

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1610  
Phase II

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Investigation into Qualifying Facility  
Contracting and Pricing.

ORDER

DISPOSITION: STIPULATION ADOPTED

**I. PROCEDURAL HISTORY**

On February 20, 2015, the Commission Staff; Portland General Electric Company; PacifiCorp, dba Pacific Power; Idaho Power Company; OneEnergy, Inc.; Obsidian Renewables LLC; the Community Renewable Energy Association; the Renewable Energy Coalition; and the Oregon Department of Energy filed a stipulation in this docket proposing to resolve several issues involving contractual matters, and to apply a slightly modified version of the dispute resolution process we adopted in Order No. 07-360 for large qualifying facilities (QF) contracts to standard QF contracts.

On March 6, 2015, the Small Business Utility Advocates (SBUA) filed a response to Staff's motion to admit the parties' stipulation. SBUA argues that the language in the stipulation addressing community-based and family-owned projects will require those projects to resort to expertise outside of regular project development assistance to determine whether or not a project is consistent with the criteria, and that the definition invites too much uncertainty in applicability and potential litigation. At a prehearing conference held on March 13, 2015, SBUA clarified that it does not object to the stipulation. Rather, SBUA seeks to have the Commission "recommend or at least encourage utilities to express the criteria more clearly in compliance filings subject to party comment."<sup>1</sup>

**II. STIPULATION**

The stipulation addresses the following contractual matters:

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<sup>1</sup> SBUA's Response to Staff's Motion to Admit Stipulation at 3.

1. Scheduled Commercial Online Date (COD): Currently, no Commission order specifies a minimum or maximum amount of lead time a QF should be allowed for the scheduled COD in a standard contract. The stipulating parties agree that QFs can select a scheduled COD anytime within three years of contract execution, and that a QF can elect a scheduled COD that is more than three years from contract execution if the QF can establish that a period in excess of three years is reasonable and necessary and the utility agrees to the scheduled COD. The stipulating parties agree that utilities will not unreasonably withhold their consent. If a utility and QF disagree about whether the QF has demonstrated that a later COD is reasonable and necessary, they may use an expedited dispute resolution process that is the subject of another agreement among the parties, as described below.

2. Opportunity to Cure QF Default: Currently, the Commission does not require that utilities provide QFs with an opportunity to cure if they default on the standard contract by failing to meet the scheduled COD. The stipulating parties agree that standard contracts should specify that: utilities may issue a notice of default if a QF does not meet the scheduled COD; QFs have 12 months to cure a default for failure to meet the scheduled COD; and utilities may collect damages during the 12-month default period. The stipulating parties agree that damages should be equal to the positive difference between the utility's replacement power costs less the prices in the standard contract during the period of default, plus costs reasonably incurred by the utility to purchase replacement power and additional transmission charges, if any, incurred by the utility to deliver replacement energy to the point of delivery.

3. Contract Termination for Default for failure to meet scheduled COD: Currently, utilities cannot terminate a standard contract for a QF's failure to meet the scheduled COD if the utility is resource sufficient at the time of the scheduled COD. The stipulating parties agree that a utility may terminate a standard contract after a QF defaults for failing to meet the scheduled COD regardless of the utility's resource sufficiency/deficiency position.

4. Penalty for not meeting the Minimum Availability Guarantee (MAG): The stipulating parties agree on the following method for calculating net replacement costs for purposes of imposing a penalty for failure to meet the MAG: (1) determine the amount of the "shortfall," which is the difference between the projected on- and off-peak net output from the project that would have been delivered had the project been available at the minimum guaranteed availability for the contract year and the actual net output provided by the QF for the contract year; (2) multiply the shortfall by the positive difference, if any, obtained by subtracting the contract price from the price at which the utility purchased replacement power; and (3) add any reasonable costs incurred by the utility to purchase replacement power and additional transmission costs to deliver replacement power to point of delivery, if any.

5. Termination for Consecutive Failure to Meet MAG: The parties agree that a utility should be allowed to issue a Notice of Default and terminate a standard contract, pursuant to its terms and limitations, for failure to meet the MAG if the QF does not meet the

MAG for two consecutive years, if such failure is not otherwise excused under the contract.

