BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1734

PacifiCorp's Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap	)))))))))	JOINT RESPONSE OF OBSIDIAN RENEWABLES, LLC AND CYPRESS CREEK RENEWABLES, LLC IN SUPPORT OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION'S AND THE RENEWABLE ENERGY COALITION'S JOINT MOTION TO DISMISS

I. Introduction

Obsidian Renewables, LLC ("Obsidian") and Cypress Creek Renewables, LLC ("Cypress Creek") jointly submit this response in support of the motion to dismiss ("Motion") filed in this docket by the Community Renewable Energy Association ("CREA") and the Renewable Energy Coalition ("REC").

PacifiCorp's attempt to repeal this Commission's core decisions in an ongoing proceeding is an extension of a companywide scheme to extinguish its obligations under the Public Utility Regulatory Policies Act ("PURPA"). PacifiCorp is a corporate offspring of Berkshire Hathaway Energy.[1] Simultaneous with PacifiCorp's petition ("Petition") in this case, lobbyists for Berkshire Hathaway have been aggressively pushing Congress to adopt "reforms" to PURPA that would, in effect, terminate the public utilities' obligation to purchase the output of Qualifying Facilities ("QF").[2]

As key members of the Senate Energy and Natural Resources Committee have noted, the motives of PacifiCorp's parent company in attacking PURPA have nothing to do with protecting ratepayers or improving system reliability. Instead, their motives have everything to do with scheming to increase the companies' profitability to shareholders.[3] Washington Senator Maria Cantwell told Berkshire Hathaway lobbyists: "I just see you making money

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[1] Berkshire Hathaway Energy was formerly known as Mid-America Energy Holdings Co., and is the owner of PacifiCorp.

[2] *See generally* "Berkshire Hathaway Energy advances utility legislation despite Cantwell pushback." Energy & Environment Publishing, June 1, 2015. For convenience, a copy is attached hereto as Exhibit A.

[3] *See Id.*

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coming and going on the repeal of the PURPA language. The Pacific Northwest is not going to support another cooked-up scheme from California ISO about energy markets."[4]

Motives aside, the Commission must dismiss PacifiCorp's Petition as a matter of law because it is procedurally deficient in at least three respects. First, the Commission must dismiss PacifiCorp's Petition as a matter of law because it is an impermissible attempt to relitigate a final Commission order in an ongoing proceeding. Second, the Commission must dismiss the Petition as a matter of law because it is essentially a request for reconsideration of a final Commission order that is both untimely and unwarranted under the Commission's procedural rules. Finally, the Commission must dismiss the Petition as a matter of law because it violates the terms of a Stipulation executed by PacifiCorp and other UM 1610 parties including Obsidian, CREA, REC, and the Commission Staff--and approved by the Commission less than two months ago.

II. The Commission Must Reject PacifiCorp's Attempt to Relitigate Issues Already Decided in UM 1610.

The Commission has a longstanding policy against relitigating issues that have already been decided by a final order. This policy is most strictly enforced where the arguments raised in subsequent proceedings are the same as the arguments raised in the initial proceeding. By its own admission, that is precisely what PacifiCorp seeks to do in this case.

a. The Commission does not allow parties to relitigate issues that have already been decided by final order.

As CREA and REC point out in their Motion, the Commission's experience in dockets UT 138 and UT 139 are directly relevant here. UT 138 and UT 139 involved a lengthy, multi-phase investigation to adopt state rules and procedures necessary to implement a federal statute. As with the present case, the issues addressed in UT 138 and UT 139 were highly technical in nature and involved voluminous testimony from industry experts. The Commission therefore steadfastly refused to allow a party to relitigate issues that had already been resolved by the Commission during the preceding phases.

In Order No. 03-085 the Commission rejected Verizon's attempt to relitigate in Phase III the flow-through rate for service functions decided by the Commission in Phase I. In rejecting Verizon's request for further evidentiary hearings on the flow-through rate, the Commission explained:

> Staff and the Joint CLECs oppose Verizon's proposal to apply a lower flow-through rate to the four service order functions listed above. They emphasize that issues relating to service order processing costs were fully adjudicated in

[4] Quoted in "After Senate Showdown, Buffets Berkshire pushes PURPA reform in House." Utility Dive, June 2, 2015. For convenience, a copy is attached hereto as Exhibit B.

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> Order Nos. 98-444 and 00-316, and that Verizon is essentially requesting a rehearing. * * * The Commission agrees with Staff and Joint CLECs. * * * The functions were part of the cost studies submitted by Verizon in Phase I, and were considered by the Commission in arriving at the decision in Order No. 98-444 to adopt the 98 percent flow-through rate for service order processing activities. That decision was reaffirmed on reconsideration in Order Nos. 00-316 and 00-643. *As emphasized elsewhere in this order, it is inappropriate for Verizon to attempt to relitigate issues during the compliance filing phase of this docket.* (Emphasis added).

Later in the same Order, the Commission repeated the rule. "As we have emphasized, the purpose of Phase III is *to review compliance filings made in accordance with the Commission's directives in Order Nos. 98-444 and 00-316*. It is not a forum to relitigate issues that have already been decided." (Emphasis in original).

PacifiCorp is well versed in this Commission rule. Less than one month prior to filing the Petition, PacifiCorp itself opposed a request for clarification and reconsideration in UE 267.[5] PacifiCorp opposed reconsideration on grounds that "the Joint Parties ask the Commission to either nullify its decisions in this docket or, in the alternative, allow the Joint Parties to immediately relitigate issues already argues and decided."[6] PacifiCorp further argued that the "Commission has broad discretion to refuse a request in this or another docket to modify Order No. 15-060, particularly where parties renew arguments the Commission already rejected."[7] PacifiCorp therefore urged the Commission to reject the motion as "an improper collateral attack on Order No. 15-060."[8] In support of this argument, PacifiCorp relied on the same Commission Order in UT 138 and UT 139 that is discussed above and in the Motion.[9]

For the reasons set forth below, PacifiCorp's arguments in UE 267 in opposition to a timely filed motion for clarification or reconsideration apply even more forcefully to PacifiCorp's own Petition.

b. The issues raised in UM 1610 are identical to the issues raised by PacifiCorp in its Petition.

The Commission's policy against relitigating issues that have already been decided applies in this case because the issues raised by PacifiCorp in its Petition are identical to the

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[5] *See* PacifiCorp's Response In Opposition To Joint Parties' Motion For Clarification Or, In the Alternative, Application for Reconsideration or Rehearing, UE 267 (filed May 5, 2015). For convenience, a copy of PacifiCorp's Opposition is attached hereto as Exhibit C.

[6] *Id.* at 2.

[7] *Id.* at 5.

[8] *Id.* at 2.

[9] *Id.* at 5.

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issues raised in Phase I of UM 1610. In its Petition, PacifiCorp asks the Commission to reduce the standard contract term for small Qualifying Facilities ("QF") and to reduce the eligibility cap for such standard QF contracts from 10MW to 100kw. PacifiCorp argues that the relief sought in its Petition is warranted because it has received multiple inquiries concerning potential standard QF contracts since Order 14-058. PacifiCorp says it is concerned that that avoided cost prices paid to such QFs may in the future exceed actual avoided costs.

The issues alleged by PacifiCorp in the Petition are nothing new. In fact, they are identical to the issues presented to the Commission in UM 1610. As the Commission explained in Order 14-058, UM 1610 originated with a request to reduce the eligibility cap for standard contracts from 10MW to 100kw in response to a "deluge" of requests for standard QF contracts:

> On January 27, 2012, Idaho Power Company filed an application to lower the eligibility cap for a QF standard contract from 10 MW to 100 kW. The application was made to address requests received by the company for Oregon standard contracts from nine different QFs with a total nameplate capacity of 73 MW, when average total load for Idaho Power's Oregon customers in 2011 was only 87 MW.[10]

The Commission reiterated "[a] primary reason we opened this docket was to investigate concerns that avoided cost price paid to QFs exceeded reasonable estimates of avoided costs."[11] Thus, again, the primary issue raised by PacifiCorp in its Petition is identical to the primary reason that the Commission opened UM 1610.

c. The Issues Raised in UM 1610 Were Fully Adjudicated and Resolved in Order No. 14-058.

The issues raised in Phase I of UM 1610 were fully adjudicated by the parties and were resolved by the Commission through Order No. 14-058. In issuing Order No. 14-058, the Commission explained that "we remain grounded in the policies we articulated in previous orders addressing these issues, and decline to make changes without compelling evidence of a need for the proposed revision."[12] Based on this approach, the Commission declined to reduce the term of the standard contract, or the fixed payment period of the standard contract. The Commission retained the 20-year contract term initially established in Order No. 05-584. The Commission stated in Order 05-584 that it was well aware that "20 years is a significant amount of time over which to forecast avoided costs. Indeed, divergence between forecasted and actual avoided costs must be expected over a period of 20 years."[13] Thus, the primary thrust of PacifiCorp's Petition is an attempt to relitigate an issue of which the

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[10] Order No. 14-058, p. 4.

[11] *Id.* at 5.

[12] *Id.* at 1.

[13] Order No. 05-584, p. 20.

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Commission has been aware for more than a decade.

The Commission also expressly refused to reduce the eligibility cap from 10MW to 100kw for any type of QF. The Commission explained that "[w]e retain the eligibility cap for standard contracts at 10 megawatts. We reject Idaho Power's proposal to use a 100 kilowatt eligibility cap for standard contracts in its service territory, consistent with its Idaho service territory."[14] The Commission explained in its Order that it is unnecessary to adopt the draconian measures requested by Idaho Power—and now PacifiCorp—because the Commission adopted other safeguards to mitigate the risk that ratepayers would be overcharged for QF power.

> We acknowledge the concerns raised by Idaho Power, Pacific Power, and PGE that the application of our current methodology may result in the utility and its customers offering prices in excess of actual avoided costs. However, as explained below, we conclude that *the utilities' concerns about potential overpayments are best addressed through our decisions to require annual updates to avoided costs. As discussed below, we also address ways to incorporate wind integration costs and resource capacity contributions into standard avoided cost calculations and standard renewable avoided cost price calculations*, and we direct the parties to further consider in the next phase of these proceedings how to calculate the third-party transmission costs attributable to a QF.[15]

(Emphasis added). Again, the concern raised by PacifiCorp in its Petition—the risk that prices paid to QFs may exceed actual avoided prices—is precisely the issue that the Commission resolved in Order No. 14-058.

Although Order No. 14-058 changed neither the contract term nor the eligibility threshold, PacifiCorp alleges that since Order No. 14-058 was issued it has received "a dramatic increase in pricing requests" for QF contracts.[16] PacifiCorp theorizes that *if* all of the potential projects become actual projects, and *if* the future market price drops below the avoided cost price, and *if* the depressed market price stays below the avoided cost price for the next ten years, then PacifiCorp's ratepayers may be exposed to a price risk.[17] PacifiCorp then attempts to add drama to its hypothetical risk by postulating a $2.9 billion dollar price tag for its system wide QF projects.[18] PacifiCorp's gratuitous hypotheticals and hyperbole are not "compelling evidence of a need for the proposed revision."[19]

In fact, the putative "risk" to ratepayers caused by the 10 MW eligibility cap is no different now than it was when Order 14-058 was issued. In Order 14-058, the Commission recited Idaho Power's argument that "since the Commission adopted the 10 MW eligibility

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[14] Order 14-058 at 2.
[15] *Id.* at 7.
[16] *See* PacifiCorp's Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap, UM 1734 (filed on May 21, 2015), p. 10.
[17] *Id.* at 12.
[18] *Id.* at 12.
[19] Order 14-058, p. 1.

