

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UM 1394

In the Matter of

THE PUBLIC UTILITY COMMISSION OF  
OREGON

Open an investigation into electric companies  
providing Qualified Reporting Entity services  
for certification of renewable energy certificates  
by the Western Renewable Energy Generation  
Information System.

ORDER

**DISPOSITION: MEMORANDUM OF UNDERSTANDING ADOPTED;  
SCHEDULE SUSPENDED**

**I. INTRODUCTION**

This docket was opened to investigate whether investor-owned utilities in Oregon should be required to provide Qualified Reporting Entity (QRE) service to third-party generators who need the service in order to certify their renewable energy credits (RECs). In this order, we adopt a Memorandum of Understanding filed by Staff; PacifiCorp, dba Pacific Power (Pacific Power); Portland General Electric Company (PGE); and Idaho Power Company (Idaho Power) (collectively, the utilities), in which the utilities agree to provide QRE service voluntarily for a two-year period. We suspend this docket until April 1, 2011. The parties will convene a two-year review workshop on or around March 15, 2011, in conformance with the terms of the Memorandum of Understanding.

**II. PROCEDURAL HISTORY**

On October 7, 2008, the Public Utility Commission of Oregon (Commission) granted Commission Staff's request to open an investigation into whether electric companies should provide QRE service in connection with certification of RECs. As part of its request, Staff filed an initial seven-point issues list for discussion.

A prehearing conference was held on October 21, 2008. A procedural schedule was adopted that required Pacific Power, PGE, and Idaho Power to file draft tariffs and opening comments on Staff's initial issues list. The schedule also required the parties to develop a joint issues list.

The following parties were granted intervenor status: PGE; Pacific Power; Idaho Power; Bonneville Power Administration (BPA); Industrial Customers of Northwest Utilities; Exergy Development Group of Idaho, LLC; Falls Creek HP Limited Partnership; Renewable Northwest Project; Oregon Department of Energy (ODOE); Citizens' Utility Board; U.S. Geothermal Inc.; Iberdrola Renewables, Inc.; and Community Renewable Energy Association.

On November 6, 2008, in compliance with the procedural schedule, Idaho Power, PGE, and Pacific Power filed draft tariffs for QRE service and opening comments on Staff's initial issues list. On December 1, 2008, Staff filed a revised joint issues list on behalf of the parties, expanding on Staff's initial issues list. On December 12, 2008, the parties filed comments on the joint issues list. Workshops were held on November 12, 2008, January 9, 2009, and February 23, 2009.

On May 8, 2009, after a series of settlement discussions, Staff filed a Joint Motion to Adopt Memorandum of Understanding and Suspend Docket.

### III. DISCUSSION

#### A. Background

The Western Renewable Energy Generation Information System (WREGIS) is tasked with certifying RECs in Oregon.<sup>1</sup> As part of the certification process, WREGIS requires a QRE to upload generating data to WREGIS on a monthly basis.<sup>2</sup> Unfortunately, not all generators in the state have access to QRE service, leaving some generators without an avenue for certifying their RECs.

WREGIS has determined that “[i]f the Generating Unit currently reports to a Balancing Authority, then this specific Balancing Authority should be the Qualified Reporting Entity for those generating units in WREGIS, as long as the data can be reported on a generating unit basis.”<sup>3</sup> Staff notes that BPA provides the service at no cost within its balancing authority area.<sup>4</sup> But outside of BPA's control area, no entity provides the service to all generators who need the service in Oregon. Pacific Power and Idaho Power are certified to provide QRE service, but they provide the service only for their own generation resources. Staff notes that size and cost barriers can prevent small generators from becoming

<sup>1</sup> Under ODOE rules, renewable energy certificates may not be used to comply with the Oregon Renewable Portfolio Standard unless they have been certified by WREGIS. See OAR 330-160-0020.

<sup>2</sup> An exception exists for very small generators of 360 kW or less.

<sup>3</sup> See Staff's September 30, 2008, memorandum at 2, citing WREGIS Interface Control Document for QREs.

<sup>4</sup> Staff also notes that the California Independent System Operator provides free QRE service to all generators within its balancing authority area.

QREs themselves.<sup>5</sup> As a consequence, generators may find themselves without a way to certify their RECs.

