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Via Electronic Filing

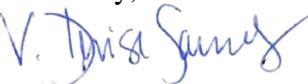
Public Utility Commission of Oregon
Filing Center
201 High St SE, Suite 100
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RE: UM 1725 – Idaho Power Company: Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination

Attention Filing Center:

Enclosed for filing in Docket UM 1725 is Portland General Electric Company's **Response in Opposition to Motion for Clarification Filed by the Community Renewable Energy Association and the Renewable Energy Coalition** to be filed electronically with the Filing Center.

Thank you in advance for your assistance.

Sincerely,

V. Denise Saunders
Associate General Counsel

VDS:bop

Enclosure

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

PORTLAND GENERAL ELECTRIC COMPANY'S RESPONSE IN OPPOSITION TO MOTION FOR CLARIFICATION OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION AND THE RENEWABLE ENERGY COALITION

I. INTRODUCTION

Portland General Electric Company (PGE) respectfully submits this response in opposition to the motion for clarification filed by the Community Renewable Energy Association (CREA) and the Renewable Energy Coalition (REC).

CREA and REC have moved the Public Utility Commission of Oregon (Commission) to clarify that its existing policy on standard qualifying facility (QF) contracts requires a utility to pay fixed rates for 15 years *following the date a QF achieves commercial operation*. This is inaccurate.

The Commission's policy requires utilities to offer contracts of up to 20 years, with fixed rates during the first 15 years, and market rates in the final five years. A QF's commercial operation date can occur three or more years after it executes a contract. The Commission has never stated that utilities must purchase QF power at fixed rates for 15 years measured from the date a QF achieves commercial operation. PGE urges the Commission to deny CREA and REC's motion for clarification or, in the alternative, to

clarify that existing policy requires a utility to pay fixed rates only during the first 15 years of a standard contract term *measured from the date of execution*.

II. BACKGROUND

In this docket, Idaho Power Company (Idaho Power) applied to the Commission to reduce the duration of its negotiated QF contracts from 20 years to 2 years. The Commission denied the request in Order No. 16-129, entered March 29, 2016. The Commission stated:

After further consideration in this docket, we conclude that our current policy appropriately balances ... interests. That policy provides for 20-year contracts, with prices fixed at avoided cost rates in place at the time of signing remaining in effect for a 15-year period, and indexed pricing for the remaining five years ...¹

CREA and REC have asked the Commission to clarify that this decision did not change the Commission's policy on contract duration. They assert that current policy requires 15 years of fixed payments measured from commercial operation.² PGE disagrees. Both the plain meaning of the Commission's 2005 policy statement on contract duration, and the terms of PGE's Commission-approved standard contract tariff—Schedule 201—clearly demonstrate that existing policy only requires a utility to pay fixed rates for the first 15 years following contract execution.

¹ Order No. 16-129, Docket UM 1725 at 8.

² CREA and REC's Motion for Clarification at 1-2 ("... the existing policy [is] that the period for 15 years of fixed prices commences at the time the QF achieves operation, not the earlier date prior to construction when the QF signs the power purchase agreement.").

III. DISCUSSION

A. The Commission's Existing Policy

The Commission's policy on standard contract length was established in Order No. 05-584 entered May 13, 2005, in UM 1129.³ The question was: how long should a utility be obligated to pay fixed rates? The longer the term, the greater the risk that fixed rates would deviate from actual avoided costs. Because customers end up paying for QF power, the Commission has an interest in keeping contract terms short to protect customers from excessive price risk. But the Commission is also interested in facilitating QF financing and development. And QFs need fixed rates for a long enough period to attract financing. In setting the length of standard contracts, the Commission had to balance these competing interests. The Commission recognized this in Order No. 05-584:

We conclude that establishing an appropriate maximum term for standard contracts requires us to balance two goals. A primary goal ... is to accurately price QF power. We also seek ... to ensure that QF projects ... have viable opportunities to enter into a standard contract. To achieve this latter goal, it is necessary to ensure that the terms of the standard contract facilitate appropriate financing for a QF project. Consequently ... our fundamental objective is to establish a maximum standard contract term that enables eligible QFs to obtain adequate financing, but limits the possible divergence of standard contract rates from actual avoided costs.⁴

After considering the comments and arguments of all parties to UM 1129, the Commission held:

[W]e adopt ODOE's recommendation that the maximum term of a standard contract be ... 20 years. In so doing ... we acknowledge 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. Given our desire to calculate avoided costs as accurately as possible, and the testimony of several parties that avoided costs should not be fixed beyond 15 years, we are persuaded that **standard contract prices should be fixed for only the first 15 years of a**

³ See, Order No. 05-584, Docket UM 1129 at 17 to 20.