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cap for standard contracts, the company has been faced with a deluge of QF project developments, and the resulting influx of largely intermittent QF power is having significant unintended detrimental operational and financial impacts on Idaho Power's system and customers." As explained above, the Commission determined in Order 14-058 that the best way to address a "deluge" of new QF contracts is not to reduce the contract eligibility cap or to shorten the contract term, but to adopt other safeguards such as annual avoided cost adjustment, integration charges and project-specific price adjustments. PacifiCorp fails to explain in its Petition how these safeguards implemented by the Commission just last year in Order 14-058 are insufficient to protect its ratepayers.

PacifiCorp concedes, as it must, that its Petition does not raise any new issues. "PacifiCorp recognizes that the Commission affirmed the 10 MW eligibility cap in Order No. 14-058 in Phase I of docket UM 1610. PacifiCorp also acknowledges that the Commission did not revisit the 15-year fixed price term, which was brief by the parties, in Phase I of UM 1610."[20] PacifiCorp itself agrees that its Petition seeks to relitigate issues barely a year after they were decided by the Commission.

d. PacifiCorp's petition fails to invoke the Commission's statutory authority to repeal or modify its final orders.

Although the Commission generally refuses to allow parties to relitigate issues that have already been decided, that does not mean that the Commission is inalterably bound to its prior decisions. ORS 756.568 confers upon the Commission limited statutory authority to "rescind, suspend, or amend any order" at any time upon notice and an opportunity to be heard. For the reasons set forth below, the Commission's statutory authority under ORS 756.568 is inapplicable here.

ORS 756.568 is inapplicable here because PacifiCorp has deliberately avoided invoking the Commission's authority under that statute to repeal or modify Order No. 14-058. In fact, PacifiCorp's Petition makes no mention of ORS 756.568 at all. PacifiCorp is therefore asking the Commission to repeal Order No. 14-058 without following the proper statutory procedure and without acknowledging the enduring validity of the current order.

The reason that PacifiCorp has not asked the Commission to exercise its authority under ORS 756.568 to repeal Order 14-058 is because PacifiCorp knows there are no grounds for the Commission to do so. The Commission has stated that it will not exercise its authority under ORS 756.568 based on arguments and evidence that it has already considered. In Order No. 03-085, for example, the Commission refused to rescind, suspend or amend a prior order based upon evidence received in the first phase of the same docket.[21] In this case, Order No. 14-058 was adopted little over one year ago as part of the ongoing UM 1610 proceeding. As

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[20] PacifiCorp's Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap, UM 1734 (filed on May 21, 2015), p. 1.

[21] *See* Order No. 03-085, p.16.

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explained above, PacifiCorp admits that the arguments it wishes to make through its Petition are the same as those that were fully adjudicated in Phase I of UM 1610.[22]

PacifiCorp also has avoided ORS 756.068 because it only wants the Commission to reconsider those aspects of Order 14-058 that would benefit PacifiCorp—rather than repealing the order in its entirety. The Commission is reluctant to exercise its authority under ORS 756.568 to repeal final orders at the request of one party where doing so would substantially affect the rights of other parties.[23] In this case, Order No. 14-058 reflects a careful balance between the interests of QF project developers and the purchasing utilities. Granting to PacifiCorp the relief sought in the Petition would fundamentally upset that balance to the detriment of QF project developers. If the Commission were to exercise its authority under ORS 756.568 in this case, the Commission would have to repeal Order No. 14-058 in its entirety and allow *all* of the parties to UM 1610 to relitigate *all* of the issues decided in Order No. 14-058.

III. The Commission Must Reject PacifiCorp's Petition as an Untimely and Unwarranted Request for Reconsideration.

It is irrefutable that the issues now raised by PacifiCorp in its Petition were previously addressed by the Commission in Order 14-058.[24] Unlike other parties, including Obsidian, PacifiCorp did not timely seek rehearing or clarification of the Commission's ruling.[25] Nor did PacifiCorp exercise its right to seek judicial review of Order 14-058. Instead, PacifiCorp elected to wait for over a year and then ask the Commission to open a new docket for the sole purpose of abrogating material provisions of Order 14-058. PacifiCorp's Petition must be interpreted, therefore, as a *de facto* request for reconsideration of Order 14-058. Because it is well past the 60-day deadline for reconsideration, the Commission must reject it. Even if PacifiCorp's *de facto* request for reconsideration were timely, however, it still should be rejected because PacifiCorp is merely raising the same issues and repeating the same arguments that have already been made.

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[22] PacifiCorp's Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap, UM 1734 (filed on May 21, 2015), p. 1.

[23] *See In re Public Utility Com'n of Oregon Staff Request to approve Negotiated Interconnection Agreements and Amendments Submitted Pursuant to 252(e) of the Telecommunications Act of 1996,* ARB 870, Order No. 15-080 (Or PUC Mar 13, 2015) ("Under ORS 756.568, we amend the orders in question. Granting this motion will not affect any party's substantive rights or responsibilities under the underlying agreements. It is a clerical correction to conform the Commission orders to the actual decisions intended and followed.").

[24] PacifiCorp's Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap, UM 1734 (filed on May 21, 2015), p. 1.

[25] On April 24, 2014, Obsidian timely filed a request for clarification of Order 14-058 with respect to the calculation of the capacity payment for solar projects. On May 9, Staff filed a response in which it agreed with the concerns raised by Obsidian. On June 10, 2014, the ALJ issued a ruling granting Obsidian's motion for clarification. Although exactly one year has passed since the motion for clarification was granted, the calculation of the solar capacity payment remains an unresolved issue in Phase II of UM 1610. Obsidian is concerned that PacifiCorp's untimely collateral attack on Order 14-058 will be heard by the Commission before Obsidian's timely motion for clarification of Order 14-058--which was granted--is fully resolved.

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a. The Commission rejects requests for reconsideration that do not comply with the Commission's procedural rules.

The Commission has procedural rules governing requests for rehearing or reconsideration of final Commission orders. OAR 860-001-0720(1) provides that an application for rehearing or reconsideration shall be filed "[w]ithin 60 days from the date of service of an order entered by the Commission." Pursuant to OAR 860-001-0720(3), an application for rehearing or reconsideration may be granted by the Commission only if the application shows that there is new evidence that was previously unavailable, there has been a change in law or policy since the order was issued, the order contains an error of law or fact or there is "good cause" for further examination of an issue essential to the decision.

The Commission will reject requests for reconsideration--however styled by the applicant--that do not satisfy the procedural rules set forth in OAR 860-001-0720. In Order No. 03-805, for example, the Commission dismissed Verizon's attempt to relitigate previously decided issues as an untimely request for reconsideration. The Commission explained that "we agree that Verizon's findings regarding loop conditioning is untimely. As the Staff and Joint CLECs emphasize, the Commission reexamined loop conditioning on reconsideration in Order No. 00-316. Verizon did not appeal that decision, and the time for doing so has now past."[26]

In the very proceeding at issue here--docket UM 1610-- the Commission denied an application for reconsideration that was timely submitted by OneEnergy and CREA. In Order No. 14-229, the Commission found that the applicants failed to show that reconsideration was warranted as required by OAR 860-001-0720(3). It is hard to imagine that OneEnergy and CREA would have fared any better if, rather than timely requesting reconsideration, they instead waited over a year and then petitioned the Commission to open a new docket for the purpose of granting the exact same relief.

As applied here, the Commission must reject PacifiCorp's *de facto* request for reconsideration unless the Commission finds both that the request is timely under OAR 860-001-0720(1) and that reconsideration is warranted under OAR 860-001-0720(3).

b. PacifiCorp's request for reconsideration is *extremely* untimely.

For the reasons set forth above, PacifiCorp's challenge to the Commission's decisions in Order No. 14-058 is a *de facto* request for reconsideration. Pursuant to OAR 860-001-0720(1), a request for rehearing or reconsideration must be filed with the Commission within 60 days of the service of the order. Order No. 14-058 was issued by the Commission in February of 2014. PacifiCorp did not seek clarification, rehearing or reconsideration within the 60-day deadline. Nor did PacifiCorp seek judicial review of Order 14-058. Instead, PacifiCorp waited more than a year and then filed a Petition asking the Commission to reverse

[26] Order No. 03-085, p. 16.

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two key components of Order No. 14-058. Because PacifiCorp's Petition seeks reconsideration of issues decided in Order 14-058 well after the applicable deadline, the Commission is required by its own procedural rules to dismiss the Petition.

c. Merely repeating the same arguments is not sufficient grounds for reconsideration.

Even if PacifiCorp's *de facto* request for reconsideration of Order 14-058 were timely, it still should be rejected by the Commission for failing to meet the criteria set forth in OAR 860-001-0720(3). As explained above, just one month ago PacifiCorp filed a brief in response to a request for rehearing in UE 267.[27] In that response brief, PacifiCorp wrote that "the requirements of OAR 860-001-0720 are not met when a party 'merely reiterates its prior argument and its disagreement with [a] decision and its underlying reasoning.'"[28] In support of this proposition, PacifiCorp cites to Order No. 00-308. In Order No. 00-308, the Commission stated that "ICNU makes no new argument and cites no legal authority or portion of legislative history, but is content to reiterate its contention that 'the statutory language applies to a narrower range of costs than that adopted by Order No. 00-165.' ICNU has provided us no basis on which to change our analysis of the law set forth above."

PacifiCorp's Petition violates the very rule that PacifiCorp relies on in UE 267. PacifiCorp's Petition merely reiterates the arguments that had already been made in Phase I of UM 1610 and asks the Commission to reach a decision that is contrary to Order No. 14-058. As explained in greater detail above, PacifiCorp's Petition argues that the contract term and eligibility cap for standard QFs should be slashed because PacifiCorp has received multiple inquiries about potential new QF contracts. PacifiCorp is concerned that this could put its ratepayers at risk of overpaying in the future if all of these inquiries result in completed projects and if the market price for energy drops and stays below the QF contract price for an extended period. These are *exactly* the issues that were fully adjudicated in Phase I of UM 1610 and that the Commission resolved in Order No. 14-058.[29]

Based on PacifiCorp's own legal analysis in UE 267, PacifiCorp's Petition does not satisfy the procedural requirements of OAR 860-001-0720(3). The Commission should therefore dismiss PacifiCorp's *de facto* request for rehearing.

IV. The Commission Must Reject PacifiCorp's Petition because it Violates the Terms of a Stipulation Approved by the Commission.

Putting aside the fact that PacifiCorp's Petition is an untimely and improper attempt to relitigate issues that were recently decided by the Commission, there is yet another independent grounds that compels the Commission to dismiss the Petition. By filing the

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[27] *See* Exhibit C hereto.

