

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1396  
Phase II

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON

Investigation Into Resource Sufficiency  
Pursuant to Order No. 06-538.

ORDER

DISPOSITION: POLICIES ADOPTED

**I. INTRODUCTION**

We opened this proceeding to further address issues related to calculating avoided cost payments to qualifying facilities (QFs), consistent with our policy and the Public Utility Regulatory Policy Act (PURPA). We concluded Phase I of this proceeding by issuing Order No. 10-488.

In this order, we conclude Phase II by addressing issues related to avoided costs for renewable resources. As addressed below, we find that:

- Separate renewable avoided cost rates should be adopted for Portland General Electric Company (PGE) and PacifiCorp, dba Pacific Power (Pacific Power). Because Idaho Power Company (Idaho Power) is not fully subject to the Oregon renewable portfolio standard (RPS), no renewable resources avoided cost rate should be adopted for that utility at this time;
- During periods of renewable resource sufficiency, the rate will be based on market prices. During periods of renewable resource deficiency, the rate will be based on the renewable avoided cost of the next utility scale renewable resource acquisition in that utility’s IRP. The renewable resource QF will keep all associated Renewable Energy Certificates (RECs) during periods of renewable resource sufficiency, but will transfer those RECs to the purchasing utility during periods of renewable resource deficiency;
- The IRP Action Plan should be used to identify when a renewable resource acquisition could be avoided. Out-of-state renewable portfolio

standards should not be used to determine when a renewable resource can be avoided;

- A renewable QF should have the option of choosing among the renewable avoided cost stream and the standard avoided cost stream;
- A project is avoidable until a utility makes an irreversible commitment to acquire it. An irreversible commitment occurs after the completion of the RFP process and the execution of contracts or awarding of the project to the utility to build for itself; and
- PGE and Pacific Power's renewable resource avoided cost rate compliance filings will be the subject to evidentiary hearings, where parties will have the opportunity to review the material, conduct discovery, and propose changes.

## II. PROCEDURAL HISTORY

On January 21, 2011, a prehearing conference was held, and a schedule adopted. Opening comments were filed on May 13, 2011. Reply comments were filed on June 28, 2011.

Opening comments were filed by PGE, Pacific Power, Idaho Power, the Renewable Energy Coalition (the Coalition), the Industrial Customers of Northwest Utilities (ICNU), the Oregon Department of Energy (ODOE), Northwest Energy Systems Company (NESCO), the Community Renewable Energy Association (CREA), and the Public Utility Commission of Oregon Staff (Staff). Reply comments were filed by PGE, Pacific Power, Idaho Power, the Coalition, ICNU, ODOE, CREA, and Staff.

## III. DISCUSSION

In an appendix to Order No. 10-488, we identified issues to be addressed in this phase of the proceeding. The issues were divided into substantive and procedural issues, with some of the substantive issues containing sub-issues. For our discussion in this order, we adopt a different numbering system, but provide prior references to allow the reader to match up the comments to our resolution.

### **A. Should the Commission require that each utility determine its avoided cost for a renewable resource? If so, how should the Commission decide what renewable resource would be avoided and at what cost? (Issue I. A)**

#### ***1. Parties' Positions***

The concept of a renewable resource avoided cost option is broadly supported among the parties. Only ODOE expressed concern about the authority of a state commission to establish renewable resource avoided cost rates, and suggested the Commission allow additional briefing on the issue.

The parties offer various recommendations, however, as to how a renewable resource avoided cost should be determined. PGE recommends the rate be based on the levelized value of the capital and operations and maintenance costs of a proxy wind resource during a deficiency period—similar to the current calculation using a proxy combined-cycle combustion turbine (CCCT) resource. For the sufficiency period, PGE proposes that the avoided cost be based on power market forward curves, plus an adder for the estimated value of RECs.

Pacific Power believes that the rate should be based on the next deferrable renewable resource in the utility's IRP. If a proxy resource is used, Pacific Power recommends that resource be a utility-scale wind plant, noting its current plans to acquire substantial amounts of wind generation.

