BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1725

In the Matter of IDAHO POWER COMPANY, Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination.	)	RENEWABLE ENERGY COALITION REPLY TO MOTION FOR CLARIFICATION

I. INTRODUCTION

Pursuant to OAR § 860-001-0420 and the Administrative Law Judge's July 9, 2015 Ruling, the Renewable Energy Coalition (the "Coalition") submits this reply to Idaho Power Company's ("Idaho Power") motion for clarification ("Motion for Clarification") of the Oregon Public Utility Commission's (the "Commission" or "OPUC") recent Order No. 15-199. The Coalition opposes addressing the complex issue of whether qualifying facilities ("QFs") can revise their size and continue to be treated as the same project through a motion for clarification. The Commission should not resolve this issue without a full record or consideration of all the relevant and related factors. An expedited decision based on the sparse information available at this time could result in long term unintended consequences. Therefore, the Commission should deny the Motion for Clarification without prejudice.

Alternatively, if the Commission addresses the merits of Idaho Power's request, then the Commission should conclude that a QF can reduce its proposed generation

capacity and remain eligible for the avoided cost rates in effect at the time of their application, especially when the change prompting the reduction is outside the QF's control.

The Coalition takes no position on Idaho Power's second request seeking Commission permission to address its solar integration charges immediately rather than in UM 1610.

II. BACKGROUND

On April 24, 2015, Idaho Power requested: 1) a temporary stay of its PURPA obligations; 2) to lower the standard contract eligibility cap to 100 kW for wind and solar QFs; 3) to lower the standard contract term to two years for wind and solar QFs; 4) approval of a solar integration charge; and 5) to change its resource sufficiency determination. The Coalition, the Community Renewable Energy Association, Gardner Solar, and Pacific Northwest Solar filed responses in opposition, and the Coalition alternatively proposed limited interim relief. Staff opposed the PURPA stay, but supported specific interim relief that would lower the size threshold for wind and solar QFs to 100 kW and five year contract terms for wind and solar QFs.

On June 23, 2015, the Commission rejected Idaho Power's request to stay its PURPA obligations and Idaho Power's specific request for interim relief. Order No. 15-199 at 6-7. Instead, the Commission lowered the size threshold for solar QFs to three megawatts ("MW"). Id. The Coalition does not oppose the portion of the Commission's order reducing the size threshold for solar QFs on an interim basis because the Commission carefully considered the information provided by Idaho Power, the concerns and suggestions of interested parties, and the potential harm in granting the magnitude of

relief initially requested. Idaho Power is apparently satisfied with the far more limited relief that the Commission granted because Idaho Power "appreciates the Commission's thoughtful ruling . . ."

III. REPLY

Idaho Power's Motion for Clarification should be rejected without prejudice because it raises important factual and policy questions that should not be resolved on an expedited basis through a clarification request. Idaho Power's concerns should instead be addressed through a complaint with specific projects, or in a broader investigation that allows interested parties a better opportunity to be heard. Idaho Power's proposed solution goes well beyond just size changes, and could potentially impact project changes for numerous projects on a wide variety of key aspects of contract negotiations and implementation. Without careful consideration, the Commission could set unintended and harmful policies regarding numerous types of project changes.

If the Commission intends to address the merits of Idaho Power's request, then the Commission should find that the projects at issue should be allowed to reduce their proposed generation capacity and remain eligible for the avoided cost rates in effect at the time of their applications. This result would be fair to the specific projects because they would likely have requested contracts with smaller generation sizes if they had known the Commission was planning to reduce the standard contract size threshold eligibility.[1]

[1] The projects at issue are not Coalition members, and the Coalition has not discussed the issues in this reply with them. The Coalition's knowledge about these projects is based on the pleadings in this proceeding.

A. Current Dispute Regarding Size Reductions

The Commission's interim relief became effective April 24, 2015, the date upon which Idaho Power filed its applications in this proceeding. Order No. 15-199 at 6. In other words, the size threshold for solar QFs was reduced to 3 MWs starting April 24, 2015. QF developers that sought "but did not receive ESAs prior to that date may seek a determination of whether those requests created a legally enforceable obligation in individual complaint proceedings." Id.

Idaho Power states that the status of QFs contract requests for projects in excess of 3 MWs that were received between April 24 and June 24, 2015 is unclear. Idaho Power believes there are two options for the projects: 1) maintain their requests for the full size of their projects and negotiate their avoided cost rates; or 2) make new requests lowering their size to 3 MW or larger, but being required to sell at Idaho Power's recently approved and lower avoided cost rates. Motion for Clarification at 6. Idaho Power states, however, that the QF developers believe that they are entitled to revise downward their previous requests of project size of 5 or 10 MWs to 3 MWs, and therefore remain entitled to the recently superseded avoided cost rates. Id. These QF projects appear to be making their requests because of circumstances beyond their control (i.e., the Commission's Order No. 15-199 lowering the size threshold). The QFs are attempting to secure (in part) the avoided cost rates that they would have been entitled to but for Idaho Power's applications and the Commission's Order No. 15-199.