[28] *Id.* at p. 5-6.

[29] *See* Order No. 14-058 p. 4-5.

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Petition, PacifiCorp has violated the plain language and the clear intent of a Commission-approved Stipulation to which PacifiCorp is a party.

a. PacifiCorp, Obsidian and others are parties to a legally enforceable Stipulation.

Just months ago, PacifiCorp, Obsidian, the Commission Staff and several other parties in UM 1610 executed a binding Stipulation.[30] The purpose of the Stipulation was to resolve certain issues by mutual agreement and to identify additional issues to be resolved by the Commission in Phase II of UM 1610. On April 16, 2015, the Commission issued Order No. 15-130 in which it formally approved and adopted the Stipulation. The Commission has held that such stipulations are binding and enforceable against the executing parties. In Order No. 00-723, for example, the Commission explained that "[a]bsent extraordinary circumstances, we are compelled to abide by the stipulation as the binding expression of the parties' intentions. Not only was this document signed and agreed to by the parties, we issued an order adopting the stipulation."[31]

As is relevant here, the Stipulation contains a provision that expressly allows Idaho Power--and no other party--to open a new docket outside of UM 1610 to raise issues applicable to the capacity threshold for standard wind and solar QF contracts and the term of such contracts. Specifically, Section I of the Stipulation provides:

> Notwithstanding anything stated and agreed to in this Stipulation, as well as the accompanying Stipulation re: Issues List, Idaho Power hereby reserves the right to bring as separate case filings matters related to: (1) revision of the standard rate eligibility cap; (2) the appropriate maximum contract term; (3) implementation of solar integration charges; and (4) revision of Idaho Power's resource sufficiency period. The parties have agreed that these matters not be included in the proceedings for UM 1610, and further agree and understand that removing these Idaho Power issues from UM 1610 should not prejudice any right of Idaho Power to bring these matters before the Commission as Idaho Power specific case filings.

On its face, Section I applies to Idaho Power and to Idaho Power alone.

The Stipulation extends this special concession only to Idaho Power because it is uniquely situated among the three public utilities in Oregon.[32] In UM 1725, for example, Staff noted the "unique circumstances of Idaho Power."[33] Staff explained that "[t]he

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[30] For convenience, a copy of the Stipulation is attached hereto as Exhibit D.

[31] *Rio Comm'ns, Inc. v. Quest Corp.*, IC 2, Order No. 00-723 (Or PUC Nov 8, 2000).

[32] Notwithstanding Idaho Power's right to initiate such action under the Stipulation, Obsidian and Cypress Creek reserve all rights to oppose the relief sought by Idaho Power in UM 1725.

[33] *See* Staff Response to Motion for Temporary Stay, filed in UM 1725 on June 2, 2015. For convenience, a copy of Staff's Response is attached hereto as Exhibit E.

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Commission has previously imposed different PURPA policies for Idaho Power so that Idaho Power is subject to consistent policies in both Oregon and Idaho given that most of Idaho Power's service territory is in Idaho."[34]

As a stipulating party, Obsidian never intended for the language in Section I to apply to any party other than Idaho Power. Indeed, if the language in Section I had either expressly or implicitly included either PacifiCorp or PGE, Obsidian would not have executed the Stipulation. Although Obsidian cannot speak for others, Obsidian believes that few if any of the remaining parties to the Stipulation would have executed the Stipulation if it expressly or implicitly permitted either PacifiCorp or PGE to open a new docket in order to relitigate issues already decided in Phase I.

b. Allowing PacifiCorp to file the same petition as Idaho Power would be contrary to the plain language and clear intent of the Stipulation and must be rejected.

In interpreting and enforcing the Stipulation, the Commission must look to the plain language of the agreement. In Order No. 11-095, for example, the Commission explained that it would reject a party's position that is contrary to the plain language and clear intent of a settlement agreement.

> We have reviewed the subject language in Conditions 8, 9, and 10 and do not agree with TRACER that the conditions lend themselves to any interpretation other than the plain language of the text. Furthermore, were CenturyLink to advocate a position contrary to the clear intent of the language in those conditions in the Settlement Agreement, the Commission would note their violation of the terms and respond accordingly. The changes to the terms of the Settlement Agreement proposed by TRACER are rejected.

See also Order No. 00-623 ("In summary, we conclude that *the plain language of the interconnection agreement* approved in ARB 100 allows Metro One to purchase DALs covering Qwest's entire 14-state territory, not just Oregon, and that Metro One may use those DALs to provide directory assistance to end-users located anywhere in the country.") (Emphasis added).

In this case, the plain language and clear intent of Section I of the Stipulation indicates that *only* Idaho Power is permitted to bring as separate case filings matters related to the revision of the standard rate eligibility cap and the appropriate maximum contract term. As explained above, Section I only applies to Idaho Power and does not permit any other utility to raise such matters in a separate proceeding. Further, the plain language of Section I reflects the clear intent of the stipulating parties to treat Idaho Power different from the other purchasing utilities. Thus, PacifiCorp's Petition, by raising matters related to the revision of the standard rate eligibility cap

[34] *Id.* at 6.

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and the appropriate maximum contract term, is directly contrary to the plain language and clear intent of the Stipulation and must be rejected.

c. Allowing PacifiCorp to file the same petition as Idaho Power would render meaningless a material provision of the Stipulation.

In addition to giving effect to the plain language and clear intent of the Stipulation, the Commission shall also interpret the Stipulation so as to avoid rendering any provision of it meaningless or superfluous. In Order No. 13-416, for example, the Commission concluded that ORS 757.259 requires the application of an earnings test when amortizing tax refunds. The Commission's conclusion was compelled by the fact that "[i]f we were to read the earnings test requirement out of the amortization of amounts under ORS 752.259(1)(a)(A), the language in the statute would be rendered superfluous."

A situation very similar to the present case arose in docket UE 227. In Order No. 11-516, the Commission rejected a party's attempt to raise a discovery dispute because the party failed to comply with the procedural requirements set forth in a stipulation to which it was a party.

> We conclude that ICNU's notice of its discovery dispute was inadequate. Although parties to the stipulation broadly retain the right to raise issues at the Commission's public meeting, they also agreed to follow *specific* steps as part of the process leading up to that public meeting. The purpose of the ten-day notice and dispute-resolution process prior to the public meeting seems to be reasonably clear: *to identify disputes over specific elements of the update and to resolve those disputes before the public meeting.* Accordingly, we read this notice requirement to be compulsory. *To interpret the stipulation otherwise would render the specific notice and resolution process meaningless.*

(Emphasis added). In other words, once a party has agreed to be bound by a stipulation, the party must forgo certain rights that it would otherwise have but-for the stipulation. To hold otherwise would be to render the stipulation terms meaningless.

In this case, the Stipulation contains an express and material provision that specifically permits Idaho Power—and only Idaho Power—to make a separate filing raising matters related to the revision of the standard rate eligibility cap and the appropriate maximum contract term. Neither PacifiCorp, PGE nor any other party to the Stipulation bargained for the same opportunity. Section I of the Stipulation would be meaningless to the extent any party to the Stipulation other than Idaho Power is permitted to make a separate filing on these matters. PacifiCorp's Petition must be dismissed, therefore, so as to avoid rendering Section I of the Stipulation meaningless.

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V. Conclusion

PacifiCorp is in the enviable position of being able to litigate PURPA issues at the expense of its ratepayers but for the benefit of its shareholders. As explained above, PacifiCorp's Petition is an extension of a companywide scheme to repeal its PURPA obligations. It is no secret that PacifiCorp and its parent companies wish to repeal PURPA so that they may invest shareholder capital in—and earn a rate of return on—their own vertically integrated generating resources.[35] Senator Cantwell queried Berkshire Hathaway representatives as follows: "Isn't it the case that obviously getting rid of this PURPA requirement would just greatly benefit the company financially on your profit margin by reducing competition for central station generation?"[36] The Senator's question may as well have been rhetorical because the answer is clear and her point is well taken.

Notwithstanding any "cooked-up scheme" to repeal PURPA, the issues now before the Commission are purely legal in nature. Obsidian and Cypress Creek support the Motion filed by CREA and REC to dismiss PacifiCorp's Petition. As explained above, PacifiCorp's Petition is an impermissible attempt to relitigate Order 14-058. Second, the Petition is a *de facto* request for reconsideration of Order 14-058 that is both untimely and unwarranted under the Commission's procedural rules. Finally, the Petition directly violates the terms of a Stipulation executed by PacifiCorp. Each of these procedural flaws is a necessary and sufficient condition for dismissing the Petition as a matter of law.

DATED this 10th day of June, 2015.

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Of Attorneys for
Obsidian Renewables, LLC and
Cypress Creek Renewables, LLC

[35] *See generally* Exhibit A attached hereto.
[36] *Id.*

EXHIBIT A

ENERGY POLICY:

Berkshire Hathaway Energy advances utility legislation despite Cantwell pushback

Hannah Northey, E&E reporter

E&E Daily: Monday, June 1, 2015

Article updated at 11:40 a.m. EDT.

Berkshire Hathaway Energy appears to be successfully pushing legislative language through both chambers of Congress that would scrap federal requirements for utilities to buy power from small renewable and cogeneration units.

But Warren Buffett's multinational conglomerate will have an uphill battle getting that language past the Senate Energy and Natural Resources Committee's top Democrat, Maria Cantwell of Washington.

Cantwell has made clear she plans to work against Berkshire Hathaway Energy's (BHE) proposal, which she said amounts to an attempt by the company to bolster its position in the Western coal markets, where it owns both rail lines and generators. Cantwell also said she'd rather spend her time on issues like battery storage than trying to create a market that needs policing.

"These guys are trying to deregulate a coal market where they make a lot of money coming and going," Cantwell said during an interview last month. "We've obviously had trouble with these very creative markets before, and when you have cheap, affordable, cost-based public power, you don't want people to manipulate the markets."

At the center of the debate is a new "accountability" subtitle the House Energy and Commerce Committee unveiled this week to be included in the lower chamber's larger energy bill. The House **language** mirrors an element of a proposal that BHE floated at a Senate hearing earlier this month regarding federal rules for small power production and cogeneration. Specifically, the House draft clarifies that renewable and cogeneration facilities at or below 20 megawatts have access to the markets, thereby eliminating an obligation for utilities in organized markets to buy power from those generators. But the House draft stopped short of addressing other provisions within BHE's proposal. The subtitle will receive its first airing at a House Energy and Commerce Subcommittee on Energy and Power hearing this week (*see related story*).

The language would amend the Public Utility Regulatory Policies Act of 1978, a law aimed at bolstering renewables and efficiency by requiring utilities to buy power from "qualifying facilities," including cogeneration plants that use steam or heat from industrial and commercial processes, as well as solar, wind, biomass, waste and other facilities that are 80 megawatts or less. The Federal Energy Regulatory Commission has overseen the treatment of qualifying facilities for decades.

PURPA has triggered backlash in the past from utilities opposed to forced purchase of power, and the House language mirrors part of a proposal that Jonathan Weisgall, Berkshire Hathaway Energy's vice president for legislative and regulatory affairs, laid out in prepared **testimony** at a Senate ENR hearing on May 14.