⁴ *Id.* at 19.

20-year term. Tariffs and standard contract terms should provide that, in the event a QF opts for a standard contract with a 20-year term, the QF must take one of the market pricing options that we address later in this order for the final five years of the contract.⁵

The Commission ultimately summarized its policy as:

Establishing a maximum standard contract term of twenty years. Allowing a QF to select fixed pricing for the first fifteen years of the standard contract, but requiring the selection of a market pricing option for the last five years.⁶

The Commission's language is clear. A QF is entitled to select the term of a standard contract up to a maximum of 20 years. A utility must pay fixed rates for QF power during the first 15 years of the 20-year contract. A utility need only pay market rates for QF power during the last five years of a 20-year contract.

A QF has the right to take up to three years from contract execution to achieve commercial operation.⁷ If CREA and REC are correct, and a utility must pay fixed rates for 15 years following commercial operation, then a utility could be required to pay fixed rates until the 18th year of a 20-year contract (assuming the QF takes three years to achieve commercial operation). But this is clearly contrary to the Commission's determination that "standard contract prices should be fixed for only the first 15 years of a 20-year term."⁸ PGE is aware of no instance where the Commission has stated that a utility must pay fixed rates for a 15-year period *commencing when a QF achieves commercial operation*.

⁵ *Id.* at 20 (emphasis added).

⁶ *Id.* at 1-2.

⁷ See Order No. 15-130, Docket UM 1610 at 2 (Commission approves stipulation of UM 1610 parties to the effect that a QF has a right to a three year period to achieve commercial operation and may demand a longer period "if the QF can establish that a period in excess of three years is reasonable and necessary ...").

⁸ Order No. 05-584, Docket UM 1129 at 20.

B. Standard Contract Tariffs

CREA and REC do not attempt to argue that their favored approach is required by the text of the Commission's policy statement. Instead, they argue that the Commission has adopted their policy by implication. Specifically, they assert that Idaho Power's standard contracts and associated tariff Schedule 85 provide for payment of fixed rates for 15 years following commercial operation.⁹ In effect, they argue that, because the Commission has approved Schedule 85, the Commission's policy, as applied, requires utilities to pay fixed rates for 15 years following commercial operation.

But this argument ignores the fact that PGE's standard contracts and associated tariff Schedule 201 have always limited the payment of fixed rates to the first 15 years of a contract term. More specifically, Schedule 201 states that standard contracts have a maximum term of 20 years,¹⁰ that fixed payments are available for a maximum of 15 years,¹¹ and that when a contract term is longer than 15 years, PGE will pay market rates for each year after the initial 15 years of the contract.¹² Clearly, the Commission's policy, as applied to PGE, does not require utilities to pay fixed rates for more than 15 years measured from the date of execution.

⁹ CREA and REC's Motion for Clarification at 2 (citing to Idaho Power's standard contract terms and noting that they allow a QF to received fixed rate prices for up to 15 years following the QF's commercial operation date). PGE takes no position on whether Idaho Power's standard contract actually commits it to pay fixed rates for 15 years following the commercial operation date. If it does, this outcome is more generous than that required under the Commission's express policy statement in Order No. 05-584.

¹⁰ PGE's Schedule 201 at Sheet No. 201-1 ("The agreement will have a term of up to 20 years as selected by the QF."), and at Sheet No. 201-24 ("TERMS OF AGREEMENT: Not less than one year and not to exceed 20 years."). Available as a PDF download at: <https://www.portlandgeneral.com/-/media/public/business/power-choices-pricing/documents/business-sched-201.pdf?la=en>.

