

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1725**

4 In the Matter of

5 IDAHO POWER COMPANY,

6 Application to Lower Standard Contract
7 Eligibility Cap and to Reduce the Standard
8 Contract Term, for Approval of Solar
9 Integration Charge, and For Change in
Resource Sufficiency Determination.

STAFF RESPONSE TO MOTION FOR
CLARIFICATION

10 **I. REC and CREA's Motion.**

11 In Order No. 16-129, the Commission reduced the eligibility cap for solar qualifying
12 facilities (QFs) seeking standard contracts with Idaho Power Company (Idaho Power) under the
13 Public Utility Regulatory Policy Act (PURPA), authorized Idaho Power to file new avoided cost
14 prices based on an updated resource deficiency date and denied Idaho Power's requests to lower
15 the eligibility cap for standard contracts for wind QFs and shorten the term of all negotiated
16 PURPA contracts from 20 to 2 years. The Community Renewable Energy Association
17 ("CREA") and the Renewable Energy Coalition ("REC") seek an order clarifying that Order No.
18 16-129 rejecting Idaho Power's request to shorten the term of all negotiated PURPA contracts
19 does not modify the start date of the fixed-price portion of such contracts. REC and CREA
20 explain that the following language in Order No. 16-129 could be construed to mean that that the
21 fixed-price term of a contract must begin at the date of execution, rather than the QF's
22 commercial on-line date (COD):

23 Longer term contracts help align the financing period with an asset's useful
24 life, making the investment less risky and likelier to obtain far more
25 reasonable financing terms . . . [W]e conclude that our current policy
26 appropriately balances these interest. The policy for 20-year contracts, with
prices fixed at avoided cost rates in place at the time of signing remaining in

1 effect for a 15-year period, and indexed pricing for the remaining five years,
2 continues to have merit.¹

3 REC and CREA explain that under the Commission's current policy, the fixed-price term
4 of a QF contract begins on the QF's COD. REC and CREA note that in Order No. 05-584, the
5 Commission concluded that 15 years is the minimum term "to ensure the terms of the standard
6 contract facilitate appropriate financing for a QF project."² CREA and REC explain that
7 "[b]ecause the minimum period of fixed revenue must be 15 years and QFs cannot sell electric
8 energy for revenue prior to construction and operation, the 15 years must commence when the
9 QF achieves operation – not the date up to three years earlier, prior to financing and construction,
10 when the standard contract is initially executed."³

11 **II. PGE's Response.**

12 Portland General Electric Company (PGE) opposes REC's and CREA's request to clarify
13 its existing policy on when the fixed-price term of a contract begins. PGE argues that REC and
14 CREA are mistaken about the Commission's policy regarding the fixed-price term of a contract,
15 asserting that the Commission has been clear that QFs can select a contract of up to 20 years, and
16 the first fifteen years of the contract (meaning from contract execution) are fixed term.⁴ PGE
17 also asserts that its standard contracts and associated tariff Schedule 201 have always limited the
18 payment of fixed rates to the first 15 years of a contract term, and notes that the Commission has
19 repeatedly approved Schedule 201, finding that it complies with Commission policy.⁵

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22 ¹ OPUC Order at 8.

23 ² Motion for Clarification of the Community Renewable Energy Association and the Renewable
24 Energy Coalition 2-3.

25 ³ Motion for Clarification of the Community Renewable Energy Association and the Renewable
26 Energy Coalition 3.

⁴ PGE's Response in Opposition to Motion for Clarification of CREA and REC 3-4.

⁵ PGE's Response in Opposition to Motion for Clarification of CREA and REC 5.

1 **III. Staff's Response.**

2 Staff believes that assumption underlying the motion for clarification is correct—the
3 Commission did not intend to modify any terms of Idaho Power's PURPA contracts other than to
4 reduce the eligibility cap for standard contracts with solar QFs and to allow a pricing update.
5 Accordingly, to the extent the language singled out by REC and CREA may create ambiguity as
6 to whether the Commission intended to make any other change regarding terms of Idaho Power's
7 QF contracts, Staff believes that clarification of the Commission's intent is appropriate.