Weisgall said that BHE's decisions in the renewable markets are being driven by state clean energy goals, technological advances and U.S. EPA rules -- not PURPA. Forcing utilities to buy millions of megawatts from smaller units at higher prices that aren't subject to the same scrutiny is triggering higher prices and reliability issues, he said. Weisgall noted one contract could force PacifiCorp's customers to incur an incremental $1.1 billion over the next decade for unneeded power.

To modernize the law, Weisgall said utilities should be able to participate in a Western energy imbalance market and forgo the requirements of PURPA.

The energy imbalance market, which began in November 2014 and experienced price fluctuations at the outset, gives Western buyers the option to purchase electricity in five-minute increments. That is meant to allow utilities to draw on resources regionwide that may be cheaper than their neighboring plants on reserve and ready to ramp up production to compensate for declining wind and solar (***EnergyWire***, March 18).

But the House draft doesn't make mention of energy imbalance markets.

EXHIBIT A
PAGE 1 OF 2

A veteran energy attorney whose clients include both utilities and "qualifying facilities" said on background that the House language would "effectively end" PURPA for utilities in organized markets. "What's really happening here is the revenue from a company-owned plant goes to the utility, and the revenue from a QF goes to a third party," he said. "One of the enumerated purposes of PURPA was to overcome traditional reluctance of utilities to buy power from and sell power to non-utility generators. And I think that reluctance is still there."

In the upper chamber, Sen. James Risch (R-Idaho) also took aim at PURPA's requirement for utilities to buy power from cogeneration or small renewable energy facilities by introducing **S. 1037**, which would allow utilities to avoid the "mandatory purchase obligation" if their state regulators determined there was no demand for additional power. He said the obligation provides additional subsidy for renewable energy projects that already receive tax credits and forces utility customers to pay above-market rates for power they do not need.

Whatever language is up for discussion, Cantwell has made clear she's not on board.

The senator blasted Weisgall at the hearing last month, noting that the company owns BNSF Railway Co. -- the largest rail carrier of Powder River Basin coal -- and coal generators, including MidAmerican Energy Co., PacifiCorp and NV Energy. "Isn't it the case that obviously getting rid of this PURPA requirement would just greatly benefit the company financially on your profit margin by reducing competition for central station generation?" Cantwell asked Weisgall.

Weisgall rejected the senator's assertion, defending the energy imbalance market as a way to usher more renewables onto the grid, lower power prices and reduce emissions. He also defended BHE's dedication to clean energy, saying the company plans to reduce its footprint in coal from 35 to about 26 percent, and supports renewables at the right cost. In prepared testimony, Weisgall noted that BHE has invested $8 billion in wind energy in Iowa, Oregon and Washington, and another $8 billion in BHE Renewables. The company also operates 10 geothermal plants.

But Cantwell pushed on, accusing Berkshire Hathaway of trying to game the markets. Cantwell also made clear her constituents are opposed to the energy imbalance market.

"I can tell you one big group that doesn't support it, and it's the Pacific Northwest," Cantwell said.

Cantwell's comments reflect a pushback in the Northwest to the creation of an energy imbalance market. George Caan, executive director of the Washington Public Utility Districts Association, said during an interview last week that the majority of consumer-owned utilities in the Evergreen State are "highly reluctant if not totally opposed" to the energy imbalance market and believe a less aggressive mechanism is more appropriate to integrate renewables onto the grid.

Her comments are also informed by the Western energy crisis, which bubbled over into her first year in office.

Cantwell came to the Senate in 2001, as California's electric grid was experiencing frequent blackouts that would later be linked to market manipulation by the energy trading firm Enron, which would later declare bankruptcy. Cantwell dug into the investigation of Enron, whose operations extended into her home state, and was eventually instrumental in securing the release of audiotapes of traders joking about the havoc they were causing.

"The Pacific Northwest is not going to support another cooked-up scheme from California ISO about energy markets," Cantwell told Weisgall at the hearing. "We're not getting screwed over again by another Enron-style 'look over here but don't pay attention to what's going on over here.'"

Reporter Rod Kuckro contributed.

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EXHIBIT B

Utility Dive

After Senate showdown, Buffett's Berkshire pushes PURPA reform in House

By Robert Walton | June 2, 2015

Dive Brief:

Warren Buffett's Berkshire Hathaway Energy (BHE) has been pushing legislation to revamp the Public Utility Regulatory Policies Act of 1978, E&E Daily reports, hoping to eliminate requirements that utilities purchase power from small renewable and cogeneration units.

The House Energy and Commerce Committee this week revealed a new subtitle of its Energy Efficiency and Accountability measures, and it included language which mirrored a proposal BHE made at a Senate hearing last month (http://www.utilitydive.com/news/buffetts-berkshire-hathaway-energy-pushing-for-purpa-reform/398767/).

To get the language through into a final senate bill, however, BHE will have to square off with Sen. Maria Cantwell (D-WA), who was reportedly angered by the company's proposal, saying it would allow it too much market power in the Pacific Northwest, where it also owns rail lines and generators.

Dive Insight:

Sen. Cantwell lambasted the proposal to do away with requirements supporting small renewable generators angered at a Senate Energy and Natural Resources Committee last month, but now similar language has appeared in proposed House legislation.

In May, BHE Legislative and Regulatory Affairs Vice President Jonathan Weisgall proposed at a hearing that utilities participating in California's new Energy Imbalance Market should be able to avoid requirements that they purchase power from small generation assets labeled qualified facilities under the law. Utilities participating in regional markets are already exempted from purchasing from QFs, but those not in a competitive market are required to do so.

The language in the House proposal, E&E Daily points out, would clarify that generators 20 MW or smaller have access to markets and would not need the PURPA requirement.

Weisgall told the committee in prepared testimony (http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=c956e7a4-70bb-456c-9a4a-f53f42a5ecc8) that the mandatory purchase obligation "can cause operating inefficiencies and reliability issues for the host utility, which has no control over where the QFs are sited or integrated into its system."

EXHIBIT B
PAGE 1 OF 2

"Many QFs are 'undispatchable' and might lead to over-generation conditions or inefficient use of
baseload units that are forced to cut back operations to accommodate unscheduled QF purchases," he said.

Those comments brought a swift response from Cantwell, who said she was concerned that removing the QF requirement would diminish competition for central power stations, many of which BHE owns in the Pacific Northwest.

"I just see you making money coming and going on the repeal of the PURPA language," she said. "The Pacific Northwest is not going to support another cooked up scheme from California ISO about energy markets."

The House proposal does not mention the California Energy Imbalance Market, which opened late last year to a series of price spikes and led federal regulators to investigate the new market (http://www.utilitydive.com/news/ferc-to-investigate-caiso-energy-imbalance-market-over-price-spikes/376914/) . But in April the California ISO said it had identified the issue (http://www.utilitydive.com/news/caiso-to-ferc-energy-imbalance-market-problems-found-reforms-coming/391556/) , explaining that a failure to recognize capacity held by PacifiCorp led to apparent shortages and subsequent price spikes.

Recommended Reac

E&E Daily: Berkshi tion despite Cantwell pushback (http://w

Top Image Credit: Flickr:)/8686463939/)

Filed Under:

Generation Regulation & I

EXHIBIT C

McDowell Rackner & Gibson PC

KATHERINE MCDOWELL
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May 5, 2015

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

Re: UE 267 – In the Matter of PacifiCorp Transition Adjustment, Five-Year Cost-of-Service Opt-Out

Attention Filing Center:

Attached for filing in the captioned docket is an electronic copy of PacifiCorp's Response in Opposition to Joint Parties' Motion for Clarification or, in the Alternative, Application for Reconsideration or Rehearing. A copy of this filing was emailed to all parties to this proceeding.

Very truly yours,

Katherine McDowell
Attachment

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE 267

In the Matter of PACIFICORP d/b/a PACIFIC POWER Transition Adjustment, Five-Year Cost of Service Opt-Out.	**PACIFICORP'S RESPONSE IN OPPOSITION TO JOINT PARTIES' MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, APPLICATION FOR RECONSIDERATION OR REHEARING**

I. INTRODUCTION

On February 24, 2015, the Public Utility Commission of Oregon (Commission) issued Order No. 15-060 adopting a five-year cost-of-service opt-out program (Five-Year Program) for PacifiCorp d/b/a Pacific Power (PacifiCorp or Company). This final order is the culmination of a multi-year effort to develop an option for PacifiCorp's large customers to elect long-term direct access and avoid on-going transition charges after a five-year transition period. In Order No. 15-060, the Commission resolved the key issue in dispute between PacifiCorp and the Joint Parties[1] by approving a Consumer Opt-Out Charge to prevent shifting fixed generation costs from direct access customers to other customers. PacifiCorp filed compliance tariffs on March 6, 2015, to which no party objected, and it stands ready to offer the new Five-Year Program later this year.

[1] The Joint Parties are: Noble Americas Energy Solutions LLC, Wal-Mart Stores, Inc., Shell Energy North America (US), LP, Constellation NewEnergy, Inc., Fred Meyer Stores, Inc./Kroger, Co., the Northwest and Intermountain Power Producers Coalition, and Safeway Inc. The Joint Parties include most of the "Stipulating Parties" in this docket. Stipulating Parties *not* joining are: Staff of the Public Utility Commission of Oregon, Industrial Customers of Northwest Utilities, and Vitesse, LLC. On April 24, 2015, the COMPETE Coalition filed a response supporting the Joint Parties' Motion.

The Joint Parties' Motion for Clarification or, in the Alternative, Application for Reconsideration or Rehearing (Joint Parties' Motion) threatens to stall implementation of the Five-Year Program. The Joint Parties ask the Commission to "clarify" that the level and calculation of the Consumer Opt-Out Charge remain subject to litigation before the Five-Year Program even goes into effect. In the alternative, the Joint Parties ask the Commission to correct, reconsider or rehear two issues underlying the Consumer Opt-Out Charge calculation: (1) whether an amendment to Section X of the 2010 Protocol or system load growth projections may negate or reduce transition costs; and (2) whether the amount of fixed generation costs in years six through 10 should decline to reflect depreciation.

Essentially, the Joint Parties ask the Commission to either nullify its decisions in this docket or, in the alternative, allow the Joint Parties to immediately relitigate issues already argued and decided. Indeed, just yesterday Noble Americas Energy Solutions LLC (Noble), served discovery in PacifiCorp's 2016 Transition Adjustment Mechanism (TAM) on issues raised in the Joint Parties' Motion, including the calculation of the Consumer Opt-Out Charge,[2] the operation of the Generation and Regulation Initiative Decision Tool model (GRID) in valuing the Consumer Opt-Out Charge,[3] load growth,[4] and potential changes to the administration of the Five-Year Program.[5] To prevent this improper collateral attack on Order No. 15-060, the Commission should deny the Joint Parties' Motion and make clear that the Consumer Opt-Out Charge may not be revisited in the 2016 TAM.