6. **Criteria for Eligibility for the Community-Based/Independent Family-Owned Exemption to the Single QF Project Rule:** The parties agree on criteria intended to capture the result intended by the Commission when it modified the criteria to determine whether a QF is a "single QF project" for purposes of qualifying for a standard contract.

7. **Revisions to the Forms of Standard Contracts:** The stipulating parties agree that proposed changes to the forms of standard contract should be filed independently of proposed revisions to avoided cost prices. Proposed changes to both the forms of contracts and avoided cost prices can be filed at the same time, but must be in separate filings. The parties also agree that stakeholders, Staff, or the utilities can ask the Commission to revise the terms of forms of standard contracts, and that this ability is not reserved to utilities.

The stipulation also asks the Commission to approve a dispute resolution process for standard contracts. In Order No. 07-360, the Commission created an expedited process for complaints filed by a QF or utility regarding a dispute arising during the negotiation of non-standard PURPA contracts. The stipulating parties agree that a slightly modified version of the dispute process authorized by the Commission in Order No. 07-360 should be available to QFs and utilities entering into standard contracts. Modifications include removal of the provisions relating to the time to file a complaint, and elimination of the requirement that only the complaining QF and utility can intervene in a complaint proceeding.

The stipulating parties request that the terms in the stipulation be implemented after the Commission issues an order approving their stipulation, rather than waiting for completion of Phase II of this docket. The utilities will file compliance filings to implement the terms of the adopted stipulation, and standard contracts subsequently executed will implement the terms of the stipulation.

In support of their stipulation, the parties note that their proposed revisions to standard contracts balance QFs' need for certainty and stability in planning projects, with the need to protect utilities and their customers from speculative projects.

### III. RESOLUTION

We find it appropriate for the parties to negotiate the terms of QF standard contracts, and approve of the stipulating parties' resolution of certain contractual matters to the satisfaction of both the utilities and QFs that will be subject to those contracts. We also note that the stipulating parties' proposed changes will increase uniformity and predictability in the utilities' approaches to QF contracting, which will ease the administrative burden on QFs and on the Commission. We also authorize the dispute process for standard contracts that the stipulating parties endorse. We acknowledge SBUA's concerns regarding the language for community-based and family-owned exemptions, but determine that the language in Substantive Stipulation Exhibit A to the

parties' stipulation is reasonable, acknowledging that it may be further refined in compliance filings. We adopt the parties' stipulation in its entirety. We direct the utilities to file compliance filings to implement the stipulation.

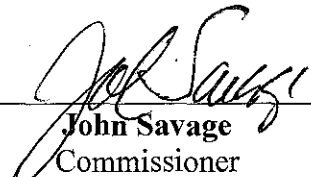
**IV. ORDER**

IT IS ORDERED that:

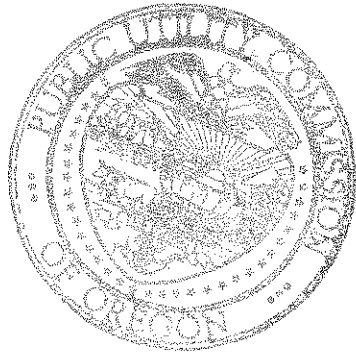
1. The stipulation between the Public Utility Commission of Oregon Staff; Portland General Electric Company; PacifiCorp, dba Pacific Power; Idaho Power Company; OneEnergy, Inc.; Obsidian Renewables LLC; the Community Renewable Energy Association; the Renewable Energy Coalition; and the Oregon Department of Energy, attached as Appendix A, is adopted.
2. The utilities must file compliance filings following the entry of this order.

Made, entered, and effective APR 16 2015

  
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**Susan K. Ackerman**  
 Chair

  
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**John Savage**  
 Commissioner

  
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**Stephen M. Bloom**  
 Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 **UM 1610**

4 In the Matter of the Public Utility Commission | **STIPULATION**  
5 of Oregon

6 INVESTIGATION INTO QUALIFYING  
7 FACILITY CONTRACTING AND PRICING  
8

9 **I. Parties**

10 The parties to this Stipulation are Staff of the Public Utility Commission of Oregon (Staff),  
11 Portland General Electric Company (PGE), PacifiCorp, Idaho Power Company (Idaho Power),  
12 One Energy, Inc., Obsidian Renewables LLC (Obsidian), the Community Renewable Energy  
13 Association (CREA), the Renewable Energy Coalition (REC), and the Oregon Department of  
14 Energy (ODOE) (together the "Parties").

