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July 22, 2015

VIA ELECTRONIC EMAIL

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

Re: 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

Attention Filing Center:

Attached for filing in the above-captioned case is an electronic copy of Idaho Power Company's Reply to Responses of Gardner Capital and REC to Motion for Clarification.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo

Wendy McIndoo
Office Manager

Attachment

cc: UM 1725 Service List

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.	**IDAHO POWER'S REPLY TO RESPONSES OF GARDNER CAPITAL AND REC TO MOTION FOR CLARIFICATION**

Pursuant to the Ruling of the Administrative Law Judge Alan Arlow, dated July 17, 2015, Idaho Power makes this Reply to the Renewable Energy Coalition's ("REC") Reply to Motion for Clarification, and Gardner Capital Solar Development, LLC's ("Gardner Capital") Reply to Motion for Clarification.

I. INTRODUCTION

On June 23, 2015, the Commission issued two orders relevant to this proceeding:

- In Order No. 15-199, issued in this docket, the Commission granted Idaho Power interim relief by temporarily lowering the cap for standard qualifying facility (QF) contracts to 3 MW, pending resolution of the Commission's investigation. The new cap applies to all projects requesting standard contracts after April 24, 2015. Projects requesting but not receiving standard contracts before that date may attempt to establish, through individual complaint proceedings, that the Company incurred a legally enforceable obligation (LEO) to provide them with standard contracts under the terms and conditions then in effect. The

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Commission also ordered the parties to consider the solar integration charges in UM 1610. [1]

- In Order No. 15-204, issued in UM 1730, the Commission approved new avoided cost rates for the Company's standard QF contracts ("standard contract rates" or "avoided cost rates"), effective June 24, 2015.[2] These rates are substantially lower than the old rates.[3]

On July 8, 2015, Idaho Power filed a motion requesting that the Commission clarify its order ("Motion for Clarification" or "Motion") as follows: First, the Company has requested that the Commission clarify that the nine solar projects, sized at 5 and 10 MW that requested standard contracts ***after April 24, 2015, but before June 24, 2015,*** may not circumvent the Commission's Order by revising downward the nameplate capacity of their projects in order to receive contracts with the old standard contract rates. Second, Idaho Power requested that the Commission clarify that, by directing parties to comment on solar integration charges in UM 1610, it did not intend to defer or delay consideration of the Company's pending application for approval of solar integration charges in UM 1725.

Gardner Capital and REC have each filed responses to the Motion for Clarification. REC argues that the Commission should refrain from determining in this docket whether the nine solar projects requesting contracts between April 24 and June 24 may reduce their size to three MW, and still qualify for the old standard contract rates. REC requests instead that the Commission investigate the matter through individual developer complaint proceedings. Alternatively, REC asserts that these nine projects should be allowed to

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[1] *Applications 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*, Docket UM 1725, Order No. 15-199 (June 23, 2015) (hereinafter "Order No. 15-199").

[2] *Application to Update Schedule 85 Qualifying Facility Information*, Docket UM 1730, Order No. 15-204 (June 23, 2015) (hereinafter ("Order No. 15-204").

[3] Order No. 15-204, Appendix A at 4.

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retroactively qualify for the old standard contract rates.[4] These positions, which would allow nine QF projects to lock in inflated prices for over a decade, would undermine the intended result of the Commission's orders and should therefore be rejected.

Gardner Capital agrees with Idaho Power that the nine solar projects requesting contracts between April 24 and June 24 should ***not*** be entitled to the old superseded avoided cost rates, but requests that the Commission clarify that these projects may, at their option, downsize to 3 MW or below in order to qualify for the new standard avoided cost rates without losing their place in the interconnection queue or being required to refile their original requests.[5] Idaho Power is generally agreeable to this request, subject to the concerns and comments expressed below.

In addition Gardner Capital asks the Commission to clarify that, with respect to the seven projects requesting standard contracts ***prior to April 24, 2015***, that the complaint proceedings referenced in the Commission's order will not be limited to the question as to whether those projects have established an LEO. Instead, Gardner Capital asks the Commission to clarify that the developers may attempt to use the complaint proceedings to force Idaho Power to provide it with standard contracts at the old avoided cost rates, regardless of whether they are able to establish an LEO. As will be discussed below, unless Gardner Capital, or the other developers requesting standard contracts before April 24 can establish an LEO, Idaho Power should have no obligation to provide them with contracts at the old, superseded avoided cost rates.[6]

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[4] REC Reply at 3.

[5] Gardner Capital Reply at 4-5.

[6] ODOE takes no position on the standard contract issue, but supports Idaho Power's request that the Commission clarify that by ordering the parties to consider solar integration charges.

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II. ARGUMENT

A. The Commission Should Clarify that Developers Cannot Circumvent the Intent of Its Order by Downsizing Requests Made After April 24 and Receive the Outdated Avoided Cost Rates.