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[2] *See* Noble Solutions' First Set of Data Requests to PacifiCorp Data Requests 7, 8, Docket No. UE 296 (May 4, 2015) (data requests on the calculation and assumptions underlying the Consumer Opt-Out Charge in Schedule 296 and fixed generation charges in Schedule 200, including the treatment of accumulated depreciation), attached as Appendix A.

[3] *Id.* at 9 (data request regarding GRID and the modeling of projected generation costs).

[4] *Id.* at 4, 5 and 10 (data requests on retail load, direct access eligible load, and system load).

[5] *Id.* at 16 (data request on PacifiCorp's testimony in docket UE 267 regarding treatment of customers who fail to meet administrative requirements of Five-Year Program).

II. ARGUMENT

A. The Scope and Effect of Order No. 15-060 Requires No Clarification.

The Joint Parties' primary request is that the Commission clarify that its approval of the Consumer Opt-Out Charge "is without prejudice to further development of the underlying rate calculation and assumptions in a future rate-setting proceeding."[6] The Joint Parties argue that the calculation of the Consumer Opt-Out Charge is "unclear" because it is presented in exhibits that are merely "illustrative."[7] They incorrectly claim that the exhibits were not vetted because they were presented for the first time in PacifiCorp's reply testimony.[8] For at least three reasons, the Joint Parties' position is meritless.

First, Order No. 15-060 is clear. The Commission adopted the Consumer Opt-Out Charge as presented in PacifiCorp's testimony, which included a detailed description of the calculation methodology and illustrative examples. Docket UE-267 was not a generic investigation in which the Commission simply announced policy for future implementation. Instead, the purpose of this docket was to approve tariffs for PacifiCorp's Five-Year Program,[9] which necessarily involved review of the underlying rate calculation and assumptions of the Consumer Opt-Out Charge.

In addition, given the well-developed state of the record in this case, the Commission denied the Stipulating Parties' request for a second hearing based on the Commission's rejection of their stipulation.[10] The Joint Parties' Motion effectively renews this request for a

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[6] Joint Parties' Motion at 9.
[7] Joint Parties' Motion at 7-8.
[8] Joint Parties' Motion at 8.
[9] Order No. 15-060 at 1.
[10] Order No. 15-060 at 4.

second hearing, apparently proposing to use PacifiCorp's 2016 TAM as the forum. For the same reasons the Commission previously rejected this request, it should reject it here.

Second, the fact that PacifiCorp's exhibits showing the calculation of the Consumer Opt-Out Charge were illustrative does not suggest that the methodology is unclear and subject to additional litigation before the Five-Year Program is implemented. It is common for parties to demonstrate calculations or methodologies using hypothetical numbers in workpapers or illustrative exhibits. The fact that PacifiCorp followed this practice here renders its methodology for the Consumer Opt-Out Charge more clear and definite, not less.

Third, PacifiCorp will calculate the Consumer Opt-Out Charge for the Five-Year Program using the same methodology it uses for the annual TAM.[11] The Company has used this methodology since 2004 with express Commission approval.[12] PacifiCorp's initial testimony described precisely how it would calculate the Consumer Opt-Out Charge, including how it would use GRID to value the freed-up energy.[13] In reply testimony, PacifiCorp proposed only two changes.[14]

In this proceeding, the Stipulating Parties presented no testimony or evidence challenging the calculation of the Consumer Opt-Out Charge—despite filing individual and joint testimony, and despite the opportunity for cross-examination.[15] It is inappropriate for

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[11] Order No. 15-060 at 7.

[12] *In re Investigation into Direct Access Issues for Industrial and Commercial Customers Under SB 1149*, Docket No. UM 1081, Order No. 04-516 (Sept. 14, 2004) (approving interim use of GRID to calculate transition adjustment); *In re PacifiCorp Request for a General Rate Increase in the Company's Oregon Annual Revenues*, Docket No. UE 170, Order No. 05-1050 (Sept. 28, 2005) (approving permanent use of GRID to calculate transition adjustment).

[13] PAC/200, Duvall/4-6; Exhibit PAC/201.

[14] To respond to the concern that a higher charge could be prohibitive, PacifiCorp reduced the number of years accounted for in the charge from 20 years to 10 years. PAC/400, Duvall/2. And, for consistency across opt-out programs (Schedules 294, 295 and 296), PacifiCorp agreed to adjust its use of GRID in calculating transition costs for the Five-Year Program to be fully consistent with how it uses GRID for the TAM. PAC/400, Duvall/18.

[15] *See* PacifiCorp's Rebuttal Brief at 2.

the Joint Parties to attempt to challenge these issues now during the implementation phase of the Five-Year Program.[16] The Commission has broad discretion to refuse a request in this or another docket to modify Order No. 15-060, particularly where parties renew arguments the Commission already rejected.[17] In the future, if the Joint Parties believe they have new evidence or new arguments demonstrating that the Consumer Opt-Out Charge is unjust or unreasonable, they can attempt to seek Commission review at that time.

B. The Commission's Decisions on Load Growth and Fixed Generation Costs were Correct and Final.

As an alternative, the Joint Parties ask the Commission to "correct" or grant reconsideration or rehearing on the impact of load growth on the Consumer Opt-Out Charge, and how depreciation of fixed generation costs is reflected in the Consumer Opt-Out Charge. Contrary to the Joint Parties' assertions, there is no basis for these "corrections," no error of law or fact, and no cause for reconsideration or rehearing within the scope of ORS 756.561(1) and OAR 860-001-0720(3).[18] The requirements of OAR 860-001-0720 are not

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[16] *See e.g., In re Ascertaining the Unbundled Network Elements that must be Provided by Incumbent Local Exchange Carriers to Requesting Telecommunications Carriers Pursuant to 47 C.F.R. § 51.319*, Docket Nos. UT 138 & UT 139 (Phase III), Order No. 03-085 at 16 (Feb. 5, 2003) (after entering order that prescribed methods for calculating certain telecommunication costs and charges, Commission rejected "inappropriate" attempt to relitigate issues during compliance filing phase of docket, reasoning compliance phase was "not a forum to relitigate issues that have already been decided").

[17] *See e.g., In re PacifiCorp Annual Tax Filing under ORS 757.268*, Docket No. UE 177(4), Order No. 11-026 at 5 (Jan. 20, 2011) (after entering protective order that limited document review to safe room, Commission rejected request to amend the order that renewed arguments already raised in prior attempts to modify the order); *Indus. Customers of Nw. Utilities v. Pub. Util. Comm'n of Oregon*, 240 Or App 147, 164 (2010) (construing ORS 756.568 to give Commission broad discretion and finding "nothing in the statute *requires* the PUC to amend an earlier order, particularly if there are prudential reasons not to do so") (emphasis in original).

[18] The Commission may reconsider or rehear an order if there is "sufficient reason" to do so. ORS 756.561(1). Under OAR 860-001-0720(3), "sufficient reason" consists of: previously unavailable, material evidence; a change in law or policy; an error of law or fact essential to the decision; or good cause for further examination of an issue essential to the decision. The Joint Parties cite OAR 860-001-0720(3)(c) "error of law or fact" and (d) "good cause" as bases for reconsideration or rehearing of Order No. 15-060. *See* Joint Parties' Motion at 11.

met when a party "merely reiterates its prior argument and its disagreement with [a] decision and its underlying reasoning."[19]

1. The Joint Parties Misconstrue the Commission's Decision on Load Growth.

The Joint Parties ask the Commission to "correct" Order No. 15-060 to remove all reliance by the Commission on GRID to resolve the issue of whether load growth will mitigate transition costs or, alternatively, to grant rehearing and conduct further proceedings on this question.[20] Specifically, the Joint Parties ask the Commission to determine that if Section X of the 2010 Protocol is amended or if system load growth is otherwise reasonably projected to absorb transition costs, the Consumer Opt-Out Charge will be reduced.

In their testimony and briefs, the Stipulating Parties argued that the Consumer Opt-Out Charge is unjustified because PacifiCorp can adjust its system to match lost load within five years, obviating any transition costs. PacifiCorp responded with significant evidence demonstrating that this argument was incorrect. The Company explained it was unreasonable to assume it could defer planned resource acquisitions based on departing direct access load.[21] The Company offered unrebutted evidence that savings from reduced front office transactions associated with the loss of direct access load are already captured in GRID model runs.[22] The Company presented undisputed evidence that the Company forecasts no load growth in Oregon and that the Commission's current approach to inter-jurisdictional allocation effectively forecloses consideration of system load growth as a stranded cost

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[19] *In re Portland General Electric Co.*, Docket Nos. UM 954 & UM 958, Order No. 00-308 (June 9, 2000) (denying request for reconsideration). As an example of unsuccessful relitigation, see the history of the BPA transmission credit. *See e.g., In re PacifiCorp 2013 Transition Adjustment Mechanism*, Docket No. UE 245, Order No. 12-409 at 17 (Jan. 15, 2013) (affirmed on reconsideration Order No. 13-008); *In re PacifiCorp 2014 Transition Adjustment Mechanism*, Docket No. UE 264, Order No. 13-387 at 13-14 (Oct. 28, 2013).

[20] Joint Parties' Motion at 15.

[21] PacifiCorp's Rebuttal Brief at 10-11.

[22] PAC/400, Duvall/5-6; *see* PacifiCorp's Rebuttal Brief at 11.

mitigation factor in Oregon.[23] It also pointed out that GRID—the model relied upon by the Company to produce both the transition adjustment and the Consumer Opt-Out Charge—incorporates the Company's total system load forecast and therefore fully accounts for system load growth.[24]

In Order No. 15-060, the Commission agreed with PacifiCorp, stating:

> The Stipulating Parties failed to rebut PacifiCorp's evidence of transition costs, up to approximately $60 million, in years six to ten of the program, and rely too heavily on mere assertions about how transition costs beyond year five can be reduced or erased. Moreover, we reject the Stipulating Parties' arguments that PacifiCorp's system load growth will completely mitigate any transition costs. As PacifiCorp notes, GRID considers forecasted system load growth in calculating both the transition adjustments and the consumer opt-out charge.[25]

The Joint Parties assert that, faced with conflicting testimony, the Commission failed to address the impact of system load growth and improperly relied exclusively on PacifiCorp's argument that GRID incorporates forecasted system load growth into valuing freed-up power—evidence the Joint Parties claim is not properly in the record.[26]

The Joint Parties mischaracterize Order No. 15-060 when they allege that the Commission relied exclusively on GRID for its decision. PacifiCorp offered evidence supporting numerous arguments rebutting the Joint Parties' assertions that load growth could mitigate transition costs. The Commission explicitly rejected *all* of the Joint Parties' arguments on this issue.[27] The Commission's decision did not rely solely on its recognition that GRID accounts for system load growth.

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[23] PAC/400, Duvall/5.
[24] PacifiCorp's Rebuttal Brief at 10.
[25] Order No. 15-060 at 7.
[26] Joint Parties' Motion at 13.
[27] Order No. 15-060 at 7.

