

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

26

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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23 COMMUNITY RENEWABLE ENERGY  
ASSOCIATION

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26 RENEWABLE ENERGY COALITION

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

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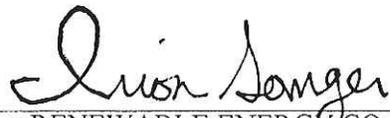
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OBSIDIAN RENEWABLES, LLC

*Ken Kaufman (for Bill Eddie)*  

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ONE ENERGY, INC.

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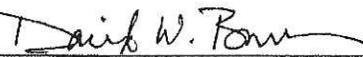
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OBSIDIAN RENEWABLES, LLC

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ONE ENERGY, INC.

*Gene Dittler for Renee France*  

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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.