This docket was opened to explore whether investor-owned utilities in Oregon should be required to provide QRE service. The issues raised in the final joint issues list broadly encompass the following questions:<sup>6</sup>

- Does the Commission have the statutory authority to require utilities to provide QRE service to third parties?
- Does this Commission or the Federal Energy Regulatory Commission have jurisdiction over QRE service?
- Assuming the Commission can require utilities to provide QRE service, can the Commission also require utilities to subsidize the costs of third-party QRE service?
- If such subsidies cannot be required, can third-party generators afford to pay for the service on their own?
- If utilities are required to provide QRE service, should they be allowed to discriminate between their own generators and third-party generators when charging for QRE service?
- Is QRE service, in general, a competitive service?
- What is the actual cost of providing QRE service?

The comments filed by the parties on December 12, 2008, make clear that the parties have strong and divergent views on many of these issues.<sup>7</sup>

## **B. The Stipulation**

After holding workshops, the parties were unable to resolve their differences with respect to the issues listed above. On May 8, 2009, Staff and the utilities (collectively, the Stipulating Parties) filed a Memorandum of Understanding (MOU) that would provide a temporary solution for REC certification while allowing the parties to continue exploring the issues.

Under the terms of the MOU, the utilities agree to voluntarily provide QRE service in their own service territories for approximately two years. The MOU includes as exhibits form QRE service agreements for each of the utilities. At the end of the two-year period, on or about March 15, 2011, the parties will convene a two-year review workshop.

---

<sup>5</sup> Staff notes that WREGIS requires QREs to be free from conflicts of interest related to generating data or associated RECs. As a result, an entity providing QRE service for its own generation must be large enough to allow for separation of function and employees to ensure no conflicts exist.

<sup>6</sup> For a more detailed discussion of the initial issues, please see the Staff's September 30, 2008, memorandum filed in this docket on October 7, 2008.

<sup>7</sup> The draft tariffs for QRE services filed by the utilities also differed considerably.

Based on the results of the workshop, Staff will make an assessment about the status of QRE service and make a recommendation to the Commission about what additional proceedings, if any, would be appropriate in this docket. Although the MOU was signed only by Staff and the utilities, no active party opposes it.

Under the terms of the MOU, the utilities agree they will not leave the business of being a QRE before the two-year workshop is held without first notifying the Commission. The MOU also states that nothing in the agreement prevents a utility and QRE customer from mutually agreeing to alter any portion of the QRE service agreement or precludes a party from pursuing “any available remedies.”<sup>8</sup>

Because the parties disagree about whether the Commission has jurisdiction to order the utilities to provide QRE service, the Stipulating Parties do not seek Commission approval of the agreements under which utilities propose to provide QRE service. The Stipulating Parties simply ask the Commission to adopt the MOU and abate this proceeding to allow the utilities to proceed voluntarily under the terms of their own form agreements.

### **C. Resolution**

We find it reasonable to adopt the MOU. This docket involves some complex issues that will not be resolved quickly. In the meantime, parties seeking REC certification have no way to obtain that certification. The MOU provides small generators with an interim solution for obtaining QRE service, during which time the practical effect of the utilities’ draft agreements can be assessed and the outstanding issues can be explored.<sup>9</sup>

As noted previously, the parties in this docket include a wide spectrum of stakeholders, and no active party in this docket objects to the adoption of the MOU. If the practical effect of the MOU turns out to be problematic, nothing in the MOU precludes the Commission from reopening UM 1394 in order to address the issues raised on a more expedited basis.<sup>10</sup>

We emphasize that nothing in this order expresses approval or disapproval of the specific terms and conditions of the utilities’ form QRE service agreements. Our order simply adopts the terms of the MOU, including the stipulating parties’ recommendation that we suspend this docket while the utilities go forward voluntarily under their own form agreements.

---

<sup>8</sup> MOU at 2, Term 2.

<sup>9</sup> In the meantime, the MOU notes that ODOE is adopting a process to allow retroactive creation of RECs from generation beginning in 2007. The MOU states that if any party requests, “the Parties agree to reconvene another workshop at a mutually agreeable time and place . . . to assess the provision of QRE services for the creation of retroactive RECs by the IOUs.” MOU at 2, Term 2. The utilities also state their intention to “further explore the option of providing QRE service outside their respective allocated service territories for generators for which they act as the Balancing Authority” in the interim. MOU at 1.


<sup>10</sup> The MOU also provides that by signing the MOU, “Staff does not waive its right to request the Commission to reopen UM 1394 or any other investigation for cause.” MOU at 2, Term 2.