Moreover, reliance on the Company's explanation that GRID accounts for system load growth in calculating both the transition adjustment and Consumer Opt-Out Charge is entirely proper. The Company raised this issue in its rebuttal brief to respond to an argument in the Stipulating Parties' reply brief that "PacifiCorp must make appropriate planning responses to *expected* direct access load."[28]

The fact that GRID considers forecasted system load growth is not a disputable fact, and is certainly a fact that the Commission could reference for purposes of its decision. The Company uses GRID to calculate the Consumer Opt-Out Charge in the same manner as it uses GRID to calculate the transition adjustment in the annual TAM.[29] The TAM Guidelines recognize that the updated net power costs in PacifiCorp's initial filing each year are based on the Company's "most recent official forward price curve, *forecast load* and allocation factors."[30] In PacifiCorp's 2013 TAM, the Commission summarized, "To initially forecast a NPC for the 2013 TAM filing, the company updated the following GRID inputs: *system load*, wholesale sales, purchase power expenses, wheeling expenses, market prices for natural gas and electricity, fuel expenses, and the characteristics and availability of generation facilities."[31] The Commission is entitled to rely on these past orders regarding the operation of GRID in the TAM, and it may also take official notice of general or technical facts within its specialized knowledge.[32]

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[28] PacifiCorp's Rebuttal Brief at 9 (quoting Stipulating Parties' Post-Hearing Reply Brief at 13) (emphasis added in PacifiCorp's Rebuttal Brief).
[29] PAC/400, Duvall/4, 18; *see* PacifiCorp's Rebuttal Brief at 2.
[30] *In re PacifiCorp 2009 Transition Adjustment Mechanism Schedule 200, Cost-Based Supply Service*, Docket No. UE 199, Order No. 09-274, App. A at 9 (July 16, 2009) (emphasis added).
[31] *In re PacifiCorp 2013 Transition Adjustment Mechanism*, Docket No. UE 245, Order No. 12-409 at 1 (Oct. 29, 2012) (emphasis added).
[32] OAR 860-001-0460(1)(e).

Finally, the Joint Parties argue that because GRID models only NPC and does not address fixed generation cost recovery, GRID's use of a system load forecast does not negate the Joint Parties' load growth argument.[33] But—as explained in PacifiCorp's rebuttal brief and demonstrated in PacifiCorp's testimony and exhibits—GRID is used to capture the value of freed-up energy in the calculation of the Consumer Opt-Out Charge.[34] System load growth reflected in GRID increases the value of the freed-up energy, increases the offset to fixed generation costs, and mitigates (but does not eliminate) transition costs. In this way, system load growth is accounted for in the Consumer Opt-Out Charge calculation.

2. The Joint Parties Challenge Fixed Generation Costs without Substantiating Evidence and Misstate How Depreciation is Reflected in Rates.

Without citing to any substantiating evidence, the Joint Parties ask the Commission to "correct" Order No. 15-060 to state that departing customers are responsible only for the *depreciated* value of generation assets.[35] Alternatively, the Joint Parties ask the Commission to grant rehearing and conduct further proceedings on this issue.

This issue was first raised by the Joint Parties in their reply brief.[36] Without supporting evidence, there is no basis for a request to "correct" the Order.

The Commission should likewise deny the request for rehearing. The Joint Parties made this argument in briefing, PacifiCorp fully responded, and the Commission impliedly accepted PacifiCorp's position in approving the Consumer Opt-Out Charge as proposed.[37] As outlined in PacifiCorp's rebuttal brief:

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[33] Joint Parties' Motion at 14.
[34] PAC/200, Duvall/4; PacifiCorp's Rebuttal Brief at 10.
[35] Joint Parties' Motion at 16-20.
[36] Stipulating Parties' Post-Hearing Reply Brief at 10-11.
[37] Order No. 15-060 at 6.

1. The Joint Parties made this argument for the first time in their reply brief after failing to present any testimony or evidence challenging PacifiCorp's calculation of the Consumer Opt-Out Charge.

2. The Joint Parties relied only on a Brattle Group article cited in PacifiCorp's opening brief for an entirely different point (and which the Joint Parties otherwise claimed was irrelevant).

3. The Company's treatment of fixed generation costs—holding them constant through year 10 and escalating only for inflation—is conservative and one that is entirely consistent with past treatment of this component of the transition cost calculation.

4. Staff's reply testimony supported the escalation of fixed generation costs for the first five years and there is no theoretical basis for cutting off this escalation at year six.[38]

5. It was arbitrary for the Joint Parties to concede that fixed generation costs will be inclining the first five years of the transition costs calculation and then claim the same costs should decline in years six through 10.[39]

In their motion, the Joint Parties also misstate how depreciation is reflected in rates. The Joint Parties argue that a "stranded cost calculation cannot assume that the current fixed generation costs will remain constant."[40] Yet, it is fundamental that while a plant's depreciated value goes down over time, plant balances and depreciation expense remain constant in rates. The Commission has specifically affirmed this point in past cases.[41] The Joint Parties' argument on this issue is procedurally and substantively deficient.

C. Issues around VRET are Outside the Scope of this Proceeding.

In their motion, the Joint Parties argue that Commission should ensure the Consumer Opt-Out Charge does not impede customer alternatives, particularly in the context of a

[38] *See* Staff/100, Compton/6.

[39] PacifiCorp's Rebuttal Brief at 7-8.

[40] Joint Parties' Motion at 17.

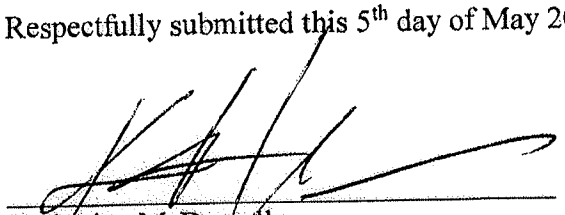
[41] *See e.g., In re Portland General Electric Co.*, Docket Nos. DR 10, UE 88 & UM 989, Order No. 08-487 at 90 (Sept. 30, 2008), *aff'd Gearhart v. Pub. Util. Comm'n of Oregon*, 356 Or 216 (2014) (analogizing amortization of Trojan asset to a home mortgage, where amount of monthly payment remains constant).

PacifiCorp voluntary renewable energy tariff (VRET).[42] This argument is without foundation in the record, speculative, and out of place in this docket. The Commission is separately considering VRET issues in docket UM 1690. The Joint Parties should raise their concerns, if applicable, in a proceeding where a specific VRET will be decided.

III. CONCLUSION

Based on the foregoing, PacifiCorp respectfully requests that the Commission deny the Joint Parties' Motion for Clarification or, in the Alternative, Reconsideration or Rehearing.

Respectfully submitted this 5th day of May 2015,



Katherine McDowell
McDowell Rackner & Gibson PC

Sarah Wallace
Vice President and General Counsel
PacifiCorp d/b/a Pacific Power

Attorneys for PacifiCorp

[42] Joint Parties' Motion at 5-6.

EXHIBIT D

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1610

In the Matter of the Public Utility Commission of Oregon INVESTIGATION INTO QUALIFYING FACILITY CONTRACTING AND PRICING	**STIPULATION**

I. Parties

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

II. Background

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

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

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

III. Agreement

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

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

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

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standard contract, the QF has one year in which to cure the default for failure to meet the COD, during which the QF is subject to damages for failure to deliver. Damages are 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 utility to deliver replacement energy to the point of delivery.

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

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

> The QF may file a complaint asking the Commission to adjudicate disputes regarding the formation of the standard contract. The QF may not file such a complaint during any 15-day period in which the utility has the obligation to respond, but must wait until the 15-day period has passed.
>
> The utility may respond to the complaint within ten days of service.
>
> The Commission will limit its review to the issues identified in the complaint and response, and utilize a process similar to the arbitration process adopted to facilitate the execution of interconnection agreements among telecommunications carriers. *See* OAR 860, Division 016. The ALJ will act as an administrative law judge, not as an arbitrator.

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

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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.

F. Termination for consecutive MAG failures. A utility may issue a Notice of Default (and subsequently 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.

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

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

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

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

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

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

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

Dated this 19th of February, 2015.

STAFF

COMMUNITY RENEWABLE ENERGY ASSOCIATION

RENEWABLE ENERGY COALITION

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Dated this 18th of February, 2015.

STAFF

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Dated this _____ of February, 2015.

_____
STAFF

_____
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_____
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IDAHO POWER COMPANY

OBSIDIAN RENEWABLES, LLC

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Ken Kaufmann (for Bill Eddie)
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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.

EXHIBIT E

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1725

In the Matter of IDAHO POWER COMPANY Motion for Temporary Stay of its Obligation to Enter into New Power Purchase Agreements with Qualifying Facilities.	STAFF RESPONSE TO MOTION FOR TEMPORARY STAY

I. Introduction.

Idaho Power Company (Idaho Power) has asked the Commission to modify some of its policies implementing the Public Utility Regulatory Procedures Act (PURPA). Specifically, Idaho Power asks the Commission to lower the eligibility cap for Standard Avoided Cost prices and standard contracts from 10 megawatts (MW) to 100 kilowatts (kW), (2) shorten the maximum term for contracts for qualifying facilities (QFs) over 100 kW from 20 years to two years, (3) authorize Idaho Power to incorporate a solar integration charge into the calculation of standard and negotiated avoided cost prices, and (4) postpone the starting year of Idaho Power's next deficiency period from 2016 to 2021.[1] Idaho Power also asks the Commission to issue an order temporarily staying Idaho Power's obligation to enter into standard fixed-price contracts until after the Commission has issued an order resolving the four requests listed above.[2] In the

[1] Idaho Power Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term (April 24, 2015), Application for Change in Resource Sufficiency Determination (April 24, 2015), and Application for Approval of Solar Integration Charge (April 24, 2015).

[2] Motion for Temporary Stay of Obligation to Enter Into New Power Purchase Agreements with Qualifying Facilities (April 24, 2015)("Motion for Temporary Stay").

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alternative, Idaho Power asks the Commission to order interim relief by immediately granting the four requests listed above pending the Commission's final decisions on these requests.[3]

Staff recommends that the Commission deny Idaho Power's request to stay Idaho Power's obligation to enter into all standard contracts.[4] Staff also recommends, however, that the Commission grant part of the interim relief asked for by Idaho Power. Specifically, Staff recommends that the Commission reduce the eligibility cap for Standard Avoided Cost prices and standard contracts from 10 MW to 100 kW and shorten the maximum contract term for QFs over 100 kW to five years, both on an interim basis, until the Commission has addressed Idaho Power's request to make these modifications to PURPA policies as they apply to Idaho Power on a permanent basis.

Staff does not recommend that the Commission grant Idaho Power's request to change the resource sufficiency/deficiency demarcation for Standard Avoided Cost prices or to include solar integration costs in the calculation of avoided cost prices. The potential harm to ratepayers that Idaho Power proposes to address with these changes to Commission orders is adequately addressed by temporarily limiting the availability of Standard Avoided Cost prices to QFs 100 kW and less and temporarily limiting the maximum term of QF contracts for non-standard contracts to five years.

II. Pertinent statutes, rules, and orders.

ORS 756.568 authorizes the Commission, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, to rescind, suspend or amend any order made by the commission. ORS 756.568 does not specify a standard for Commission action under that statute.

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[3] Motion for Temporary Stay 9.

