



ALISHA TILL
Direct (503) 290-3628
alisha@mrg-law.com

February 8, 2021

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

Re: Docket UM 2032 – Investigation into the Treatment of Network Upgrade Costs for Qualifying Facilities

Attention Filing Center:

Attached for filing in the above-captioned docket is the Joint Utilities' Response to Obsidian Renewables, LLC's Petition to Intervene.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2032

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into Treatment of Network
Upgrade Costs for QFs

**JOINT UTILITIES' RESPONSE TO
OBSIDIAN'S PETITION TO
INTERVENE**

1 Pursuant to Oregon Administrative Rule 860-001-0300, Portland General Electric
2 Company, PacifiCorp dba Pacific Power, and Idaho Power Company (together, the Joint
3 Utilities) respectfully submit this Response to Obsidian Renewables, LLC's (Obsidian) Petition
4 to Intervene, filed on January 29, 2021. The Joint Utilities do not object to Obsidian's
5 intervention and participation in the docket's existing contested case process to investigate the
6 treatment of Network Upgrade costs for qualifying facilities (QF). However, the Joint Utilities
7 do object to the extent that Obsidian seeks to intervene solely to belatedly attack the
8 Commission's and Administrative Law Judge's (ALJ) prior determinations that this docket
9 should be conducted as a contested case. Such an attack would unreasonably delay the
10 proceeding and burden the record and should not be permitted.

I. LEGAL STANDARD

11 A petition to intervene will be granted if the ALJ finds that the petitioner "has sufficient
12 interest in the proceedings" and that their participation "will not unreasonably broaden the issues,
13 burden the record, or delay the proceedings."¹ The ALJ may impose appropriate conditions on

¹ OAR 860-001-0300(6).

1 an intervenor’s participation.²

II. ARGUMENT

2 In its January 29, 2021 petition to intervene, Obsidian states that its “primary interest in
3 this proceeding is to encourage the Commission to continue to move away from using litigation
4 as a surrogate for rulemaking in establishing generally applicable PURPA policies.”³ Obsidian
5 then criticizes the process used in the docket to date and seems to assert that this investigation
6 should proceed as a non-contested case and be followed by a rulemaking.⁴

7 Although the Joint Utilities disagree with Obsidian’s apparent position regarding the
8 appropriate process for addressing the questions posed in this docket, the Joint Utilities will not
9 address the merits of Obsidian’s argument here.⁵ Instead, this Response explains that, because
10 the Commission and the ALJ considered and resolved the process for this docket many months
11 ago, Obsidian’s belated effort to overturn these prior decisions is inappropriate and should not
12 be entertained.

13 The Commission specifically decided not to open docket UM 2032 as a rulemaking. In
14 July 2019, the Commission adopted Staff’s recommendation to open several different PURPA
15 implementation dockets, and some were opened as rulemakings.⁶ While Staff had originally
16 envisioned that the issues in UM 2032 would be addressed in a rulemaking, Staff’s ultimate

² OAR 860-001-0300(6).

³ Obsidian’s Petition to Intervene at 2 (Jan. 29, 2021).

⁴ Obsidian’s Petition to Intervene at 2-5.

⁵ Obsidian makes several unfounded allegations regarding the actions and motives of the Joint Utilities and their counsel, to which the Joint Utilities largely will not respond. However, to the extent that Obsidian’s filing can be read to make the serious accusation that the Joint Utilities’ counsel did not follow all applicable rules and requirements prior to participating in this proceeding, that accusation is incorrect. The Joint Utilities’ counsel scrupulously complied with all applicable rules and ethical requirements.

⁶ *In the Matter of Public Utility Commission of Oregon, Request to Adopt a Scope and Process for the Investigation into PURPA Implementation*, Docket UM 2000, Order No. 19-254 (Jul. 31, 2019).