¹¹ PGE's Schedule 201 at Sheet No. 201-4 ("The Standard Fixed Price Option ... is available for a maximum term of 15 years.").

¹² PGE's Schedule 201 at Sheet No. 201-5 ("Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price for all years up to five in excess of the initial 15.").

From the time it was first proposed in response to Order No. 05-584 through the present day, Schedule 201 has always limited fixed rate payments to the first 15 years of the contract term.¹³ The Commission has repeatedly approved Schedule 201, finding that it complies with Commission policy.¹⁴

If Idaho Power's tariff suggests that that the Commission allows a utility to pay fixed rates for 15 years measured from commercial operation, then PGE's tariff demonstrates that the Commission does not mandate such a result. Rather, the Commission's existing policy, as clearly stated in Order No. 05-584, and as applied in PGE's Schedule 201, allows a utility to offer to purchase QF output at fixed rates for the first 15 years of a standard contract *measured from execution of the contract*.

C. The Commission Should Refuse to Modify its Existing Policy

As discussed above, the Commission's policy, as applied through Commission-approved tariffs, does not require a utility to pay fixed rates for 15 years following commercial operation. Rather, existing policy requires utilities to offer to purchase QF output at fixed rates for the *first* 15 years of a contract term, measured from execution.

Through their motion for clarification, CREA and REC are effectively lobbying for a change in existing policy. The Commission should refuse to modify its policy at this point, in this docket, for three reasons.

¹³ See e.g., PGE's July 12, 2005, compliance filing in Advise No. 05-10; PGE's November 1, 2007, compliance filing in Advise No. 07-27; PGE's August 13, 2015, compliance filing in UM 1728. CREA and REC point to a single PGE contract with OneEnergy Solar, LLC, in which PGE agreed to pay fixed rates for 15 years following the date the QF achieves commercial operation. See CREA and REC's Motion for Clarification at footnote 6. In that case, PGE inadvertently deviated from Schedule 201. PGE has addressed this error internally and all subsequent contracts have limited fixed-price payments to the initial 15 years of the contract term. The error in the OneEnergy Solar contract favored the counter-party, and the scheduled commercial online date for the project was 18 months after execution of the contract, so the impact of PGE's error was limited.

¹⁴ See e.g., Order No. 07-065, Docket UM 1129 at 1 (Commission approved PGE's Schedule 201 which limited fixed-rate payments to the first 15 years of a 20-year contract; Commission noted that no UM 1129 parties opposed letting the tariff go into effect and that Commission staff found the tariff complied with the Commission's PURPA policies).

First, this docket is not a general policy docket but rather a docket initiated by Idaho Power to address several issues of PURPA compliance specific to Idaho Power. As a result, this docket is an inappropriate forum in which to consider and rule on a policy question of general applicability. If the Commission wishes to consider whether it should change its policy on when a utility must pay fixed rates, it should do so as part of a general policy docket involving all interested parties and providing for adequate testimony and briefing.

Second, the question of whether a utility should be obligated to pay fixed rates for 15 years following commercial operation was raised very late in this proceeding. With regard to this issue, there has been no opportunity for the parties in this docket to submit testimony, to cross examine the testimony of other parties, or to provide the Commission with the type of detailed briefing that should inform such an important policy evaluation.

Finally, it would be inappropriate for the Commission to change its substantive holding in this docket in response to a motion for clarification. A request for clarification “may not seek to change the result of the order.”¹⁵ In Order No. 16-129, the Commission decided to leave its policy on contract length unaltered.¹⁶ As discussed above, that policy as presently applied does not require utilities to offer fixed rates for 15 years following a QF’s achievement of commercial operations. Rather it requires a utility to make fixed rates available during the first 15 years of a standard contract as measured from execution. Under such circumstances, granting the relief requested by CREA and REC would amount to improperly altering the decision in Order No. 16-129 in response to a motion for clarification.

¹⁵ Order No. 16-075, Docket UM 1489 at 6.

¹⁶ Order No. 16-129, Docket UM 1725 at 7 (“...we adhere to our current policy.”).

