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VIA ELECTRONIC FILING  
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Public Utility Commission of Oregon  
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Re: AR 629 – Comments of Obsidian Renewables LLC

Obsidian Renewables LLC on behalf of itself and its affiliated project companies would like to comment on this docket. Obsidian intends to participate in the next workshop. Obsidian's position differs in some respects from the QF Parties position and also differs in some respects from the Joint Utility position.

Obsidian has developed qualified facility solar projects and solar projects that are not qualified facilities in Oregon. Obsidian conditionally supports a mandatory mediation process for disputes between regulated utilities and contending counterparties. Our support is conditional because we remain concerned that the utilities will treat mandatory mediation as merely another obstacle to be cleared by QFs prior to getting to the merits of an issue. If the utilities treat mediation as unimportant, nothing more than a speed bump, then we would not favor a new procedure that makes contending with regulated utilities longer, slower and more expensive.

Our own recent experience is instructive. In interpreting an Obsidian standard QF contract PGE took a position that is not directly supported by any known Commission interpretation and is directly contrary to the outcome of DR 48 (involving very similar language in PacifiCorp's standard QF contract). We asked PGE to engage in the exact form of mediation that the Joint Utilities proposed in this docket. PGE refused, forcing us to file a complaint we were very reluctant to file. (See UM 2051, <https://edocs.puc.state.or.us/efdocs/HAA/um2051haa15501.pdf>)

In order to better ensure that mandatory mediation is meaningful and productive, we suggest (i) requiring both parties to participate in a meaningful manner and (ii) authorizing the mediator to determine at the conclusion of an unsuccessful mediation whether either of the parties failed to participate in a meaningful manner and if not, requiring such party to pay the counterparty's costs of the mediation, including attorney fees. To avoid lengthy determination of those costs, we suggest a flat amount of \$5,000 may be ordered instead, in the mediator's judgement.

The Commission should not ignore the openly hostile approach the electric utilities now evidence toward QFs, even in this docket. The November 6, 2019 filing by the Joint Utilities, for example, “respectfully submits” a response to the QF Trade Associations that contains this second paragraph:

*“The comments provided by the QF Trade Associations range far beyond the specific and solution-oriented questions posed by Chief Administrative Law Judge (ALJ) Nolan Moser, and instead seek to prejudice the process by making misleading claims, unsubstantiated accusations, and proposals for an unbalanced and overly prescriptive dispute resolution process. Through misrepresenting utility incentives, the QF Trade Association’s comments advocate for an unfair and biased alternative dispute resolution (ADR) process that ignores retail customer impacts. The Commission should resist the QF Trade Associations’ invitation to compromise the integrity and evenhandedness of its adjudicatory process and replace it with one that is inherently unfair and biased, to the detriment of the Joint Utilities’ customers.”*

Unfortunately, the Joint Utilities letter goes on in the same vein for several pages. This type of rhetoric and the attitude it conveys will undermine the effectiveness of any mediation program unless the PUC insists that it end. We think our proposal is a reasonable and simple way to urge the utilities to “walk the talk” of mediation. Without meaningful supervision, mediation will likely become just more burden and cost on QFs.

Thank you for your attention to these comments.

Obsidian Renewables LLC



David W. Brown, Principal  
C: Service List by email