**ORDER**


IT IS ORDERED that:

1. The Memorandum of Understanding attached to this order as Appendix A is adopted.
2. This docket is suspended until April 1, 2011.
3. The parties will convene a two-year review workshop on or around March 15, 2011, in conformance with the terms of the Memorandum of Understanding.

Made, entered, and effective JUL 26 2009.

  
\_\_\_\_\_  
**Lee Beyer**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
\_\_\_\_\_  
**Ray Baum**  
Commissioner



## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding and Agreement ("MOU") is made and entered into this 5<sup>th</sup> day of May, 2009, by and among the Public Utility Commission of Oregon Staff ("Staff"); PacifiCorp, dba Pacific Power ("PacifiCorp"); Portland General Electric Company ("PGE"); and Idaho Power Company ("Idaho Power"). PacifiCorp, PGE and Idaho Power are hereafter sometimes collectively referred to as the investor-owned-utilities "IOUs." Staff, PacifiCorp, PGE and Idaho Power are sometimes referred to herein collectively as the "Parties" or singularly as "Party."

Recitals

WHEREAS, the IOUs are electric utilities operating in the state of Oregon and are subject to the supervision and regulation of the Public Utility Commission of Oregon ("Commission"); and

WHEREAS, on September 30, 2008, the Commission granted Staff's request to open an investigation under Docket No. UM 1394 into electric companies providing qualified reporting entity ("QRE") service for certification of renewable energy certificates by the Western Renewable Energy Information System ("WREGIS"); and

WHEREAS, the Citizens' Utility Board of Oregon ("CUB"); the Industrial Customers of Northwest Utilities ("ICNU"); Exergy Development Group of Idaho ("Exergy"); Renewable Northwest Project; Iberdrola Renewables, Community Renewable Energy Association ("CREA"); the Oregon Department of Energy ("ODOE") and the Bonneville Power Administration ("BPA") and the IOUs have all been granted intervention in UM 1394 (CUB, ICNU, Exergy, Renewable Northwest Project, Iberdrola Renewables, CREA, ODOE and BPA are hereafter sometimes referred to collectively as the "Stakeholders"); and

WHEREAS, the IOUs filed initial comments in UM 1394 on November 6, 2008, and the Parties and Stakeholders thereafter filed opening comments in UM 1394 on December 12, 2008; and

WHEREAS, the Parties held a series of workshops to discuss issues surrounding UM 1394 on November 12, 2008, January 9, 2009, and February 23, 2009; and

WHEREAS, based upon the outcome of those workshops, the Parties have reached an understanding and agreement with respect to the provision of QRE service within their respective Oregon allocated service territories; and

WHEREAS, the IOUs intend to further explore the option of providing QRE service outside their respective allocated service territories for generators for which they act as the Balancing Authority; and

WHEREAS, to accomplish the objectives stated above, the Parties desire to enter into this MOU regarding QRE service by the IOUs and the suspension of UM 1394;

NOW, THEREFORE, in consideration of the mutual promises expressed herein and other good and valuable consideration, the receipt and sufficiency of which are hereby accepted, the Parties agree as follows:

Terms

1. QRE Service. The IOUs agree to voluntarily offer QRE service pursuant to the independently developed terms and conditions of their respective form QRE services agreements attached hereto as Exhibit "A." However, nothing in this Agreement shall prevent an IOU and QRE customer from mutually agreeing to alter any portion their service agreement.

2. Suspension of UM 1394. The Parties shall request and recommend that the Commission suspend UM 1394.

The ODOE is adopting a process to allow retroactive creation of RECs from generation beginning in 2007. If any Stakeholder or Party requests, the Parties agree to reconvene another workshop at a mutually agreeable time and place after the ODOE adopts a process that allows for the retroactive creation of RECs to assess the provision of QRE services for the creation of retroactive RECs by the IOUs.

The Parties agree to reconvene another workshop among the Stakeholders and the Parties at a mutually agreeable time and place on or about March 15, 2011; in order to assess the provision of QRE services by the IOUs under the form QRE service agreements. Based on the results of that workshop, Staff shall make an assessment and recommendation as to whether to initiate further proceedings under UM 1394, including but not limited to: (1) further briefing by Staff, the IOUs, and the Stakeholders on the issue of Commission authority and jurisdiction to require the IOUs to provide QRE service; (2) further discussions on providing QRE service outside the IOUs' respective allocated service territories for which they act as the Balancing Authority; (3) further discussions on pricing and price changes; (4) further workshops; or (5) holding a potential hearing.