8 As REC and CREA explain, Idaho Power's Schedule 85 already provides for fixed
9 avoided cost prices for "contract years one (1) through (15) fifteen" and market-based prices for
10 "all periods after the end of the fifteenth (15th) contract year[,]" and provides that "contract
11 years" begin on the date of commercial operation, not the much earlier date of contract
12 execution.⁶ Staff believes REC and CREA are correct that the Commission did not intend to
13 change when the fixed-price term of Idaho Power's QF contracts begins. The language in Order
14 No. 16-129 that has been identified by CREA and REC could invite dispute in future
15 proceedings as to whether Order No. 16-129 specifies that the 15-year fixed-price term of a
16 negotiated PURPA contract commences at the time of contract execution rather than on the date
17 the QF achieves operation.⁷

18 PGE's assertions that the Commission has allowed PGE to use a different start date for
19 the fixed-price terms of its QF contracts and that PGE's practice is consistent with the
20 Commission's policy is not pertinent to the issues presented in this docket regarding Idaho
21 Power contracts. And, the Commission could clarify that it did not intend to modify the use of
22 the fixed-price term in Idaho Power's contracts without addressing whether it has a general
23 policy regarding the start date of the fixed-price term of QF contracts. To the extent the

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25 ⁶ Motion for Clarification of the Community Renewable Energy Association and the Renewable
Energy Coalition 2.

26 ⁷ Motion for Clarification of the Community Renewable Energy Association and the Renewable
Energy Coalition 4.

1 Commission believes it is necessary to address its policy regarding the start date of the fixed-
2 price term of QF contracts and PGE's interpretation of that policy, the Commission could do so
3 in a more general docket as PGE suggests.

4 PGE asserts that its standard contract includes a 20-year term, inclusive of the time
5 between contract execution and the commercial on-line date of the QF.⁸ A review of PGE's
6 Standard Renewable Off-System Variable Power Purchase Agreement Form, effective
7 September 23, 2015, does not clearly substantiate PGE's claim. Notably, the form of contract
8 does not have a specified term. Instead, the term of the contract is filled out by the contracting
9 parties. While PGE may have completed and executed these contracts so that the fifteen-year
10 fixed-price term starts from the effective date of the contract rather than the QF's COD, this
11 cannot be known from the form of the contract reviewed and approved by the Commission.

12 Second, at least one section of this standard contract form is inconsistent with PGE's
13 assertion that the fifteen-year fixed-price term starts on the effective date of the contract, rather
14 than the COD of the QF. Section 4.5 of PGE's Standard Renewable Off-System Variable Power
15 Purchase Agreement Form provides that QFs keep RECs during the utility's sufficiency period
16 and during any period within the term of the contract after completion of the first fifteen years
17 after the QF's COD:

18 4.5. During the Renewable Resource Deficiency Period, Seller shall provide
19 and PGE shall acquire the RPS Attributes for the Contract Years as specified in
20 the Schedule and Seller shall retain ownership of all other Environmental
21 Attributes (if any). ***During the Renewable Resource Sufficiency Period, and***
22 ***any period within the Term of this Agreement after completion of the first***
fifteen (15) years after the Commercial Operation Date, Seller shall retain all
Environmental Attributes in accordance with the Schedule.⁹

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25 ⁸ PGE's Response in Opposition to Motion for Clarification of CREA and REC 5-6.

26 ⁹ Standard Renewable Off-System Variable Power Purchase Agreement Form Effective
September 23, 2015

1 Section 1.7 of the contract defines "contract year" as "each twelve (12) month period
2 commencing upon the Commercial Operation Date or its anniversary during the Term, except the
3 final Contract Year will be the period from the last anniversary of the Commercial Operation
4 Date during the Term until the end of the Term."

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IV. Conclusion

Staff recommends that the Commission clarify it intended only to lower the eligibility cap for standard contracts with solar QFs and allow Idaho Power to update its avoided cost prices to take into account a new resource deficiency date and did not intend to change the start date for the fixed-price term of PURPA contracts with Idaho Power.

DATED this 6th of May, 2016.

Respectfully submitted,

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