Idaho Power proposes to develop an avoided cost rate for each type of renewable resource, using a representative generation profile for that resource type.<sup>1</sup>

Staff believes that the utilities' IRP should be used to determine whether the utilities are renewable resource deficient, and that the renewable resource cost estimates provided in the IRP should be the basis of the renewable avoided cost. If the utility is renewable resource deficient, Staff contends that a utility scale regional wind plant is the appropriate avoidable renewable resource and avoided cost to use.

ODOE finds relevance in the use of an RPS implementation plan in conjunction with the IRP Action Plan. Such information complements what is needed as part of the definition of a renewable avoided cost. ODOE expresses concern, however, about relying on large wind as a proxy resource, as each renewable resource has significant site and production specific factors.

ICNU does not oppose either an IRP or proxy-resource-based approach, but expresses concerns regarding implementation. If the Commission adopts an IRP based approach, ICNU recommends that the final rates be subject to review in an evidentiary proceeding. If a proxy resource approach is used, ICNU argues that it should not be based solely on the cost of a wind resource, noting that the utilities are planning to acquire a variety of renewable resources, some of which may operate more like a reliable base load resource than an intermittent resource like wind.

CREA agrees with parties supporting the use of a wind plant as a proxy for the renewable avoided cost rate, but argues that for small QFs the proxy calculation should include the

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<sup>1</sup> In its comments, Idaho Power also requests authorization to use a different methodology than the company's currently authorized SAR (surrogate avoided resource) methodology for QFs up to 10 MW—including both renewable and non-renewable resources. Idaho Power contends that its proposed integrated resource plan (IRP) methodology is more comprehensive and is the method currently used to calculate avoided costs for QFs greater than 10MWs. Idaho Power's request is beyond the scope of this proceeding. Idaho Power may raise the issue again in a properly noticed proceeding involving Idaho Power stakeholders.

additional avoided costs associated with small scale projects, such as avoided costs of interconnection and transmission. CREA recommends that an independent third-party design the proxy with input from the parties and approval by the Commission.

NESCO, REC, and the Coalition recommend that the Commission set rates that differentiate between base load and intermittent resources. NESCO proposes that each utility be directed to calculate at least two different avoided cost values—one for base load and one for intermittent—while the Coalition proposes that the base load CCCT proxy resource be treated as the avoidable resource for base load QFs, which would retain their RECs.

## 2. *Resolution*

At the outset, we conclude that this Commission has the authority to adopt a separate avoided cost rate for renewable resources and that no additional briefing on this issue is necessary. As Staff notes, the Federal Energy Regulatory Commission (FERC) recently concluded that “where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility’s avoided cost for that procurement requirement.”<sup>2</sup> Because ORS Chapter 469A requires that electric utilities meet a renewable portfolio standard through the acquisition of renewable energy credits (RECs) associated with qualifying renewable generation resources, a properly designed renewable energy avoided cost rate for renewable resources would comply with PURPA.<sup>3</sup>

Exercising this authority, we agree with the parties that a separate avoided cost stream for renewable resources should be adopted for PGE and Pacific Power, the two Oregon utilities currently subject to the RPS. Because the RPS requirements do not apply to Idaho Power until 2025, we do not adopt a renewable resources avoided cost option for Idaho Power at this time.

Like standard avoided costs, the renewable resource avoided cost rates will vary depending on whether the utility is renewable resource sufficient or deficient. During periods of renewable resource sufficiency, the rate should be based on market prices. During periods of deficiency, we adopt Pacific Power’s proposal to base the renewable avoided cost on the next utility scale renewable resource acquisition in the utility’s IRP. We find that reference to the utility’s IRP will best ensure that the renewable resource avoided cost rate most accurately reflects the costs the utility will avoid with the QF purchase.

Although we recognize that the avoidable renewable resource likely will be a wind project, we decline proposals to adopt a wind farm proxy to calculate avoided costs during periods of deficiency. We share concerns raised by ODOE and CREA that the use of a wind proxy presents more difficulties than our use of a CCCT proxy to calculate standard QF rates. Whereas the CCCT proxy avoided cost calculation can be reduced to basic assumptions regarding capacity, capacity factor, capital costs, and heat rate; utility scale renewable

<sup>2</sup> 133 FERC 61,059, pp. 13-14.