1 recommendation—which the Commission adopted—was to style this docket as an investigation
2 because the subject matter would benefit from a more thorough development of a factual record.⁷
3 At the public meeting regarding Staff’s recommendation, certain developer parties argued that
4 UM 2032 should be a rulemaking instead of a contested case, and the Commission did not agree.
5 Thus, the Commission considered and rejected Obsidian’s current position more than 18 months
6 ago.⁸

7 The ALJ subsequently confirmed UM 2032 would be a contested case. The ALJ first
8 issued a notice of contested case procedures in the docket on February 10, 2020.⁹ In July 2020,
9 the ALJ adopted a schedule for the docket and, after hearing oral argument on the subject, the
10 ALJ issued a ruling confirming that the docket would use a contested case process.¹⁰
11 Importantly, the Northwest and Intermountain Power Producers Coalition, of which Obsidian is
12 a member,¹¹ and other QF parties actively participated in the early phases of this docket and
13 advocated unsuccessfully for a non-contested case process before the Commission and later
14 before the ALJ.

15 Obsidian’s effort to alter the process for this docket comes at an unreasonably late stage
16 in the proceeding. Had it reviewed the Commission order opening this docket or the ALJ
17 memoranda in the docket, Obsidian should have known at least six months ago that this docket
18 would be conducted as a contested case. Yet the contested case process was well underway

⁷ Order No. 19-254, App’x A at 1, 3 (“After reviewing comments by Stakeholders, Staff now proposes an investigation into the treatment of network upgrade costs for QFs rather than addressing this issue exclusively through a rulemaking. Staff is persuaded that this issue could benefit from a more thorough development of a factual record.”).

⁸ See Order No. 19-254 & App’x A.

⁹ Docket UM 2032, Prehearing Conference Memorandum (Feb. 10, 2020).

¹⁰ Docket UM 2032, Prehearing Conference Memorandum (July 1, 2020).

¹¹ <http://nippc.org/about/members/>.

1 when Obsidian petitioned to intervene in January 2021. To date, the current parties have filed
2 three rounds of testimony, beginning on August 24, 2020, and the schedule in place before the
3 docket was temporarily suspended contemplated one additional round of testimony before the
4 hearing.¹² Obsidian has provided no explanation for waiting until parties had expended
5 significant effort developing the record in this docket before raising its concerns regarding the
6 process.¹³ Given the advanced stage of this docket, it would be inefficient and unreasonable to
7 allow a late intervention for the sole purpose of re-litigating the appropriate process for the
8 docket.

III. CONCLUSION

9 Because the Commission and the ALJ have already considered and decided the “primary
10 issue” Obsidian seeks to raise, and because Obsidian waited many months before seeking to raise
11 its concerns, permitting Obsidian to re-litigate this docket’s process now would unreasonably
12 burden the record and delay the proceedings. To the extent Obsidian seeks to intervene for this
13 purpose, the Joint Utilities object. However, the Joint Utilities welcome Obsidian’s intervention
14 and participation in the remaining activities in the docket, consistent with the contested case

¹² See Docket UM 2032, Prehearing Conference Memorandum (July 1, 2020); ALJ Ruling Temporarily Suspending Procedural Schedule (Jan. 21, 2021).

¹³ This is not the first time that Obsidian has sought to convert a docket to a rulemaking very late in the procedural process. See *In the Matter of Idaho Power Company, Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination*, Docket UM 1725, Obsidian Renewables, LLC’s Motion to Hold a Proceeding in Abeyance (Nov. 13, 2015) (requesting just five days before the scheduled hearing that the case be held in abeyance pending resolution of Obsidian’s petition for rulemaking); *In the Matter of Portland General Electric Company, Request to Update its Schedule 201 and Standard Power Purchase Agreement*, Docket UM 1987, Obsidian Renewables LLC’s Response to Portland General Electric Company’s Motion to Lift Stay (Jan. 20, 2021) (advocating—in a response filed after the response deadline—that a docket that had been open for over two years must be dismissed because it is not being conducted as a rulemaking). Such belated filings burden other litigants and impede the efficient resolution of the matters at issue.

1 process currently in place.

DATED: February 8, 2021.

McDOWELL RACKNER GIBSON PC



Lisa Rackner
Lisa Hardie
Adam Lowney
Jordan Schoonover
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
dockets@mrg-law.com

Donald Light
Portland General Electric Company

Carla Scarsella
Karen Kruse
PacifiCorp, dba Pacific Power

Donovan Walker
Idaho Power Company

Attorneys for Portland General Electric
Company, PacifiCorp, dba Pacific Power, and
Idaho Power Company