

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2032**

In the Matter of	)	
	)	
PUBLIC UTILITY COMMISSION	)	PETITION TO INTERVENE OF
OF OREGON,	)	OBSIDIAN RENEWABLES, LLC
	)	
Investigation into the Treatment of Network	)	
<u>Upgrade Costs for QFs</u>	)	

Pursuant to ORS § 756.525 and OAR § 860-001-0300, Obsidian Renewables, LLC (“Obsidian”) petitions the Public Utility Commission of Oregon (“Commission”) to intervene with full party status as described in OAR § 860-001-0010(7). Obsidian waives paper service of all non-confidential filings. In support of this petition, Obsidian provides the following information:

1. The name and address of the Obsidian Intervenor is:

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2. The name and address of the attorney representing Obsidian is:

Richard G. Lorenz  
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3. Obsidian is an Oregon limited liability company that is in the business of developing renewable power generating facilities, particularly solar photovoltaic generating

facilities. Many of Obsidian’s solar projects are qualifying facilities (“QFs”) under the Public Utility Regulatory Policies Act (“PURPA”). Obsidian also develops projects that are not QFs.

4. Obsidian’s primary interest in this proceeding is to encourage the Commission to continue its move away from using litigation as a surrogate for rulemaking in establishing generally applicable PURPA policies. That Obsidian even has to file a formal Petition to Intervene and seek permission in order to participate in this policy investigation is problematic.

5. Obsidian appreciates the Staff Response to Administrative Law Judge Memorandum filed on January 21, 2021 in Docket UM 2011. Staff explained that a rulemaking is the appropriate process for making generally applicable PURPA policies. Staff recommended that the Commission continue with the UM 2011 investigation in a manner that is informal, collaborative and a “non-contested case.” The outcome of the investigation could then inform a subsequent rulemaking. Staff’s recommended approach in UM 2011 should also be applied to this Docket.

6. Ostensibly, the purpose of this docket is to “investigate” the allocation of costs of transmission Network Upgrades needed to interconnect QFs to the host utility. In practice, however, the Commission is not so much “investigating” the issue as it is putting it on trial.

7. A cursory review of the pleadings filed in this docket reads like a bar-exam question covering civil procedure. In order to participate in the docket, stakeholders have had to navigate a phalanx of procedural objections and motions concerning arcane formalities such as show-cause orders, errata, motions to supplement, motions to certify, motions to strike, and motions to compel.

8. Perhaps the most egregious example of procedural gate-keeping in this docket is the Joint Utilities’ attempt to exclude participation by former Commission Staff member Brittany

Andrus. There is no question that Ms. Andrus can contribute both information and insight that would advance the Commission’s understanding how utilities use the interconnection process as a weapon to kill PURPA projects. That is precisely why the Joint Utilities found her participation objectionable. The Joint Utilities therefore filed a formal and lengthy objection to Ms. Andrus’ participation in this investigation pursuant to OAR 860-001-0330(2)—which specifically prohibits former Commission employees from “appearing” as a “witness” in a “contested case.” Ironically, the Joint Utilities’ motion to exclude Ms. Andrus from participating in this proceeding because she is a former Commission employee was filed by a firm having a partner who was a former Commissioner. The Joint Utilities’ attempt to strictly apply rules of witness testimony in a contested case in order to bar input by knowledgeable stakeholders undermines the basic purpose of conducting an investigation. In an investigation, the Commission should be open to receiving all stakeholder information that is useful and relevant to the issue even if such information might not otherwise meet the standards of admissible evidence in a contested case proceeding.

9. The Joint Utilities’ legal maneuverings demonstrate that their primary goal is not to facilitate a full investigation of this matter but to stifle it. To that end, the Joint Utilities are now also fighting discovery requests propounded by NewSun Energy LLC (“NewSun”). Obsidian fully supports NewSun in its attempt to obtain relevant discovery from the Joint Utilities.

10. The larger point is that the financial burden of extracting information relevant to a Commission investigation should not fall on NewSun or any other individual stakeholder. NewSun is a renewable energy developer, not a utility regulator. NewSun should not have to propound formal discovery requests in the context of a Commission investigation, let alone

police those discovery requests through expensive motions to compel. By putting the burden of information gathering and enforcement on individual stakeholders, the Commission has virtually assured that the information gleaned through this investigation will be incomplete. Moreover, this adversarial discovery process invites the Joint Utilities to curate discovery responses aimed at defending their litigation position.

11. Pleadings filed in this case anticipate that this adversarial discovery process will result in a “resolution” of the issues. For example, the Joint Utilities’ Response to NewSun’s Motion for Extension of Time and Schedule Revisions states that “much of NewSun’s discovery appears to be targeted at issues that the parties have stated in their testimony should be *resolved* in Phase II.” (Emphasis added). Such statements make clear that this adversarial process is not intended to *inform* Commission policy-making, it is intended to *be* Commission policy-making. The resulting policy-by-combat will end-up reflecting the litigation position of the party having the deepest pockets. And we all know who that is.

12. Given that the procedural schedule is currently suspended pending resolution of NewSun’s motion to compel, now is a good time for the Commission to refocus this investigation on *investigating*.

13. For all of the reasons explained in the Staff Response in UM 2011, this investigative docket should “proceed informally to allow Staff and stakeholders to work collaboratively” on the issues. As Staff explained, an investigation should proceed as a “non-contested case.” Rather than acting as little more than a glorified referee, the Commission should assert its authority and fulfil its responsibility to run this investigation. Based on input from stakeholders such as NewSun, Staff should take the lead in issuing discovery requests to the utilities. The ALJ for the docket should take responsibility enforcing full and timely responses.

Broad participation by all stakeholders should be encouraged by removing procedural hurdles. The investigative process should be geared toward informing the Commission's future policy decisions rather than pitting stakeholders against each other in a never-ending war of attrition.

14. At the conclusion of this investigation, this docket should be closed and the Commission should open a rulemaking to consider adopting draft rules informed by this process. This is, in fact, the process that is *required* by Oregon law to make generally applicable rules and policies.

WHEREFORE, Obsidian respectfully requests that the Commission grant its petition to intervene with full party status in this proceeding.

DATED this 29<sup>th</sup> day of January, 2021.

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*Of Attorneys for  
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