BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 679

In the Matter of Rulemaking to Revise OAR 860-002-0000 Regarding Alternative Dispute Resolution.	RENEWABLE ENERGY COALITION, COMMUNITY RENEWABLE ENERGY ASSOCIATION, AND OREGON SOLAR + STORAGE INDUSTRIES ASSOCIATION'S COMMENTS

I. INTRODUCTION

In accordance with the Administrative Law Judge's ("ALJ") Memorandum dated September 30, 2025, the Renewable Energy Coalition (the "Coalition"), the Community Renewable Energy Association ("CREA"), and the Oregon Solar + Storage Industries Association ("OSSIA") (the "QF Trade Groups") respectfully submits these comments on the Draft Proposed Rules[1] related to informal mediation and formal alternative dispute resolution ("ADR") in OAR 860-002 for the Oregon Public Utility Commission's ("Commission" or "OPUC") consideration. Generally, the QF Trade Groups support the Draft Proposed Rules, but has the following recommendations and clarifications:

1. Not opposed to eliminating the idea of alternative facilitators besides the ALJ in OAR 860-002-0030(3) but concerned if the OPUC has the resources to allocate to this role.

2. Parties should be able to use the ADR process without being required to first file a formal complaint.

3. Keep the ability for a party to ask for a written assessment in the ADR process from the facilitator as described in OAR 860-002-0090.

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[1] Draft Proposed Rules (September 11, 2025).

4. Broaden the scope of the rules to include complaints for proposed and executed power purchase agreements and interconnection agreements in OAR 860-002-0000(1).

II. COMMENTS

A. Not Opposed to Eliminating the Idea of Alternative Facilitators Besides the ALJ in OAR 860-002-0030(3) But Concerned If the OPUC Has the Resources to Allocate to this Role

Currently the proposed rules allow the facilitator for the ADR process to be "an Administrative Law Judge, a expert contracted to provide services to the Commission, or a facilitator that has been suggested by both parties."[2] At the September 29, 2025 workshop, ALJ Grant discussed the possibility of removing the facilitator options besides an ALJ. The QF Trade Groups are not opposed to having the facilitator only be an ALJ but is concerned about the resources of the Commission to dedicate to this role. The Commission can be resource strained and the QF Trade Groups would be concerned if the Commission would not have the time or resources to be the facilitator. Thus, the QF Trade Groups would prefer to keep a wider pool of potential facilitators but is not opposed to an ALJ being the default option.

B. Parties Should Be Able to Use the ADR Process Without First Filing a Formal Complaint

Currently the proposed rules only allow parties to go through the ADR process if a complaint has already been filed.[3] Parties should be able to use the ADR process before a complaint is filed. Complaints are expensive and time consuming to prepare. A small developer should not have to prepare an expensive document just to be able to use the ADR process. Often

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2 Draft Proposed Rules at OAR 860-002-0030(3).
3 Draft Proposed Rules at OAR 860-002-0030(1).

the disputed factual and legal issues are well developed and understood by both the utility and the customer. If both parties agree to use ADR, then there is no need to require the more resource constrained party to expend the resources to draft a well-supported complaint capable of withstanding a utility motion to dismiss or motion for summary judgment.

Also, the ADR process could resolve the need to file the complaint in the first place. It would be more efficient and better use of the parties and the Commission's time and resources to allow parties to attempt to resolve disputes through the ADR process before the formal complaint process. If a developer is required to file the formal complaint before it can use the ADR process, then the developer could be less inclined to even attempt to use the ADR process because the time and resources were already spent to prepare the complaint. Thus, the parties should be able to use the ADR process without having to file a formal complaint.

C. Keep the Ability for a Party to Ask for a Written Assessment in the ADR Process from the Facilitator as Described in OAR 860-002-0090

The proposed rules allow parties to an ADR process to seek an independent assessment of the issues and potential outcome of case whether oral or written.[4] At the workshop on September 29, 2025, ALJ Grant asked stakeholders about their thoughts on this rule, whether it was useful, and whether the assessment needed to be written or if oral was sufficient.

Generally, an independent assessment from the facilitator on the issues and potential outcome of the case can be very useful to the parties of the case. It can especially help those parties who are not generally litigants to understand everything more clearly. Parties that do not engage in litigation frequently may overestimate their likelihood of winning or not fully

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[4] Draft Proposed Rules at OAR 860-002-0090.

understand the strengths of the counter arguments. The facilitator's independent assessment can help temper unrealistic expectations, highlight weaknesses parties may overlook, and shift expectations.

It can also help the parties realistically evaluate the risks and benefits of continuing litigation versus settling. An independent assessment could encourage parties to compromise and be willing to settle. It could also reduce the number of disputes if parties are willing to settle some of the issues. This would result in resource savings for the parties and the Commission. Thus, the Commission should not remove the ability for a party to seek an independent assessment from the facilitator on the issues and potential outcome of the case.

The QF Trade Groups recommend the parties be able to seek a written version of the independent assessment. Providing a written assessment will allow the parties to take back the recommendation to their team, which could include parent companies and decision makers who are unfamiliar with the facts, legal issues, and ADR process to allow them to analyze next steps. Whereas with an oral recommendation, parties could misremember things or misinterpret the recommendation when taking it back to their team.

In order to address ALJ Grant's concerns about a facilitator providing a written assessment, the facilitator should make it clear that the assessment is non-binding and the outcome may differ. Also, the assessment and any discussions during the ADR process will be strictly confidential as noted in proposed rule OAR 860-002-0090(2)-(3). It is important to retain these protections to address ALJ Grant's concerns. Thus, the Commission should retain the option for the parties to receive written independent assessments.

D. Broaden the Scope of the Rules to Include Complaints for Proposed and Executed Power Purchase Agreements and Interconnection Agreements

As currently drafted, the proposed rules on the ADR process apply to complaints over a "proposed negotiated purchased power agreement" or complaints to "enforce a small generator interconnection agreement".[5] As drafted this may not encompass a dispute related to an executed power purchase agreement or dispute related to negotiation of an interconnection agreement.

Disputes between a developer and the utility can arise at both stages of the process for power purchase agreement and interconnection agreements. Additionally, a dispute related to interconnection could also cause power purchase agreement disputes and vice versa. It is important to recognize the linkage between interconnection and power purchase. A developer should not be restricted in raising both sets of issues in a complaint because interconnection and power purchase are so intertwined with each other. Thus, the Commission should broaden the scope of complaints the ADR process can be used to include a complaint over a proposed negotiated power purchase agreement or interconnection agreement and enforcement of an executed power purchase agreement and interconnection agreement. The Commission should also not preclude a developer from bringing a complaint related to both the interconnection and power purchase agreements.

III. CONCLUSION

The Commission should adopt the recommendations above regarding the ADR process.

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[5] Draft Proposed Rules at OAR 860-002-0000(1).

Dated this 6th day of October 2025.

Respectfully submitted,

Sanger Greene, PC

Irion Sanger
Ellie Hardwick
4031 SE Hawthorne Blvd.
Portland, Oregon 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Renewable Energy Coalition

Richardson Adams, PLLC

Gregory M. Adams
515 N. 27th Street
Boise, ID 83702
Telephone: 208-938-2236
Fax: 208-938-7904
greg@richardsonadams.com

Of Attorneys for the Community Renewable Energy Association

Angela Crowley-Koch
Executive Director
Oregon Solar + Storage Industries Association
P.O. Box 14927
Portland, OR 97293
Telephone: 503-867-3378
angela@orssia.org

Oregon Solar + Storage Industries Association