B. Issues Related to Project Changes Are Complex

Idaho Power is essentially raising the issue of what types of changes can be made to a project and still be considered the same project. This can impact a project before or after having entered into a power purchase agreement. While Idaho Power has raised the issue in terms of a reduction in generation output, there are other project changes that can raise the same basic issue. These include but are not limited to a change in maximum or minimum generator capacity before or after contract execution, an increase or reduction in projected monthly, seasonal or annual generation output, changes in project location, interconnections changing from distribution to transmission level, use of new generation type or technology, generation upgrades, etc.

The Coalition agrees that there are some project changes that should result in a project being considered a new or different project. Conversely, QF projects should be able to make many changes and continue to be eligible to maintain the same project status and rights. There needs to some flexibility to allow QFs and utilities to make reasonable changes to reflect the myriad of potential factual circumstances. Flexibility, however, should be limited because clear rules and standards are necessary to prevent both the utilities and projects from gaming the process. Essentially, what types of changes that could result in the project being considered new is not always clear, and clear guidance from the Commission is helpful to avoid litigation.

What constitutes a significant change may also differ depending on the reason for the change. In other words, the same change may be appropriate under certain but not other circumstances. For example, it may be more reasonable for projects to make changes based on factors outside of their control (e.g., a project should be able to reduce

its size in the event that interconnection or transmission connections are far more costly than originally anticipated).

Changes that can occur in the ordinary course of business should also be allowed without controversy. For example, Idaho Power's standard contract provides the company the right to adjust downward the nameplate capacity during the verification process. Idaho Power Energy Service Agreement, Section 4.1.2. Other ordinary changes to the project that do not warrant the project being considered a new project subject to different rates include but are not limited to changes in commercial on line date, changes in generator operations that do not alter generator operations, new project locations that do not alter the point of delivery or interconnection, etc.

C. The Commission Previously Ruled Projects Can Increase Their Generation Capacity Size

The last time the Commission addressed the issue of changes in project size related to generator upgrades was in a generic investigation after extensive discovery and testimony by interested parties. While the Commission's previous resolution indicates that projects can change their generation capacity under reasonable circumstances, it also demonstrates that these issues are complex and require careful deliberation. The Commission did not need to specifically address projects reducing their size from 5 MW or 10 MW to 3 MW or less, in part, because all of these projects typically have had access to standard published rates.

The issue of whether a project could increase its size and remain eligible to continue to receive contracted for avoided cost rates was a contested issue in UM 1129. Order No. 06-538 at 38-39. Initially, PacifiCorp and Idaho Power agreed that a project could increase its generation capacity in limited circumstances and remain eligible for

contract avoided cost rates, while PGE argued that a QF would need to enter into new contract for the entire net output. Docket No. UM 1129, Phase I Compliance, Testimony of Lisa Schwartz at 65. Staff proposed a broader entitlement to change a generator's capacity, and the utilities eventually agreed with the recommendation. Order No. 06-538 at 38-39. Three different, but very similar, methodologies were proposed to calculate the payments for increases above 10 MWs. Id.

The Commission essentially adopted Staff's primary recommendation and concluded that the portion of the sales related to the original project generation capacity or any increases up to 10 MW would be paid the original contract prices but increases above 10 MW would be paid newer (lower or higher) rates. Specifically, the Commission determined that a QF "may upgrade operations and continue to receive its existing contract price for all power delivered up to 10 MW." Id. For project size increases that resulted in a total generation "capacity above 10 MW, a new contract must be negotiated to price any power delivered over 10 MW at updated avoided cost rates." Id. In other words, a project could change its project size under the size threshold and be treated as the same project with all associated rights and responsibilities.

The Commission also specifically adopted PGE's methodology for calculating the payment for avoided cost rates when the increase in generation capacity exceeded 10 MW. Id. at 39. The Commission adopted a specific methodology because, "to minimize contractual disputes, we recognize that there must be an administratively simple method for pricing power delivered by an upgraded QF." Id. The Commission was aware that specific and clear rules were needed to prevent unnecessary litigation and disputes.

Similar, but even more, complex issues are impacted by Idaho Power's Motion

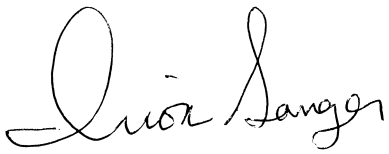
for Clarification. The Commission's resolution in UM 1129 also indicates that projects should be able to make reasonable changes their size, which would allow the projects at issue here to reduce their size to the new Commission approved maximum size for eligibility for standard contracts.

IV. CONCLUSION

The Commission should not resolve the issue of whether projects can lower their contract size requests and obtain the same avoided cost rates without a full review of the relevant facts and policy implications. It is particularly inappropriate to resolve this issue in response to a motion for clarification that provides interested parties less than two weeks to respond. If the Commission decides to resolve the issue at this time, then the specific projects should be allowed to lower their contract sizes and remain eligible for the avoided cost rates in effect at the time of their original applications.

Dated this 16th day of July 2015.

Respectfully submitted,



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