15 **II. Background**

16 The Commission opened this investigation into qualifying facility (QF) pricing and  
17 contracting in June 2012 and subsequently divided the docket (No. UM 1610) into two phases.  
18 On September 29, 2014, Administrative Law Judges Kirkpatrick and Pines issued a  
19 memorandum establishing the procedural schedule for Phase II of Docket No. UM 1610, which  
20 included a December 5, 2014 due date for proposed issues. On December 4, 2014, ALJ Pines  
21 granted Staff's request for additional time to finalize and file stipulations among several parties  
22 addressing the Phase II Issues List and some substantive issues. ALJ Pines granted Staff's  
23 January 12, 2015 request for another extension of the time in which to submit the stipulations  
24 and to suspend the remainder of the procedural schedule. Under ALJ Pines' January 12, 2015  
25 ruling, parties have until February 17, 2015, to submit their stipulations and ask the ALJs to add  
26 issues to the Phase II Issues list.

1 Parties to UM 1610 met on October 14 and 28, November 18, 2014, and February 5, 2015, to  
2 determine whether they could agree on what issues should be considered in Phase II and whether  
3 they could agree on the merits of any of these issues.

4 Following these negotiations, the Parties agreed that they will: 1) ask the Commission to  
5 consider five contested issues in addition to three of the four issues the Commission has already  
6 decided to consider in Phase II; 2) file a separate stipulation resolving other PURPA-related  
7 issues, including one of the issues deferred from Phase I to Phase II by the Commission, and  
8 some of the issues previously scheduled to be resolved in Phase II; and 3) ask the Commission to  
9 approve the stipulated resolution of these issues prior to the time parties file their first round of  
10 testimony in Phase II of this docket.

### 11 **III. Agreement**

12 The Parties agree that the following terms will be implemented after issuance of a  
13 Commission order approving this Stipulation and will apply to standard contracts executed after  
14 the Commission's approval of each utility's next compliance filing implementing the terms of  
15 this Stipulation:

16 A. Scheduled commercial on-line date. The QF has the option to select a scheduled  
17 commercial on-line date (COD) up to three years from the date the contract is executed. Unless  
18 the QF establishes to the utility that a later scheduled commercial on-line date is reasonable and  
19 necessary, and the utility agrees, the scheduled COD in a standard contract can be no more than  
20 three years from the date the contract is executed. Disagreements concerning whether a QF has  
21 established that a later scheduled COD is reasonable and necessary will be resolved in  
22 accordance with the dispute resolution provisions described in Section III.D. below. The utility  
23 will not unreasonably withhold its agreement to a COD beyond the three-year period.

24 B. Notice of default. If such failure is not otherwise excused under the contract, the utilities  
25 are authorized to issue a notice of default if the QF does not meet the scheduled COD in the  
26 standard contract. If a Notice of Default is issued for failure to meet the scheduled COD in the

1 standard contract, the QF has one year in which to cure the default for failure to meet the COD,  
2 during which the QF is subject to damages for failure to deliver. Damages are equal to the  
3 positive difference between the utility's replacement power costs less the prices in the standard  
4 contract during the period of default, plus costs reasonably incurred by the utility to purchase  
5 replacement power and additional transmission charges, if any, incurred by utility to deliver  
6 replacement energy to the point of delivery.

7 C. Contract termination. Subject to III.B. above, a utility may terminate a standard contract  
8 for failure to meet the scheduled COD in the contract (if such failure is not otherwise excused  
9 under the contract) regardless of the utility's resource sufficiency/deficiency position, either its  
10 actual resource sufficiency/deficiency position or the resource sufficiency/deficiency position  
11 indicated by the prices in the standard contract.

12 D. Dispute resolution. QFs less than 10 MW should have access to, but not be required to  
13 use, the same dispute resolution process available to QFs larger than 10 MW. That process,  
14 taken from Order No. 07-360 but modified to better match the standard contracting process, is as  
15 follows:

16 The QF may file a complaint asking the Commission to adjudicate disputes  
17 regarding the formation of the standard contract. The QF may not file such a  
18 complaint during any 15-day period in which the utility has the obligation to  
19 respond, but must wait until the 15-day period has passed.

