

**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 Qualifying Facilities.

RULING

**DISPOSITION: PETITION TO INTERVENE GRANTED**

On January 29, 2021, Obsidian Renewables, LLC (Obsidian) filed a petition to intervene in these proceedings. Obsidian develops renewable power generating facilities, both qualifying facilities (QFs) and facilities that are not QFs, and including solar photovoltaic facilities.

Obsidian indicates support for discovery requests by NewSun Energy, LLC, but states that its primary objective for seeking intervention “is to encourage the Commission to continue its move away from using litigation as a surrogate for rulemaking in establishing generally applicable PURPA policies.”<sup>1</sup> Obsidian raises concerns with this docket’s procedural process and recommends that the Commission take the opportunity presented by the schedule suspension to readdress the procedural nature of the docket, moving to an informal, non-contested, and collaborative investigation. In response comments filed on February 10, 2021, Obsidian elaborates on its concerns and request to revisit the procedural nature of this docket.

On February 8, 2021, a response to Obsidian’s petition was filed by Portland General Electric Company, PacifiCorp dba Pacific Power, and Idaho Power Company (the Joint Utilities). The Joint Utilities do not object to Obsidian’s intervention and participation in the docket’s existing process.

The Joint Utilities expressed concerns regarding Obsidian’s censure of the docket’s process. The Joint Utilities assert that addressing Obsidian’s concerns at this late point in the schedule, after such concerns were already addressed and resolved, would unreasonably burden the record and delay the proceedings.

Having reviewed Obsidian’s petition to intervene, along with the related filings which do not challenge Obsidian’s right and suitability to intervene, I find that Obsidian, as a developer of renewable power generating facilities has sufficient interest in the

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<sup>1</sup> Petition to Intervene of Obsidian at 2 (Jan 29, 2021).

proceedings to participate as a party in the docket. However, Obsidian's concerns about the procedural nature of the docket are inappropriately raised in its petition to intervene. A petition to intervene is not the appropriate vehicle to challenge prior rulings establishing the procedural nature of a docket.<sup>2</sup>

Dated this 11<sup>th</sup> day of February, 2021, at Salem, Oregon.



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Traci Kirkpatrick  
Administrative Law Judge

Attachment: Notice of Contested Case Rights and Procedures

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<sup>2</sup> See Prehearing Conference Memorandum (Jul 1, 2020).

## NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

**Hearing:** The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at [www.puc.state.or.us](http://www.puc.state.or.us). The Commission will hear issues as identified by the parties.

**Right to Attorney:** As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

**Notice to Active Duty Servicemembers:** Active Duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

**Administrative Law Judge:** The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

**Hearing Rights:** You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

**Evidence:** Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Notice of Contested Case Rights and Procedures continued

**Record:** The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

**Final Order and Appeal:** After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.