Standard**

OAR 860-001-0720 governs our review of applications for reconsideration. We may grant an application for reconsideration if we find an applicant has shown there is: (a) new evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order; (b) a change in the law or policy since the date the order was issued; (c) an error of law or fact in the order that is essential to the decision; or (d) good cause for further examination of an issue essential to the decision.<sup>8</sup>

**II. DISCUSSION**

We deny NewSun's application for reconsideration. NewSun does not articulate new evidence or good cause for us to revisit our conclusions in Order No. 24-002. We believe the best course of action is to let the process articulated in Order No. 24-002 to run its course. We recently issued a continual progress order for PGE in docket LC 80<sup>9</sup> and will assess continual progress for PacifiCorp, dba Pacific Power in docket LC 82 in its IRP update.<sup>10</sup> As we indicated in Order No.24-002, should we determine the need to direct additional utility actions after a determination that a utility is not making "continual progress" or "taking actions as soon as practicable," we may initiate separate proceedings, including contested cases, to consider relevant evidence in determining what additional direction is needed.

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<sup>8</sup> OAR 860-001-0720(3).

<sup>9</sup> Order No. 24-097 (Apr. 18, 2024).

<sup>10</sup> Order No. 24-073 at 9 (Mar. 19, 2024).

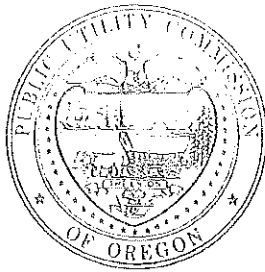
IV. ORDER

IT IS ORDERED that NewSun Energy, LLC's application for reconsideration is denied.

Made, entered, and effective Apr 29, 2024.

*Megan W. Decker*

**Megan W. Decker**  
Chair



*Letha Tawney*

**Letha Tawney**  
Commissioner

*Les Perkins*

**Les Perkins**  
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

**CERTIFICATE OF SERVICE**

I certify that on June 28, 2024, I served a true copy of this **PETITION FOR JUDICIAL REVIEW** on the following named persons by United States Postal Service, certified mail, return receipt requested, contained in a sealed envelope, addressed to said persons at their last known addresses indicated below.

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DATED: June 28, 2024.

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**CERTIFICATE OF FILING**

I certify that on June 28, 2024, I filed the original of this petition with the Appellate Court Administrator in .PDF, text-searchable format using the Oregon Appellate eCourt filing system in compliance with ORAP 16.25.

DATED: June 28, 2024.

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