<sup>3</sup> We also note that the minimum solar capacity standards set forth in ORS 757.370 may also provide a basis for adopting avoided costs for renewable resources in Oregon.

resource acquisitions are not likely to be replicable to any corresponding degree. Differences in capacity, capacity factors and transmission costs—due primarily to differences in locations—would not be captured in a proxy model, so that the proxy would not provide an accurate measure of a utility’s true avoided cost.

In addition, while we decline Idaho Power’s and ICNU’s recommendation to derive avoided costs for each type of renewable resource, we do agree with NESCO, REC, and the Coalition that the difference between “intermittent” and “base load” is a useful distinction that should be recognized in avoided cost rate options for QFs. A wind resource is intermittent and may not fairly represent the resource value of a base load renewable resource. To recognize this fact, we adopt a modified version of the Coalition’s recommendation and allow the renewable resource QF the option to select the base load CCCT proxy resource as the avoidable resource for base load QFs. In other words, the QF would have the option of choosing between the renewable resource QF rate—likely to be based on a wind resource—or the standard QF rate based on the CCCT proxy. If the QF chooses the standard avoided cost stream, it would retain the RECs associated with the energy. We further discuss the renewable QF’s right to choose between avoided costs streams under Issue F below.

**B. Should the IRP Action Plan be used to identify when a renewable resource acquisition would be avoided, or should a utility purchase of unbundled renewable energy credits signal the start of a renewable resource deficiency period? (Issue I. A1)**

**1. Parties’ Positions**

PGE, Pacific Power, Idaho Power, and Staff support the use of the IRP Action Plan to identify when a renewable resource acquisition would be avoided. PGE notes that the IRP Action Plan forms the basis for utility resource acquisition—renewable or non-renewable. Pacific Power notes that, in Phase I we already found that “the IRP process is the appropriate venue for addressing resource sufficiency/deficiency issues.”<sup>4</sup>

PGE, Pacific Power, and Staff oppose the use of unbundled RECs to signal the start of a renewable resource deficiency period. A purchase of unbundled RECs in one year does not necessarily provide the RECs a utility may need to satisfy the Oregon RPS in a sustainable fashion. Staff adds that it is “unlikely” that Oregon utilities will participate “to any great extent” in the market for unbundled RECs to satisfy their RPS requirements.

The Coalition argues that the deficiency period should occur at the earlier of the utility’s need for additional power, or when the utility is required to build a renewable plant to acquire renewable attributes for its portfolio.

ICNU and CREA offer a different perspective. ICNU notes that the IRP Action Plan may be a reasonable starting point, but the date should be modified based on utility plans or actions that demonstrate that a utility needs renewable resources, including the purchase of unbundled RECs. CREA adds that, if a utility is purchasing unbundled RECs, it is obviously

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<sup>4</sup> Citing Order No. 10-488.

renewable resource deficient. ICNU proposes that the date should be the earlier of the date provided in a utility plan (IRP or RPS implementation) for acquiring renewable resources, or the date of any actual purchase of renewable resources, including RECs. CREA also contends that the avoided cost rate should include the RECs.

ODOE questions whether a utility's IRP process or the IRP Action Plan adequately captures all of the essential components necessary to determine a renewable avoided cost. ODOE encourages the Commission to undertake discussions to explore ways to use the RPS implementation plan in conjunction with the IRP or IRP Action Plan to ensure a utility's resource planning accurately reflects the full avoided cost of integrating an unplanned renewable QF into its system.

## **2. Resolution**

As noted by Pacific Power, we earlier found the IRP process to be the appropriate venue for determining when a utility is resource sufficient or deficient. The derivation of a renewable avoided cost fits well within the same framework and allows issues relating to resource sufficiency or deficiency to be addressed as part of an integrated whole. The IRP preferred portfolio and Action Plan provide the basis for deciding when a renewable resource would be avoided by QF purchases.

We are not persuaded that the utility purchase of unbundled RECs signals the start of a renewable resource deficiency period. A utility may purchase unbundled RECs for many reasons—including speculation. In addition, as noted by Pacific Power, a utility purchase of unbundled RECs is akin to its spot purchases of energy, and not necessarily indicative of its longer term plans.