[4] A standard contract is a term "used to describe a standard set of rates, terms and conditions that govern a utility's purchase of electrical power from QFs at avoided cost." (Order No. 05-584 at 16-17.)

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Gardner Capital Solar Development, LLC (Gardner Capital) notes in its opposition to Idaho Power's Motion for a Temporary Stay that the Commission has previously stated that it will use the criteria for granting a stay in Oregon's Administrative Procedures Act (APA)[5] as a guide when considering a request to stay compliance with an order, even though the Commission is statutorily exempt from those standards under ORS 756.610(2).[6]

The criteria for a stay in the Oregon APA are not directly applicable to Idaho Power's request for stay. The issue is not whether there is a colorable claim of error in the Commission's most recent orders regarding the policies at issue, but whether the circumstances as they exist now warrant an immediate change of those policies for Idaho Power to avoid harm to ratepayers.

As Idaho Power notes in its Motion for a Temporary Stay, the Commission has previously suspended the application of certain administrative rules regarding PURPA based on its conclusion that the challenged rules appear to be unlawful holding that "no new [qualifying] facilities should be undertaken that might harm ratepayers."[7] The Commission has also temporarily suspended Idaho Power's obligation to enter into standard contracts for 60 days pending the Commission's acknowledgment of Idaho Power's IRP and Idaho Power's subsequent avoided cost filing based on inputs from the acknowledged IRP.[8]

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[5] ORS 183.482(3)(a), which provides the standard for granting a stay for agencies fully subject to Oregon's APA, requires a petitioning party to show:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

If the agency finds in petitioners' favor on these two issues, the agency must grant the stay unless it determines that substantial public harm will result if the order is stayed.

[6] See Gardner Capital Comments 4. *See also In re Portland General Electric*, Order No. 01-842 (2001 WL 1335757).

[7] Order No. 87-1154 at 1-2 (The Commission did not suspend the utilities' obligations to enter into QF contracts, only certain rules regarding QF contracts).

[8] Order No. 12-042.

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III. Current Commission policies regarding standard contract eligibility cap, contract term, inclusion of solar integration costs, and resource sufficiency/deficiency demarcation.

Eligibility cap for standard contracts: Section 18 C.F.R §292.304(c) of Federal Energy Regulatory Commission (FERC) rules implementing PURPA require that state commissions establish standard avoided cost rates for QFs up to 100 kW, and authorize state commissions to make standard rates available to larger QFs. In 2005, the Commission exercised its authority under section 18 C.F.R. §292.304(c)(2) to make Standard Avoided Cost rates available to QFs with nameplate capacity of 10 MW and below.[9]

In Order No. 14-058, the Commission declined to lower the eligibility cap for standard contracts from 10 MW. The Commission explained that standard contract rates, terms, and conditions are intended to be used as a means to remove transaction costs associated with QF contract negotiation, when such costs as well as asymmetric information and an unlevel playing field, act as a market barrier to QF development.[10] Based on testimony from several parties that lowering the eligibility cap would deter QF development in Oregon because of the transaction costs associated with negotiating a contract, the Commission decided to leave the eligibility cap where it had been since 2005.[11]

Maximum term of contract: In 2005, the Commission decided that QFs should be authorized to ask for PURPA contracts with a maximum term of 20 years because this contract term would help ensure that the QFs' projects would be financed.[12] The Commission concluded that it would authorize forecasted avoided cost prices for only the first 15 years of a 20-year contract, however, noting a "divergence between forecasted and actual avoided costs must be

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[9] Order No. 05-584 at 15.

[10] Order No. 05-584 at 16, *citing* Order No. 09-1605 at 2.

[11] See Order No. 14-058 at 7.

[12] Order No. 05-594 at 19.

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expected over a period of 20 years."[13] Although parties asked the Commission to re-visit the maximum term of PURPA contracts in Phase I of UM 1610, the Commission did not.

Solar integration charge: In Phase I of Docket No. UM 1610, the Commission considered whether it should authorize the inclusion of costs to integrate solar resources in the calculation of Standard Avoided Cost prices. Several parties argued against incorporating such costs into the calculation of Standard Avoided Cost prices, asserting that solar QF development is too small to pose harm to ratepayers, and there is too little data to produce accurate solar integration cost estimates.[14] In Order No. 14-058, Commission decided that it would not authorize inclusion of integration costs for solar resources in the calculation of standard avoided cost rates, "but . . . will revisit this issue in the future after more solar development occurs."[15]

Demarcation of resource sufficiency and deficiency periods: In 2010, the Commission determined that the demarcation of resource sufficiency and deficiency will be based on the start date of the first major resource acquisition in the most recently-acknowledged Integrated Resource Plan (IRP) Action Plan.[16] Idaho Power's current Standard Avoided Cost prices are based on the resource deficiency/sufficiency demarcations taken from its most recently acknowledged IRP Action Plan, which shows a resource deficiency period beginning in 2016.

IV. Staff recommendation.

Staff recommends that the Commission deny Idaho Power's request to temporarily suspend Idaho Power's obligation to enter into standard contracts with all QFs. 18 C.F.R. §292.304(c)(1) requires that standard avoided cost rates be available for QFs that are 100 kW and less. The potential harm that Idaho Power identifies does not warrant a Commission order circumventing this federal requirement.

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[13] Order No. 05-584 at 20.

[14] *See* Order No. 14-058 at 14-15.

[15] Order No. 14-058 at 15.

[16] Order No. 10-488 at 3, 8.

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However, Staff recommends that the Commission grant the interim relief asked for by Idaho Power, in part, by reducing the eligibility cap for standard contracts to 100 kW and reducing the maximum contract term for facilities over 100 kW to five years. For reasons explained below, Staff recommends that the Commission make this relief effective as of the day Idaho Power filed its Motion for Temporary Stay, which is April 24, 2015. To the extent a QF submitted a request for an Energy Service Agreement (ESA) prior to that date that satisfies the criteria of Idaho Power's Schedule 85,[17] that QF should be allowed the opportunity to establish a legally enforceable obligation to sell under the terms and conditions regarding standard contracts in effect prior to April 24, 2015.[18]

Staff's recommendation to temporarily change the eligibility cap for a standard contract and the maximum term of any contract over 100 kW, as they apply to Idaho Power, is based in large part on the unique circumstances of Idaho Power. The Commission has previously imposed different PURPA policies for Idaho Power so that Idaho Power is subject to consistent policies in both Oregon and Idaho given that most of Idaho Power's service territory is in Idaho.[19]

In 2011, the IPUC reduced the eligibility cap for standard contracts for wind and solar QFs to 100 kW.[20] And, the IPUC recently reduced the maximum contract term for PURPA contracts to five years pending its investigation of Idaho Power's request to reduce the maximum term to two years.[21] Staff's recommendation to grant interim relief would allow Idaho Power to operate under consistent policies regarding eligibility for standard contracts and maximum contract duration in both Idaho and Oregon, pending the Commission's final resolution of Idaho Power's proposed changes to the Commission's PURPA policies as applied to Idaho Power.

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[17] Idaho Power's Schedule 85 sets forth terms and conditions for standard contracts.

[18] Such a showing would have to be made in a separate proceeding, e.g, under the dispute resolution processes agreed to by the Stipulating Parties in Docket No. UM 1610.

[19] Order No. 05-584 at 26.

[20] IPUC Order No. 32262, Case No. GNR-E-11-01.

[21] *Idaho Power Co.*, Case No. IPC-15-01, Order No. 33222 (Feb. 6, 2015).

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Idaho Power alleges that developers outside of Oregon have indicated interest in obtaining standard contracts in Oregon to take advantage of Oregon's 10 MW eligibility cap for Standard Avoided Cost rates and the 20-year maximum term.[22] This concern is credible. In 2014, a QF developer insisted on obtaining a standard contract in Oregon notwithstanding the OPUC's initial conclusion that the QF was not entitled to an Oregon contract given the delivery point for the QFs energy into Idaho Power's system appeared to be in Idaho.[23]

Staff recognizes that the Commission addressed the eligibility cap for standard contracts in Phase I of UM 1610 only 16 months ago, in February 2014. The Commission concluded at that time that the eligibility cap for standard contracts should remain at 10 MW to eliminate the barrier to entry posed by costs to negotiate non-standard contracts.[24] However, the contacts from QF developers that Idaho Power has received since Staff filed its last round of Phase I testimony in April 2013 suggest that the 10 MW eligibility cap is not needed to eliminate barriers to entry. Information provided by Idaho Power in response to a Staff Data Request reflects that Idaho Power has received 22 requests for PURPA contracts since August 2013.[25] Of those requests, 17 have been for proposed 10 MW facilities. The bulk of these 17 requests has been made by only a few QF developers seeking ESAs for multiple 10 MW facilities.[26] This information showing that the majority of requests for ESA are by developers with multiple proposed projects, each at the 10 MW standard contract eligibility cap, suggests that the Commission's 10 MW eligibility cap on standard contracts is not used as a tool to eliminate barriers to entry, but as a tool to obtain advantageous standard contract prices for the largest amount of MWs possible.

In any event, representations in Idaho Power's Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term reflect that the QFs like those

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[22] Motion for a Temporary Stay at 4.

[23] *See* Order No. 14-027.

[24] Order No. 14-058 at 7.

[25] Staff Exhibit A, Idaho Power Response to Staff DR 5.

[26] Staff Exhibit A, Idaho Power Response to Staff DR 5.

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currently seeking Oregon contracts do not need the protection of the 10 MW eligibility cap for standard contracts.[27] Idaho Power represents that since the IPUC reduced the eligibility cap for standard contracts for wind and solar QFs, Idaho Power has negotiated separate contracts in Idaho for a total of 401 MW of QF generation in Idaho.[28] Idaho Power also states that it has current requests from an additional 47 proposed projects for a total of 1,081 MW of additional QF solar generation, all with the applicability of a 100 kW standard rate eligibility cap.[29] This information reflects that QF development is not impeded by the fact that QFs over 100 kW must negotiate contracts.

Similarly, the maximum term of 20 years is intended to ensure that QFs can obtain financing by showing a steady stream of revenue for an extended period, rather than to ensure that QFs can lock in favorable avoided cost prices for an extended period.[30] In light of the potential harm from allowing PURPA contracts based on rates that the Commission may determine exceed Idaho Power's actual avoided costs, Staff recommends that the Commission temporarily shorten the term of contracts to mitigate the potential harm and also, to reduce the incentive for out-of-state QFs to seek contracts in Oregon to obtain a contract term that is longer than what is available in surrounding states.

V. Effective date of interim relief.

A Commission decision to grant interim relief to Idaho Power, either by issuing a stay or authorizing any of Idaho Power's four requests for policy changes on an interim basis, raises the practical consideration of when such relief should be effective. Staff recommends that the Commission designate the date Idaho Power filed the Motion for Temporary Stay as the effective

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[27] Application to Lower Standard Contract Eligibility Cap and to Reduce the Contract Term 12-13.

[28] *See* Idaho Power Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term 12-13.

[29] Idaho Power Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term 12-13.

[30] Order No. 05-584 at 19.