REC's primary request is that the Commission decline to take up Idaho Power's Motion for Clarification and instead address the downsizing issue in individual complaint proceeding. At the root of REC's argument is its view that the Motion raises the general issue as to when a change to a request for a standard contract constitutes a new request. REC notes that the question is a complex one and that the answer will be highly dependent on the individual circumstances of each case. REC specifically opines that changes made in the ordinary course of business or due to factors beyond the control of the QF should not be regarded as a new project request. For this reason, REC argues that the Commission should not decide this important issue on a motion for reconsideration.[7]

In making this argument, REC misunderstands the scope of Idaho Power's request for clarification. Idaho Power is not asking the Commission to opine broadly on the types of changes to a request for standard contract that would constitute a new project. Nor is the Company asking the Commission to determine that, in all cases, a request to downsize a project results in a new project. ***On the contrary, the Company is asking the Commission to issue a very narrow clarification that the 5 and 10 MW projects requesting standard contracts between April 24 and June 24, 2015, cannot render themselves retroactively eligible to receive the outdated and inflated standard avoided cost rates by revising the size of their projects downward.***

Importantly, the requested ruling will not affect any projects other than the nine projects discussed; none of REC's members are developing any of those nine projects

[7] REC Reply at 5-6.

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and they will be unaffected by the ruling. Indeed, it is worth noting that the only party filing comments that *would* be affected by the ruling is Gardner Capital, which supports the Company's position that those projects are *not* eligible for the old standard contract rates.

In the alternative, REC argues that if the Commission *does* clarify its ruling, it do so by stating that the nine projects requesting standard contracts between April 24 and June 24 should be allowed to downsize their requests and qualify for the old avoided cost standard rates.[8] The Commission should reject REC's request, which would frustrate the intent of the Commission by requiring the Company to pay outdated and inflated avoided cost rates to developers who are not entitled to them.

As discussed above, the combined effect of the Commission's two June 23 orders was to fulfill developers' legitimate expectations—by allowing those who requested a standard contract before the Motion for Stay was filed an opportunity to establish the right to the old avoided cost rates—while at the same time protecting customers by ensuring that no project requesting a standard contract after the Motion for Stay receives the outdated avoided cost rates. In this way the Commission properly limited customers' exposure to excessive rates. If the Commission were to allow the nine projects requesting contracts after April 24 to downsize simply in order to receive the old pricing, the Company would be forced to purchase an additional 27 MW of solar energy at the old avoided cost rates which we know are outdated and overstated by $19 to $38/MWh.[9] This result would cause significant and unnecessary harm to customers, and thereby undermine the customer protections intended by its orders.

REC's brief cites the Commission's order in UM 1129, arguing that it supports the view that developers should be allowed to revise their contracts and receive the inflated

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[8] REC Reply at 3.

[9] *See* Docket UM 1725, Idaho Power Company's Supplement to Motion for Temporary Stay at 2.

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avoided cost rates[10]. REC is wrong to rely on that order. In UM 1129, the Commission considered whether a project that increases output due to a facility change—such as operating at a higher efficiency factor than before—should be compensated for the energy above the original nameplate capacity at avoided cost rates, and if so, whether they should be compensated at the rates in effect at the time it entered into the original contract.[11] The Commission concluded that the portion of sales related to the original project generation capacity, or any increases up to 10 MW, would be paid the original contract rates. However, increases above 10 MW would be paid at the newer negotiated rates.[12] In announcing its policy, the Commission specifically noted that it did not wish to adopt a policy that discouraged QFs from improving their facilities.[13] For that reason, it made sense for the Commission to allow these projects to sell their increased output to the utilities under QF contracts. Yet at the same time, the Commission protected the effect of the then-10 MW standard contract cap by requiring these QFs to negotiate rates for energy sold in excess of the cap.

Idaho Power believes that this case is not on point, given that it addresses the rights of projects that have already entered into contracts and commenced operation, and thus raises policy issues distinct and apart from those raised in this case. However, if it is relevant at all, it suggests that these nine projects should not be allowed to evade the effect of the 3 MW cap by downsizing their projects after new rates have already been approved.

REC states that it would be unfair to bar these developers from receiving the old avoided cost rates because these specific projects "would likely have requested contracts

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[10] REC Reply at 6-7.

[11] *Staff's Investigation Related to Electric Utility Purchases from Qualifying Facilities*, UM 1129, Order No. 05-584 (May 13, 2005), p. 37-39.

[12] Order No. 06-538 at 38-39.

[13] *Id.* at 39.

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with smaller generation sizes if they had known the Commission was planning to reduce the standard contract size threshold eligibility."[14] This admission proves that the size of solar and wind projects is not indicative of the sophistication of, and level of financing available to, the developer. On the contrary, sophisticated and well-financed developers will always size their projects to take advantage of the highest possible rates. The Commission is not required to accommodate these developers' understandable desires to use the regulatory process to maximum advantage—particularly at the expense of utility customers.

B. The Nine Projects Requesting Contracts between April 24 and June 24 May Downsize to 3 MW or Below and Should be Eligible to Receive the New Standard Contract Rates, without Losing their Places in the Interconnection Queue or Filing a New Application.