### **C. Should out-of-state renewable portfolio standards be taken into account when determining when a renewable resource can be avoided by a purchase from an Oregon QF? (Issue I. A2)**

#### **1. Parties' Positions**

This issue arises because of Pacific Power's multi-state operations. Pacific Power contends that out-of-state standards should not be considered, because the company's acquisition of renewable resources is done on a system-wide basis and driven by cost-effectiveness and risk mitigation. Pacific Power states that it does not acquire renewable resources to meet any one state's RPS requirements.

Staff and ODOE agree that out-of-state renewable portfolio standards should not be used to determine when a renewable resource can be avoided. Staff notes that, under the current allocation methodology applicable to Pacific Power, "costs associated with resources acquired pursuant to a State Portfolio Standard, which exceed the costs that the utility would have otherwise incurred, are assigned on a situs basis to the state adopting the standard."

ICNU, CREA, and NESCO contend that out-of-state renewable portfolio standards should be taken into account. Because renewable QFs can sell renewable power and RECs to an Oregon utility to offset all of that utility's actual RPS needs, ICNU recommends that not only out-of-state RPS obligations be considered, but also any federally imposed RPS requirements. Similarly, CREA contends that, if an out-of-state RPS imposes a cost on the utility that the utility can avoid by purchasing a QF's bundled electrical output and RECs, then the utility must compensate the QF for that avoided cost. Finally, NESCO notes that the west-coast REC market is dominated by California, and that Oregon must recognize this broader market "reality."

Idaho Power contends that whether an RPS should be taken into account is immaterial to the determination of when a utility is avoiding renewable resources. Idaho Power explains that, under OAR 860-022-0075(2) (b), energy a utility purchases from a QF in Oregon is not renewable energy for purposes of Oregon's RPS because the owner of the renewable energy facility retains ownership of the REC associated with the electricity.

## **2. Resolution**

We agree with Pacific Power, ODOE, and Staff that out-of-state renewable portfolio standards should not be used to determine when a renewable resource can be avoided. Only Pacific Power is subject to out-of-state renewable portfolio standards, and its renewable resource deficiency status is determined for the company as a whole and is not driven by individual state conditions. NESCO may be correct that California's RPS results in an insatiable appetite for RECs. That does not, however, translate into a resource deficiency for Oregon utilities and is not indicative of their avoided costs.

With regard to Idaho Power, it is correct that, under OAR 860-022-0075(2) (b), the renewable energy facility generally retains ownership of the RECs associated with the electricity sold to a utility. A QF's receipt of the renewable resource avoided cost rate, however, is contingent upon the QF transferring the REC associated with the energy sold to the purchasing utility. If the QF does not transfer the renewable energy credits, the utility will not avoid costs to purchase energy that complies with the RPS. In such a case, any purchase from the QF would be priced on a standard avoided cost rate.

### **D. Should the renewable avoided cost be based on the estimated cost of the renewable resources identified in the IRP Action Plan, or should the Commission use a "proxy" resource approach similar to the current approach used by PGE and PacifiCorp for standard avoided costs? (Issue I. A3)**

We resolved this issue above by adopting Pacific Power's proposal to base the renewable resource avoided cost on the next renewable resource in a utility's IRP. The avoided cost of the IRP resource will be based on the unique circumstances of each utility.

**E. When should the renewable avoided cost stream reflect an avoided purchase of an unbundled renewable energy certificate? (Issue I. A4)**

This issue has been rendered moot by our earlier decision that the purchase of unbundled RECs is not a consideration in deriving a renewable resource avoided cost rate. In addition to the policy reasons cited above for our finding, we also note concerns raised by both Pacific Power and Staff that the inclusion of such purchases in the avoided cost rate would violate PURPA.

**F. Should the Commission require that a renewable QF be able to choose among two avoided cost streams—the renewable resource avoided cost stream, and the non-renewable resource avoided cost stream? (Issue I. B)**

**1. Parties' Positions**

Most parties support giving a renewable QF the option of choosing among the renewable resource avoided cost stream and the standard avoided cost stream, provided the utility is renewable resource deficient. Several parties, however, proposed differing conditions related to this option.