20 The utility may respond to the complaint within ten days of service.

21 The Commission will limit its review to the issues identified in the complaint and  
22 response, and utilize a process similar to the arbitration process adopted to  
23 facilitate the execution of interconnection agreements among telecommunications  
24 carriers. See OAR 860, Division 016. The ALJ will act as an administrative law  
25 judge, not as an arbitrator.

26 E. Penalty for MAG failure. The appropriate methodology for calculating net replacement  
costs for purposes of imposing a penalty for not meeting the Mechanical Availability Guarantee  
is to 1) determine the amount of the "shortfall," which is the difference between the projected  
average on- and off-peak net output from the project that would have been delivered had the

1 project been available at the minimum guaranteed availability for the contract year and the actual  
2 net output provided by the QF for the contract year, 2) multiply the shortfall by the positive  
3 difference, if any, obtained by subtracting the Contract Price from the price at which the utility  
4 purchased replacement power, and 3) add any reasonable costs incurred by the utility to purchase  
5 replacement power and additional transmission costs to deliver replacement power to point of  
6 delivery, if any.

7 F. Termination for consecutive MAG failures. A utility may issue a Notice of Default (and  
8 subsequently terminate a standard contract pursuant to its terms and limitations) for failure to  
9 meet the MAG if the QF does not meet the MAG for two consecutive years if such failure is not  
10 otherwise excused under the contract.

11 G. Standard contract modification. Both utilities and stakeholders can ask the Commission  
12 to modify the terms of the form of standard contracts. Any filing to revise the forms of standard  
13 contract will be docketed separately from any request to change avoided cost prices.

14 H. Community-based/family-owned exemption. The criteria to determine eligibility for the  
15 new "community-based" and "independent family-owned" exemption added to the UM 1129  
16 Partial Stipulation by Order No. 14-058 are attached to this Stipulation as Exhibit A. If the QF  
17 and utility disagree about the applicability of the exception, the QF may utilize the dispute  
18 resolution process outlined in paragraph III.D.

19 I. The Parties agree that this Stipulation represents a compromise in the positions of the  
20 Parties. Notwithstanding anything stated and agreed to in this Stipulation, as well as the  
21 accompanying Stipulation re: Issues List, Idaho Power hereby reserves the right to bring as  
22 separate case filings matters related to: (1) revision of the standard rate eligibility cap; (2) the  
23 appropriate maximum contract term; (3) implementation of solar integration charges; and (4)  
24 revision of Idaho Power's resource sufficiency period. The parties have agreed that these  
25 matters not be included in the proceedings for UM 1610, and further agree and understand that

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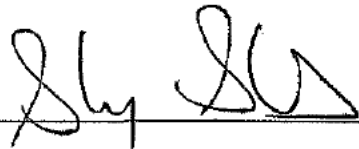
1 removing these Idaho Power issues from UM 1610 should not prejudice any right of Idaho  
2 Power to bring these matters before the Commission as Idaho Power specific case filings.

3 J. The Parties have negotiated this Stipulation as an integrated document. If the  
4 Commission rejects all or any material part of this Stipulation, each Party reserves its right to  
5 withdraw from the Stipulation within five business days of service of the order that rejects this  
6 Stipulation.

7 K. This Stipulation will be offered into the record in this proceeding as evidence pursuant to  
8 OAR 860-001-0350(7). The Parties agree to support this Stipulation throughout this proceeding  
9 and in any appeal, and provide witnesses to support this Stipulation (if specifically required by  
10 the Commission), and recommend that the Commission issue an order adopting the agreements  
11 within. By entering into this Stipulation, no Party shall be deemed to have approved, admitted, or  
12 consented to the facts, principles, methods, or theories employed by any other Stipulating Party  
13 in arriving at the terms of this Stipulation.

14 J. This Stipulation may be signed in any number of counterparts, each of which will be an  
15 original for all purposes, but all of which taken together will constitute one and the same  
16 agreement.