In addition to responding to Idaho Power's Motion for Clarification, Gardner asks for two clarifications of its own. As mentioned above, Gardner Capital concedes that projects requesting contracts between April 24 and June 24 should not be eligible to receive the old avoided cost rates, even if they choose to downsize to 3 MW or under.[15] However, Gardner Capital asks that the Commission confirm that these contracts may downsize to receive the new avoided cost rates without being required to file a brand new application, and without compromising their places in the interconnection or processing queues.[16] Idaho Power is in general agreement with this request. The Energy Sales Agreement ("ESA") and the Generation Interconnection request are two separate processes managed by two separate and distinct Idaho Power business units that were created separately in response to and in compliance with FERC standards of conduct rules. The interconnection queue will not be affected by the change in nameplate capacity in the ESA

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[14] REC Reply at 3.

[15] Gardner Capital Reply at 5.

[16] Gardner Capital Reply at 5

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process; and the Company processes requests for standard contracts as they come in—there is no processing queue. Idaho Power would not require these projects to refile all of their original information in the ESA process. In fact, shortly after the issuance of the Commission's order denying the temporary stay and putting in place the 3 MW standard contract cap, Idaho Power was contacted by Pacific Northwest Solar. Shortly thereafter, Idaho Power contacted Gardner Capital. At the request of both developers, Idaho Power has run the IRP pricing model and provided indicative pricing for negotiated rate ESAs for all of Pacific Northwest Solar's proposed solar projects, and is in the process of doing so for Gardner Capital's projects. Idaho Power has clearly stated to both developers that they can receive negotiated rates for their projects, if they remain sized over the 3 MW cap, or they can resize each project to 3 MW or lower and receive standard contracts with the currently approved standard rates. That said, a request to downsize a project in the ongoing Generator Interconnection process may result in some additional study in the interconnection process to determine the effect on the Company's system, but would not, in and of itself, remove a project from the interconnection queue.

C. The Relevant Issue for Complaint Proceedings Brought by Developers Will be Whether They Can Establish an LEO

Gardner's second request for clarification is directed to the Commission's statement in Order No. 15-199 that projects requesting standard contracts prior to April 24, 2015, will have an opportunity, through their filed complaints, to demonstrate a LEO that would require Idaho Power to provide them with a contract containing the old standard avoided costs.[17] Specifically, Gardner Capital asks the Commission to clarify that the complaint proceedings will not be limited to the question as to whether those projects had established an LEO.[18] Gardner Capital points out that it "simply requests an order that

[17] *See* Order No. 15-199 at 7.

[18] Gardner Capital Reply at 4.

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Idaho Power be obligated to provide the ESAs that it was required to provide in response to the April 7, 2015 applications for 5 projects . . . ."[19]

Gardner Capital's argument is without merit. The critical issue raised by the complaint proceedings is whether the developers for the seven projects totaling 55 MW of solar are entitled to receive the old avoided cost rates for their output. FERC regulations "permit a qualifying facility to enter into a contract ***or other legally enforceable obligation*** to provide energy or capacity over a specified term."[20] Given that these developers did not have executed contracts containing the old rates, the only way they can demonstrate the right to receive these old rates is to establish an "other legally enforceable obligation."[21] Whether or not Idaho Power was required to provide Gardner Capital with an ESA under its tariff might bear on the question as to whether the Company became obligated by a LEO. However, in the end, the question as to whether Idaho Power has an obligation to purchase from Gardner Capital's projects at the old avoided cost rates will hinge entirely on a finding that Idaho Power has a LEO to do so. Therefore, the Commission has correctly described the scope of the complaint proceedings and Gardner Capital's request for clarification should be rejected.

III. CONCLUSION

For the reasons explained above, the Commission should clarify Order No. 15-199 as follows:

1. Clarifying that the nine projects requesting standard contracts between April 24 and June 24 are not eligible to receive Idaho Power's pre-June 24 avoided cost rates, even if they downsize their projects to 3 MW or below;

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[19] Gardner Capital Reply at 4.

[20] *Cedar Creek Wind, LLC, Notice of Intent Not to Act and Declaratory Order*, 137 FERC P 61006, para. 32 (explaining Section 292.304(d)) (emphasis added).

[21] *Id.*

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2. Clarifying that these nine projects may downsize to 3 MW or below in order to receive the new standard avoided cost rates, approved on June 23, 2014, without losing their place in the interconnection queue or refiling their ESA applications;
3. Clarifying that in order to establish eligibility to receive the old, pre-June 24 standard contract rates, developers for the seven projects requesting contracts before April 24 will need to establish a LEO in an individual complaint proceeding.

Respectfully submitted this 23rd day of July, 2015.

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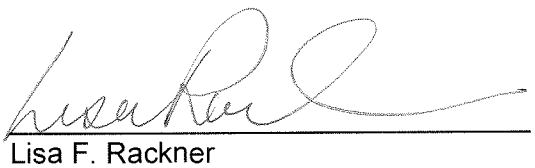

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