At any given time, a utility could be deficient or sufficient with regard to both renewable resources and non-renewable resources. For purposes of our discussion, we use the example where a utility is non-renewable resource sufficient for the next two years, and renewable resource sufficient for the next five years. Most parties agree that a renewable QF should have the option to choose the renewable avoided cost option at the time it signs a contract. These parties differ, however, as to the avoided cost stream to be paid the renewable QF during the differing periods of resource sufficiency and deficiency, and the QF's retention of RECs during these differing periods.

Using our example, Staff would propose that a QF that chooses the renewable avoided cost option be paid the market rate during the first two years of resource sufficiency, then be paid the standard avoided cost rate based on a CCCT proxy during years three to five until the renewable resource deficiency period starts. Staff believes that the renewable QF should be treated the same as other QFs during periods of overall resource deficiency, even when the utility is sufficient in renewable resources. Once the utility becomes renewable resource deficient in year five, the QF would be paid the renewable resource avoided cost rate, at which time the utility would receive the RECs associated with the energy.

Under PGE's proposal, the QF in our example would be paid the market rate during the first five years of the contract—that is, until the renewable resource deficiency period begins. PGE explains that an interim avoided cost rate for a renewable resource should not be based on a non-renewable resource like a CCCT proxy. PGE adds that the renewable QF would cede its REC to the utility at the commencement of the contract term, and that the utility would be required to pay an unspecified adder for the REC until the QF began receiving the renewable resource avoided cost rate beginning in year five (and the utility would receive the RECs associated with the energy).



Pacific Power agrees with PGE, arguing that the avoided cost for a renewable QF during a period of renewable sufficiency but non-renewable resource deficiency should not be the non-renewable proxy resource or CCCT. Pacific Power proposes that the Commission establish two straightforward avoided cost streams—one for renewable QFs, and one for non-renewable QFs. The renewable avoided cost stream would include one deficiency period to demarcate when the utility is no longer renewable resource sufficient.

Pacific Power also proposes that a renewable QF should not be allowed to choose the standard avoided cost rate if it is higher than the renewable rate. ICNU and Staff oppose this recommendation. ICNU argues that, from a practical perspective, this would mean that renewable QFs would have only one real option: the renewable avoided cost rate.

Idaho Power is the only commenting party that opposes allowing the renewable QF to choose among avoided cost options. According to Idaho Power, allowing a QF to choose an avoided cost stream that does not accurately reflect the actual costs avoided by the utility results in the utility paying a rate that is not the avoided cost.

## 2. *Resolution*

Allowing a renewable QF to choose between the two avoided cost streams is consistent with FERC's ruling that clarified the right of the states to determine the avoided cost associated with utility purchases of energy "from generators with certain characteristics." Renewable QFs willing to sell their output and cede their RECs to the utility allow the utility to avoid building (or buying) renewable generation to meet their RPS requirements. These QFs should be offered an avoided cost stream that reflects the costs that utility will avoid.

Staff and PGE do not agree regarding the renewable avoided cost payment stream during a period of non-renewable resource deficiency but renewable resource sufficiency. Staff proposes that the renewable QF be treated like other QFs and be paid the standard avoided cost but retain its RECs. In contrast, PGE proposes that the QF be paid a market price, plus an adder for the value of the RECs.

We agree with PGE that the renewable QF should be paid the market price throughout the renewable resource sufficiency period—even if the utility is non-renewable resource deficient. We find, however, that PGE's proposal that the utility make an additional payment to the QF for the REC is problematic and unnecessary. During the renewable resource sufficiency period the QF should be paid the market price and retain its RECs.

We decline Pacific Power's proposal to allow the choice only when the non-renewable avoided cost rate is lower than the standard avoided cost rate. Adoption of such a rule would be contrary to our decision above to allow the renewable QF to choose the standard avoided cost rate to better reflect the value of a base load renewable resource.

**G. When is a planned resource acquisition avoidable? (Issue C)**

We resolved this issue above by concluding that the IRP Action Plan should be used to decide when a planned resource acquisition is avoidable.

**H. If no irreversible commitment has been made to the project, is the project avoidable? What constitutes an irreversible commitment? (Issues I. C1 and C2)****1. Parties' Position**

These issues address the timing of a utility's resource sufficiency. An irreversible commitment to the development of a utility resource will establish when a utility project is no longer avoidable.