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date for Staff's recommended interim change to the eligibility cap and maximum contract term. The practical effect of this demarcation appears to be that six solar QF projects *could potentially* be allowed to sell energy under Schedule 85 prices and terms effective prior to April 24, 2015.[31] Whether any of these solar projects actually will be able to sell energy under Schedule 85 terms and conditions effective prior to April 24, 2015, would be determined separately from review of the issues in Docket No. UM 1725.

Staff recommends April 24, 2015 as the effective date of any interim relief because QFs had notice of the potential change in eligibility for Standard Avoided Cost prices and the length of standard contracts once Idaho Power filed its applications on that day. FERC has previously declined to impose new requirements that may disrupt QF's "settled expectations" regarding PURPA policy.[32] Once Idaho Power filed its applications and Motion for Temporary Stay, a QF that had not filed a request for an ESA that was compliant with Idaho Power's Schedule 85 was on notice of the potential for interim and immediate relief, and could not after that date have a "settled expectation" of the availability of Standard Avoided Cost prices for all QFs 10 MW or less.

In contrast, QFs that filed requests for ESAs that complied with all the requirements of Idaho Power's Schedule 85 prior to April 24, 2015, could reasonably have had an expectation of receiving the terms and prices in effect at the time the QF established the legally enforceable

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[31] *See* Comments of Gardner Capital Solar Development, LLC., At 1-2 (noting it had "timely" filed five requests for ESAs for a total of 40 MWs); see also Idaho Power Company's Supplement to Motion for Temporary Stay at 2 (noting one developer had asked for ESAs for five projects on April 7, 2015, and another had asked for an ESA for one project on April 16, 2015).

[32] *See e.g., Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P., Wheelabrator Environmental Systems*, 83 FERC 611236 (1998 WL 237574) ("[I]it would not be consistent with Congress' directive to encourage cogeneration and small power production to upset the settled expectations of parties to, and to invalidate any of their obligations under, such executed PURPA sales contracts.").

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obligation. Staff recommends that the Commission not disturb these expectations, much as FERC has declined to invalidate utilities' obligations under an executed PURPA sales contract.[33]

V. Conclusion

Staff recommends that the Commission deny Idaho Power's request to temporarily suspend Idaho Power's obligation to enter into all standard contracts. Staff recommends that the Commission grant Idaho Power's request for alternate interim relief by reducing the eligibility cap for standard contracts and Standard Avoided Cost prices from 10 MW to 100 kW and by limiting the maximum term of QF contracts to 5 years. Staff recommends that the effective date of this relief be the date Idaho Power filed its Motion for Temporary Stay, which means that QFs that filed requests for PURPA contracts that are compliant with Idaho Power's Schedule 85 are eligible to establish legally enforceable obligations regarding the proposed QF projects.

DATED 2nd day of June 2015.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

Mike Andrus for

Stephanie S. Andrus, #925123
Senior Assistant Attorney General
Of Attorneys for Staff of the Public Utility Commission of Oregon

[33] See, *Id.*

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STAFF EXHIBIT 1

Attachment - Response to Staff's DR 5

Idaho Power Company
Proposed PURPA Solar - As of May 18, 2015
Idaho

Exhibit 108 | Response 5

	Project Name	Project Developer	MWac	Term (Years)	State	Estimated Operation Date	Estimated Obligation (Includes Integration)	Estimated 2 Year Obligation (Includes Integration)	Indicative Pricing request or an ESA Request Date	Date a draft ESA was provided	Date a final ESA was provided
1	Project A1	Developer A	80	20	Idaho	12/01/16	$213,159,625	$9,052,344	06/30/2014	9/5/2014	No
2	Project A2	Developer A	28	20	Idaho	12/01/16	$67,482,130	$2,843,077	07/28/2014	No	No
3	Project A3	Developer A	30	20	Idaho	12/31/16	$40,316,768	$2,110,838	Other Inquiry	No	No
4	Project A4	Developer A	30	20	Idaho	12/31/16	$40,316,768	$2,110,838	Other Inquiry	No	No
5	Project B1	Developer B	20	20	Idaho	10/30/16	$48,378,647	$2,408,124	10/10/2014	No	No
6	Project B2	Developer B	20	20	Idaho	10/30/16	$45,549,075	$2,277,538	10/10/2014	No	No
7	Project C1	Developer C	20	20	Idaho	12/31/16	$53,382,246	$2,318,923	12/18/2014	No	No
8	Project C2	Developer C	20	20	Idaho	12/31/16	$53,283,030	$2,337,229	12/18/2014	No	No
9	Project C3	Developer C	20	20	Idaho	12/31/16	$49,203,964	$2,150,196	12/18/2014	No	No
10	Project C4	Developer C	20	20	Idaho	12/31/16	$49,360,962	$2,148,558	12/18/2014	No	No
11	Project C5	Developer C	20	20	Idaho	12/31/16	$48,760,343	$2,084,643	12/18/2014	No	No
12	Project C6	Developer C	20	20	Idaho	12/31/16	$51,486,567	$2,208,705	12/18/2014	No	No
13	Project C7	Developer C	20	20	Idaho	12/31/16	$51,493,788	$2,178,763	12/18/2014	No	No
14	Project C8	Developer C	20	20	Idaho	12/31/16	$51,355,246	$2,169,541	12/18/2014	No	No
15	Project C9	Developer C	20	20	Idaho	12/31/16	$51,797,625	$2,148,386	12/18/2014	No	No
16	Project C10	Developer C	20	20	Idaho	12/31/16	$48,438,230	$2,048,049	12/18/2014	No	No
17	Project D1	Developer D	6	20	Idaho	12/31/16	$8,063,354	$422,168	03/20/2015	No	No
18	Project D2	Developer D	7.5	20	Idaho	12/31/16	$10,079,192	$527,709	03/20/2015	No	No
19	Project D3	Developer D	10	20	Idaho	12/31/16	$14,413,193	$810,279	03/02/2015	No	No
20	Project D4	Developer D	10	20	Idaho	12/31/16	$14,412,285	$806,685	03/02/2015	No	No
21	Project E1	Developer E	13	20	Idaho	12/31/16	$17,470,600	$914,696	Other Inquiry	No	No
22	Project E2	Developer E	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
23	Project E3	Developer E	13	20	Idaho	12/31/16	$17,470,600	$914,696	Other Inquiry	No	No
24	Project E4	Developer E	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
25	Project E5	Developer E	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
26	Project E6	Developer E	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
27	Project E7	Developer E	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
28	Project E8	Developer E	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
29	Project E9	Developer E	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
30	Project E10	Developer E	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
31	Project E11	Developer E	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
32	Project E12	Developer E	13	20	Idaho	12/31/16	$17,470,600	$914,696	Other Inquiry	No	No
33	Project F1	Developer F	70	20	Idaho	12/31/16	$94,072,460	$4,925,289	Other Inquiry	No	No
34	Project G1	Developer G	3	20	Idaho	12/31/16	$4,031,677	$211,084	Other Inquiry	No	No
35	Project H1	Developer H	1	20	Idaho	12/31/16	$1,345,892	$70,461	06/02/2014	No	No
36	Project I1	Developer I	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
37	Project B3	Developer B	20	5	Idaho	12/31/16	$42,588,215	$2,059,783	01/28/2015	No	No
38	Project B4	Developer B	20	5	Idaho	12/31/16	$42,415,239	$2,058,467	01/28/2015	No	No
39	Project B5	Developer B	50	5	Idaho	12/31/16	$103,750,045	$4,820,801	01/28/2015	No	No
40	Project B6	Developer B	40	5	Idaho	12/31/16	$80,232,480	$3,666,449	01/28/2015	No	No
41	Project D5	Developer D	10	20	Idaho	12/31/16	$19,377,901	$1,001,813	02/17/2015	No	No
42	Project D6	Developer D	10	20	Idaho	12/31/16	$18,700,526	$968,550	02/17/2015	No	No
43	Project L1	Developer L	28	20	Idaho	12/31/16	$37,628,984	$1,970,115	Other Inquiry	No	No
44	Project L2	Developer L	28	20	Idaho	12/31/16	$37,628,984	$1,970,115	01/22/2015	No	No
45	Project L3	Developer L	80	20	Idaho	12/31/16	$107,511,382	$5,628,901	02/02/2015	No	No
46	Project O1	Developer O	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
47	Project O2	Developer O	20	20	Idaho	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
		Subtotal	1081				$1,969,960,769	$94,140,109			

Staff Exhibit 1, Page 1 of 2

Attachment - Response to Staff's DR 5

Idaho Power Company
Proposed PURPA Solar - As of May 18, 2015
Oregon

	Exhibit 106								Response 5		
	Project Name	Project Developer	MWac	Term (Years)	State	Estimated Operation Date	Estimated Obligation	Estimated 2 Year Obligation	ESA Request Date	Date a draft ESA was provided	Date a final ESA was provided
48	Project J1	Developer J	10	20	Oregon	06/15/16	$30,325,795	$2,008,461	11/11/2014	12/2/2014	No
49	Project E13	Developer E	20	20	Oregon	12/31/16	$26,877,846	$1,407,225	Other Inquiry	No	No
50	Project K1	Developer K	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	11/12/2013	No	No
51	Project K2	Developer K	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	Other Inquiry	No	No
52	Project K3	Developer K	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	11/12/2013	No	No
53	Project K4	Developer K	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	Other Inquiry	No	No
54	Project K5	Developer K	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	09/19/2013	No	No
55	Project K6	Developer K	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	Other Inquiry	No	No
56	Project K7	Developer K	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	08/23/2013	No	No
57	Project K8	Developer K	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	Other Inquiry	No	No
58	Project K9	Developer K	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	Other Inquiry	No	No
59	Project K10	Developer K	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	08/28/2013	No	No
60	Project M1	Developer M	5	20	Oregon	12/31/16	$15,967,334	$1,093,292	04/07/2015	No	No
61	Project M2	Developer M	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	04/07/2015	No	No
62	Project M3	Developer M	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	04/07/2015	No	No
63	Project M4	Developer M	5	20	Oregon	12/31/16	$15,967,334	$1,093,292	04/07/2015	No	No
64	Project M5	Developer M	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	04/07/2015	No	No
65	Project M6	Developer M	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	05/06/2015	No	No
66	Project N1	Developer N	5	20	Oregon	12/31/16	$15,967,334	$1,093,292	04/16/2015	No	No
67	Project N2	Developer N	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	04/27/2015	No	No
68	Project N3	Developer N	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	04/27/2015	No	No
69	Project N4	Developer N	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	04/27/2015	No	No
70	Project N5	Developer N	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	04/27/2015	No	No
71	Project N6	Developer N	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	04/27/2015	No	No
72	Project N7	Developer N	6	20	Oregon	12/31/16	$19,160,801	$1,311,950	04/27/2015	No	No
73	Project N8	Developer N	4	20	Oregon	12/31/16	$12,773,867	$874,633	04/27/2015	No	No
74	Project N9	Developer N	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	04/27/2015	No	No
75	Project P1	Developer P	10	20	Oregon	12/31/16	$31,934,668	$2,186,583	04/27/2015	No	No
		Subtotal	265				$807,658,339	$54,800,389			
		Total	1,346				$2,777,629,108	$148,940,498			