17 Dated this 19<sup>th</sup> of February, 2015.

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19 \_\_\_\_\_ STAFF

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23 COMMUNITY RENEWABLE ENERGY  
24 ASSOCIATION

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26 RENEWABLE ENERGY COALITION

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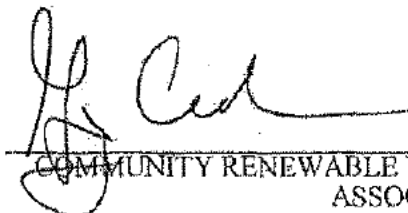
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13 in arriving at the terms of this Stipulation.

14 J. This Stipulation may be signed in any number of counterparts, each of which will be an  
15 original for all purposes, but all of which taken together will constitute one and the same  
16 agreement.

17 Dated this 18<sup>th</sup> of February, 2015.

19 \_\_\_\_\_ STAFF

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22 COMMUNITY RENEWABLE ENERGY  
23 ASSOCIATION

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25 RENEWABLE ENERGY COALITION  
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17 Dated this \_\_\_\_\_ of February, 2015.

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STAFF


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COMMUNITY RENEWABLE ENERGY  
ASSOCIATION

*Quinn Sanger*  
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RENEWABLE ENERGY COALITION

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PORTLAND GENERAL ELECTRIC CO.

IDAHO POWER COMPANY

OBSIDIAN RENEWABLES, LLC

ONE ENERGY, INC.

OREGON DEPARTMENT OF ENERGY

Page 6 - STIPULATION

Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096  
(503) 947-4520 / Fax: (503) 378-3784

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IDAHO POWER COMPANY

OBSIDIAN RENEWABLES, LLC

ONE ENERGY, INC.

SMALL UTILITY BUSINESS  
ADVOCATES

OREGON DEPARTMENT OF  
ENERGY

ORDER NO.

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PORTLAND GENERAL ELECTRIC CO.

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PORTLAND GENERAL ELECTRIC CO.

IDAHO POWER COMPANY

OBSIDIAN RENEWABLES, LLC

*Ken Kaufman (for Bill Eddie)*  
ONE ENERGY, INC.

OREGON DEPARTMENT OF ENERGY



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PORTLAND GENERAL ELECTRIC CO.

IDAHO POWER COMPANY

OBSIDIAN RENEWABLES, LLC

ONE ENERGY, INC.

*Gene Dittell for Renee France*  
OREGON DEPARTMENT OF ENERGY

**Substantive Stipulation Exhibit A – Family Owned/Community Based Definition**

A qualified facility project qualifying for the ownership exception as family owned or community based would have the following characteristics:

1. Family Owned.

- a. After excluding the ownership interest of the passive investor whose ownership interests are primarily related to green tag values and tax benefits as the primary ownership benefit, five or fewer individuals own 50 percent or more of the equity of the project entity, or fifteen or fewer individuals own 90 percent or more of the project entity. A “look through” rule applies to closely held entities that hold the project entity, so that equity held by LLCs, trusts, estates, corporations, partnerships or other similar entities is considered held by the equity owners of the look through entity. An individual is a natural person. In counting to five or fifteen, spouses or children of an equity owner of the project owner who also have an equity interest are aggregated and counted as a single individual.

2. Community Based.

- a. A community project (or a community sponsored project) must have a recognized and established organization located within the county of the project or within 50 miles of the project that has a genuine role in helping the project be developed and must have some not insignificant continuing role with or interest in the project after it is completed and placed in service. Many varied and different organizations may qualify under this exception. For example, the community organization could be a church, a school, a water district, an agricultural cooperative, a unit of local government, a local utility, a homeowners’ association, a charity, a civic organization, and etc.
- b. After excluding the passive investor whose ownership interests are primarily related to green tag values and tax benefits as the primary ownership benefit, the equity (ownership) interests in a community sponsored project must be owned in substantial percentage (80 percent or more) by the following persons (individuals and entities): (i) the sponsoring organization, or its controlled affiliates; (ii) members of the sponsoring organization (if it is a membership organization) or owners of the sponsorship organization (if it is privately owned); (iii) persons who live in the county in which the project is located or who live a county adjoining the county in which the project is located; or (iv) units of local government, charities, or other established nonprofit organizations active either in the county in which the project is located or active in a county adjoining the county in which the project is located.