In addition, a request for clarification “must cite to provisions in an order that are **fatally vague or ambiguous** and propose changes that correct those deficiencies.”¹⁷ CREA and REC apparently believe that Order No. 16-129 is ambiguous regarding whether the 15-year period for fixed rates runs from contract execution or from commercial operation. But this ambiguity, if it exists, is not fatal to the holding in Order No. 16-129. The order simply denied Idaho Power’s request to reduce standard contract duration from 20 years to 2 years. This denial did not depend in any way on whether the 15-year period of fixed prices begins to run at execution or at operation. If there is any ambiguity about that question, it is not fatal to Order No. 16-129, and therefore does not support a request for clarification.

D. CREA and REC’s Proposal Should Be Rejected on the Merits

If the Commission decides to consider modifying existing policy in response to CREA and REC’s request, PGE urges the Commission to reject their proposed policy because it unnecessarily upsets the successful balance of competing interests achieved by the Commission in Order No. 05-584.

When the Commission adopted its policy on contract duration in 2005, it clearly stated that the maximum contract length would be 20 years and that QFs may receive fixed rates for the first 15 years of the contract but must accept market rates for the last five years.¹⁸ The Commission sought to protect customers by exposing them to a maximum of 15 years of price risk (the risk that rates fixed at contract execution would

¹⁷ Order No. 16-075, Docket UM 1489 at 6 (emphasis added).

¹⁸ Order No. 05-584, Docket UM 1129 at 1-2 (The Commission established “a maximum standard contract term of twenty years ... [and allowed] a QF to select fixed pricing for the first fifteen years of the standard contract, but require[ed] the selection of a market pricing option for the last five years.”).

deviate from actual avoided costs over the first 15 years of the contract term).¹⁹ And the Commission sought to provide QFs with up to 15 years of fixed prices upon which to base project financing.

CREA and REC now argue that it can take three years from the time of contract execution for a QF to construct a project and achieve commercial operation. CREA and REC note that a QF needing three years to reach commercial operation would only have access to 12 years of fixed rate payments if a utility only pays fixed rates during the first 15 years of a contract term. And CREA and REC complain that 12 years of fixed rate payments is too short a period to support project financing. They therefore suggest that the Commission should allow QFs to obtain fixed rate payments for 15 years following the date a QF achieves commercial operation.²⁰ But this would necessarily expose customers to three more years of price-forecasting risk. This would increase customer exposure from the 15 years of exposure approved in Order No. 05-584 to 18 years of price-risk exposure. The Commission has already rejected CREA and REC's proposal in this docket to expand the period of fixed rate payments to 20 years.²¹ Now they seek nearly the same outcome through a motion for clarification (effectively asking customers to bear 18 years of fixed price risk instead of the rejected 20).

The only reason to consider exposing customers to this level of price risk would be if CREA and REC are right and QFs cannot finance projects when fixed prices are limited to the first 15 years of a contract term. But there is 11 years of evidence indicating that QF development can occur under such circumstances. Since 2005, PGE's standard

¹⁹ *Id.* at 19-20.

²⁰ CREA and REC's Motion for Clarification at 3.

²¹ Order No. 16-129, Docket UM 1725 at 7 (Commission noted that "CREA ... contend[s] that we should adopt [a] 20-year term for negotiated contracts with fixed prices as a matter of policy" but the Commission rejected the suggestion and decided to "adhere to our current policy.").

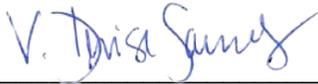
contracts have limited payment of fixed rates to the first 15 years of the contract. Under such circumstances, 46 QFs have sought and obtained QF contracts from PGE.²² And PGE currently has ten more standard contract requests pending. Clearly, the balance struck by the Commission in Order No. 05-584 has allowed for QF development while protecting customers from price risk in excess of 15 years.

IV. CONCLUSION

For the reasons set forth above, PGE respectfully requests that the Commission deny CREA and REC's motion for clarification, or alternatively clarify that its existing policy requires a utility to pay fixed rates only during the first 15 years of a standard contract term *measured from the date of execution*.

DATED this 29th day of April, 2016.

Respectfully submitted,



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²² See Docket RE 143 for a list of these QFs.