Nothing in this agreement precludes the Commission from reopening UM 1394 or any other investigation, and by signing this agreement, Staff does not waive its right to request the Commission to reopen UM 1394 or any other investigation for cause. The Parties further agree that this MOU in no way precludes the Stakeholders from pursuing any available remedies.

3. Commission Jurisdiction. The Parties acknowledge that a dispute exists as to whether the Commission has jurisdiction or authority to require the IOUs to provide QRE service. Notwithstanding anything contained herein to the contrary, the IOUs do not consent to the assertion of Commission jurisdiction or authority with respect to the provision of QRE service by the IOUs and reserve any and all rights to challenge the Commission's jurisdiction regarding the same.

4. Provision of QRE Service. The parties acknowledge that the IOUs have voluntarily agreed to provide QRE service pursuant to the terms and conditions of their respective form QRE service agreements. The IOUs cannot leave the business of being a QRE before the first two-year review proceeding/meeting without notifying the Commission.

5. Third Party QRE Service Providers. The parties acknowledge and agree that other individuals and/or entities currently provide QRE service to generators and that other entities may provide such service in the future. As a result, the parties agree that if an IOU agrees

to provide QRE service, this does not create an exclusive service provider obligation on an IOU or require an IOU to provide this service as a provider of last resort.

6. Good Faith Covenant to Cooperate. It is the parties' intent to work together in good faith to fulfill their respective obligations under this MOU. Each party specifically acknowledges and agrees that it shall cooperate with the other party to effectuate the purposes of this MOU.

7. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the state of Oregon. The parties further agree that the proper venue and jurisdiction for any disputes surrounding this MOU shall be the Commission.

8. No Joint Venture. This MOU shall not be deemed to create a partnership, joint venture, or agency relation among or between the parties.

9. Authorization. Each individual executing this MOU represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he or she signs to execute and deliver this MOU in the capacity and for the entity set forth where he or she signs and that as a result of his or her signature, this MOU shall be binding upon the party for which he or she signs.

10. Entire Agreement. This MOU sets forth the entire understanding among the parties and fully supersedes any and all prior understandings, oral or written, between the parties pertaining to the subject of this MOU. This MOU may only be amended or modified in writing.

11. Parties' Positions. The parties agree that the agreements reached in this MOU shall not be cited or used as indicative of a party's position on the issues resolved or as any other type of precedent or evidence in any other case or proceeding. In particular, this MOU does not constitute an agreement by any party to the theories used by any party in deciding to enter this MOU.

12. Facts and Legal Positions. The parties have entered in to this MOU to resolve disputed issues and no party admits or denies any fact or legal position at issue.

13. Adoption by Commission. The parties recommend that the Commission adopt this MOU in its entirety. The parties have negotiated this MOU as an integrated document. Accordingly, if the Commission in any order rejects all, or any part of this MOU, or adds to or changes any of its terms, each party reserves the right to withdraw from the MOU upon written notice to the Commission and the parties within fifteen (15) days of receiving notice of any such action by the Commission. In the event of such withdrawal, the party will not be bound by any provision of this MOU, and no such term may cited or used against any party in connection with any case or proceeding, or otherwise.

14. Counterparts. This MOU may be executed in counterparts and each signed counterpart will constitute an original document.



IN WITNESS WHEREOF, this MOU shall be dated and effective on date and year first above written.

**PUBLIC UTILITY COMMISSION OF OREGON STAFF**

By: Michael P. [Signature]

Its: Attorney

**PACIFICORP**

By: Jordan Alex White [Signature]

Its: Attorney

**IDAHO POWER COMPANY**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**PORTLAND GENERAL ELECTRIC COMPANY**

By: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, this MOU shall be dated and effective on date and year first above written.

**PUBLIC UTILITY COMMISSION OF OREGON STAFF**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**PACIFICORP**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**IDAHO POWER COMPANY**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**PORTLAND GENERAL ELECTRIC COMPANY**

By: Bill Fickelton 

Its: VICE PRESIDENT

IN WITNESS WHEREOF, this MOU shall be dated and effective on date and year first above written.

**PUBLIC UTILITY COMMISSION OF OREGON STAFF**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**PACIFICORP**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**IDAHO POWER COMPANY**

By: Lisa Ruckner

Its: Attorney

**PORTLAND GENERAL ELECTRIC COMPANY**

By: \_\_\_\_\_

Its: \_\_\_\_\_