The Coalition claims that utilities have powerful incentives to claim that an irreversible commitment occurs early in the resource's development process. Although the Coalition believes that no project is "truly irreversible," it supports the adoption of an objective and easily identifiable benchmark to identify the date of an irreversible commitment. The Coalition proposes that the date of an irreversible commitment be the date when the utility, having acquired all necessary land and permits, has spent 25 percent of the total anticipated budget for the project. The Coalition further proposes that the utilities be required to provide periodic reports of their progress toward the point of irreversibility.

ICNU recommends that a planned resource be considered avoidable until it is substantially complete. ICNU notes that there have been many instances where utilities had planned and financed generation projects, purchased equipment, and even started construction, but never actually completed the project.

CREA and ODOE propose that a planned resource acquisition should be considered avoidable until the major resource is online. CREA notes that there are many examples of a utility's planned resources being abandoned well after they would be considered "committed resources" in an IRP or even in an executed contract.

Staff argues that a resource should be considered unavoidable if it was acknowledged in a prior IRP and continues to be a committed resource in the current IRP. Staff adds that only resource additions acknowledged in the current IRP should be considered avoidable. Staff adds that the completion of the RFP process constitutes an irreversible commitment for a specific project.

PGE argues that an irreversible commitment for a specific project is when the Request for Proposal process is complete and contracts are signed.

Pacific Power states that a commitment is irreversible when the Company enters into a binding contract to acquire a resource.

## 2. *Resolution*

We conclude that a project is avoidable until a utility makes an irreversible commitment to acquire it. We further conclude that a project is “irreversible” after the completion of the RFP process and the execution of contracts or awarding of the project to the utility to build for itself. This approach provides QFs with an objective and easily identifiable date, and is consistent with our finding that the IRP process and IRP Action Plan should provide the foundation for a determination of resource sufficiency. The RFP process is closely linked to the IRP process.

We are well aware that “irreversible” in this context does not mean certain. “Irreversible” refers to the commitment by the utility to undertake that project—as an alternative to other projects that are thereby avoided. Because an irreversible project is not certain, parties may petition the Commission to determine whether an irreversible project has been abandoned or delayed to the point where the earlier determination should be reconsidered.

### **I. Which of these issues should be the subject of evidentiary proceedings? (Issue II. A)**

#### **1. *Parties’ Positions***

No commenting party requests evidentiary proceedings for this phase of the investigation. Although some believe evidentiary hearings may be required to develop renewable avoided cost rates for each utility, the parties generally agree that the issues in this docket are primarily legal and policy in nature and do not require testimony and hearings.

#### **2. *Resolution***

Having received and reviewed the parties’ comments, the Commission is satisfied that the record in this proceeding has been fully developed, such that the legal and policy determinations are well founded without the need for evidentiary hearings.

We agree with Staff, ICNU, ODOE, and CREA, that implementation of these policies requires an evidentiary record to derive utility-specific avoided cost rates for renewable resources. As CREA notes, the IRP process, while complex, is not a litigated proceeding in which a utility’s estimates of the costs of its resources are subjected to extensive discovery.


### **J. Should the evidentiary proceedings be generic or conducted on a utility-by-utility basis? (Issue II. B)**

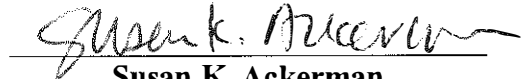
No commenting party proposes further generic proceedings. We adopt Staff’s proposal and require PGE and Pacific Power to file proposed renewable resource avoided costs, with supporting testimony and work papers. The filings and rate calculations will be subject to evidentiary hearings, wherein parties will have the opportunity to review the material, conduct discovery, and propose changes.


**IV. ORDER**

IT IS ORDERED THAT within sixty days of this order Portland General Electric Company and PacifiCorp, dba Pacific Power, each shall each file applications with supporting testimony setting forth proposed rates and tariffs to effectuate the legal and policy decisions made in this order.

Made, entered, and effective DEC 13 2011.

  
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**John Savage**  
Commissioner

  
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**Susan K. Ackerman**  
Commissioner

  
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**Stephen M. Bloom**  
Commissioner

