

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1987

In the Matter of)	OBSIDIAN RENEWABLES, LLC’S
)	MOTION FOR LEAVE TO REPLY
PORTLAND GENERAL ELECTRIC)	AND SUR-REPLY TO PORTLAND
COMPANY,)	GENERAL ELECTRIC COMPANY’S
)	REPLY ON ITS MOTION TO LIFT
Request to Update Schedule 201 and)	SUSPENSION
<u>Standard Power Purchase Agreements.</u>)	

Pursuant to OAR 860-001-0420, Obsidian Renewables, LLC (“Obsidian”) hereby respectfully moves the Oregon Public utility Commission (“Commission”) for leave to file this Sur-Reply to Portland General Electric Company’s (“PGE”) Reply on its Motion to Lift Suspension filed on January 26, 2021. Obsidian has attempted to confer with the parties in this docket regarding their positions on this motion. Staff, the Northwest Intermountain Power Producers Coalition, the Renewable Energy Coalition, the Community Renewable Energy Association, Evergreen Biopower LLC, and Portland General Electric have indicated that they do not oppose this motion.

In its Reply, PGE makes the argument that the Commission may establish the terms and conditions of PGE’s standard PURPA Power Purchase Agreement (“PPA”) outside of a rulemaking proceeding because the revised PURPA PPA only directly affects PGE. PGE writes that “the outcome of UM 1987 will be to direct a single party, PGE, to adopt a revised Standard PPA. Therefore, the Commission’s decision in UM 1988 will be directed to ‘a named person,’ and is appropriately issued in an order.” PGE forgets—or does not care—that the order it requests will directly affect every other person who wishes to or actually does execute that Standard PPA.

The terms and conditions of PGE’s Standard PPA are the terms and conditions for the purchase of energy or energy and capacity from a qualifying facility. ORS 758.535(2)(a) states precisely that the “*terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall [b]e established by rule by the Commission if the purchase is by a public utility.*” (Emphasis added).

PGE is a public utility. In this docket, PGE is *literally* trying to establish the terms and conditions by which it purchases energy from a qualifying facility. Although ORS 758.535(2)(a) was specifically raised by Obsidian in its Response, PGE conspicuously chose to ignore it in its Reply. Perhaps PGE is hoping that the Commission simply won't notice that it has a statutory obligation to establish *by rule* the terms and conditions of PGE's Standard PPA.

Under the Oregon APA, the only lawful way to establish a rule is through a rulemaking. *See* ORS 183.335(11). Because such a rulemaking is already underway in AR 631, lifting the stay in this docket can serve no lawful purpose. For the same reason, this docket actually should be dismissed in its entirety. PGE has no authority to open rulemaking as a contested case. The Administrative Law Judge should observe this clear flaw in jurisdiction and rule on his or her own authority that this docket cannot be established as a contested case.

DATED this 1st day of February, 2021.

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