

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2032**

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

Obsidian Renewables, LLC (“Obsidian”) submits these comments in response to the Joint Utilities’ objection to Obsidian’s participation in this investigation. In its petition to intervene, Obsidian encouraged the Commission to adopt an informal and collaborative investigative process to be followed (if needed) by a proper rulemaking proceeding. Obsidian noted how formal contested-case rules are being abused by the “parties” to raise barriers to participation and stifle fact-finding. Right on queue, the Joint Utilities now object to Obsidian’s participation in this investigation.

Contrary to the Joint Utilities’ objections, adopting a less formal process now will not slow down this investigation but will speed it up. It is ironic that the Joint Utilities fret over Obsidian impeding progress in a docket that is currently *suspended* because the Joint Utilities failed to respond appropriately to discovery requests. Stakeholders’ time and money have already been wasted on petty procedural disputes with the Joint Utilities over witness qualifications, motions to strike, motions to compel, and now petitions to intervene. For all of the time, cost, and effort, none of these legal skirmishes has advanced the factual record. The fact is that the contested case rules are being used, perhaps deliberately, to derail this investigation. Adopting an informal and collaborative investigative process, as the Staff described in UM 2011, would avoid such distractions in the future. An informal and

collaborative investigative process would facilitate broad stakeholder participation and would better develop the factual record upon which a future rulemaking may be based.

The two-stage process that Obsidian has suggested—to which the Joint Utilities now object—is *exactly* what the Staff Report recommended, and the Commission ordered, to open this docket. In its Report attached to Order 19-254, Staff wrote:

After review 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. Depending on the results of the initial investigation, there could be a subsequent rulemaking, should the Commission decide there is a need for changes to the current process.*

The title of this docket is “*Staff Investigation Into Treatment of Network Connection Costs for QFs.*” The focus should therefore be placed on Staff running an investigation. By contrast, this docket was not opened to resolve a complaint filed by the QFs against the Joint Utilities. The QFs should not bear the burden of conducting the investigation or proving a litigation position.

Given that the docket is currently on hold, now is an appropriate time for the Commission, Staff, and ALJ to reflect on the underlying purpose of this and similar Staff investigations. Is the investigation being advanced or frustrated by the expansive and rigid application of contested-case rules? Staff should use fact-finding strategies and procedures it finds useful to conduct its investigation. Borrowing from contested case procedures for this purpose is within Staff’s discretion. But borrowing contested case procedures to facilitate the investigation does not make this a formal “contested case” akin to a complaint proceeding. Obsidian encourages the Commission and staff to choose the right procedural tools for the job in this and other PURPA policy dockets.

DATED this 10<sup>th</sup> day of February, 2021.

/s/ Richard G. Lorenz

Richard G. Lorenz, OSB No. 003086

Cable Huston LLP

1455 SW Broadway, Suite 1500

Portland, OR 97201-3412

(503) 224-3092 (Telephone); (503) 224-3176 (Fax)

[rlorenz@cablehuston.com](mailto:rlorenz@cablehuston.com)

*Of Attorneys for*

*Obsidian Renewables, LLC*