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May 27, 2015

Public Utility Commission
Attn: Filing Center
PO Box 1088
Salem, OR 97308-1088

Re: *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. Docket No. UM 1725*

Dear Filing Center:

Please find enclosed the Opposition and Response of Pacific Northwest Solar, LLC to Idaho Power Company's Motion for Temporary Stay.

Please do not hesitate to the undersigned with any questions or concerns.

Sincerely,

/s/Ryan N. Meyer

Ryan N. Meyer
Managing Member, VP of Operations, and
Representative of Pacific Northwest Solar, LLC

Enclosure

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9
10 **BEFORE THE PUBLIC UTILITY COMMISSION**
11
12 **OF OREGON**

13 In the Matter of
14 IDAHO POWER COMPANY
15
16 Motion for Temporary Stay of Its Obligation to
17 Enter Into New Power Purchase Agreements
18 With Qualifying Facilities

Docket No. UM 1725

**PACIFIC NORTHWEST SOLAR, LLC’S
OPPOSITION TO IDAHO POWER
COMPANY’S MOTION FOR
TEMPORARY STAY OF ITS
OBLIGATION TO ENTER INTO NEW
POWER PURCHASE AGREEMENTS
WITH QUALIFYING FACILITIES**

19 Intervenor Pacific Northwest Solar, LLC (“PNW”) hereby offers its opposition in response
20 to Idaho Power Company’s (“Idaho Power”) “Motion for a Temporary Stay of Its Obligations to
21 Enter Into New Power Purchase Agreements with Qualifying Facilities” (the “Motion”). PNW
22 would note at the outset that it joins in the protest and opposition offered by Gardner Capital Solar
23 Development, LLC (“Gardner”), dated May 13, 2015, and offers the following comments in
24 furtherance of those efforts already made by Gardner.

25 Idaho Power’s Motion to Stay is not well-taken. Idaho Power has failed to adequately
26 demonstrate that denial of the Motion would result in irreparable harm or that a drastic measure
27 like the Stay is absolutely necessary to protect its interests while the OPUC considers Idaho
28 Power’s most recent request to **obliterate** the carefully considered decision of the OPUC just 15
months ago. The evidence presented clearly does not support such a request and, accordingly,
PNW requests that the Motion to Stay be denied outright.

1 **I. THE MOTION TO STAY SHOULD BE DENIED**

2 **A. THE MOTION TO STAY IS UNNECESSARY, UNWARRANTED, AND**
3 **UNSUPPORTED BY THE FACTS**

4 The Motion to Stay is not necessary to avoid even *alleged* harm to Idaho Power and its rate
5 payers. Indeed, even if the OPUC were to take as true all of the allegations in the Motion (no
6 matter how skewed), no harm would befall Idaho Power or its rate payers. Currently, Idaho
7 Power states that there is 1,326 MW of PURPA solar capacity in the queue throughout the entire
8 Idaho Power service area – just 18.5% of which is located in the Oregon service area (or roughly
9 245 MW). That same 245 MW represents just 6.8% of the nameplate capacity of existing power
10 generation facilities in the Idaho Power service area as reported on Idaho Power’s website.
11 Moreover, this amount is nearly equivalent to the differential between the maximum (2014)
12 summer peak load and the maximum (historic) summer peak load (again, as reported by Idaho
13 Power) – in short, the entire scope of *potential* solar projects of which Idaho Power is complaining
14 is just a drop in the bucket to the overall power generation/consumption for its service area. As
15 such, Idaho Power cannot maintain its argument that allowing these proposed projects to proceed
16 will in any way be utterly detrimental to its existence or in any way harm its rate payers (and thus
17 the Motion fails on the merits).

18 Furthermore, the Motion is misleading, at best, with regard to the potential projects on the
19 horizon and the impact of those projects. Idaho Power’s carefully crafted Motion discloses the
20 truth of the matter in the minute details of the language used therein – namely, that there are 245
21 MW worth of solar projects with “*indications of interest*” and/or who are “*investigating* projects
22 in the Company’s Oregon service area.” Motion for Stay, 4:4,9 (emphasis added).¹ These are not
23 projects that are guaranteed to come on-line; in fact, there is no indication that these projects are
24 even real projects, other than a developer expressing a passing interest in pursuing such projects
25 generally (and a general “indication of interest” cannot be the basis for purported irreparable harm
26

27 ¹ Note too that Idaho Power’s Supplement to the Motion to Stay **did not add** any new projects to the queue – the
28 PNW projects referenced therein were already in the Motion (as PNW is informed and believes that its projects are
captured as “Developer N” on Idaho Power’s Exhibit 106, Alphin testimony).

1 to rate payers).

2 Moreover, it is likely that developers, like PNW, **will not** move forward on all projects that
3 they have investigated (which is the norm for the solar industry as projects are analyzed for
4 feasibility purposes) and/or will modify the projects over time (usually in a manner of decreasing
5 the project size). By way of example, Southern California Edison (SCE) assumes a failure rate of
6 25% to 50% for all projects under development (meaning those projects with executed contracts
7 and pending contracts – something well beyond an “indication of interest”). *See* Southern
8 California Edison Company’s (U 338-E) Amended 2013 Renewables Portfolio Standard
9 Procurement Plan, dated August 28, 2013, filed with the California Public Utilities Commission;
10 Southern California Edison Company’s Renewables Portfolio Standard, Fourth Quarter 2014.
11 Additionally, executed standard contract projects will fail at a higher rate than negotiated contracts
12 due to the effort required to achieve an executed negotiated contract. Thus, it is reasonable to
13 assume that there will be a failure rate of no less than 25% and probably up to 50% or greater for
14 the 245 MW worth of *potential* projects that Idaho Power is basing its entire motion on, resulting
15 in far fewer projects actually coming on-line in the future (and, by extension, far fewer projects
16 that will be under contract with Idaho Power and its rate payers). Thus, the reality is more likely
17 than not that there are far fewer projects than asserted by Idaho Power (likely in the range of just
18 120 MW at the upper end). This reality of the failure rate of potential projects is underscored by
19 the fact that, despite the consistent complaints by Idaho Power in the past about being swamped
20 with renewable power projects, there is only 0.46 MW of operating solar power generation on
21 Idaho Power’s system in Oregon.

22 Even if all 245 MW of solar projects were developed and brought on-line by the end of
23 2016 as indicated by Idaho Power, it would not be the venerable dooms day picture that Idaho
24 Power seeks to paint.² As indicated above, the swing between the maximum historic summer peak
25 load and the maximum 2014 summer peak load is nearly equivalent to the entirety of the 245 MW

26 _____
27 ² Notably, even Idaho Power recognizes that the reduction of the Investment Tax Credit (“ITC”) in its current form is
28 a driver of current solar projects in its Oregon service area as Idaho Power’s evidence in support of its Motion asserts
that all solar projects with indications of interest are set to come on-line by “12/31/16.” *See* Idaho Power’s Exhibit
106, Alphin Testimony.

1 worth of *potential* solar projects in the Oregon service area. Additionally, solar power generation
2 is inherently limited by the sun’s exposure to the photovoltaic panels, meaning that the peak of
3 245 MW will only be achieved for, at best, an hour a day during the highest production months.
4 The remainder of the time there will be less than 245 MW being generated, often times
5 significantly less.

6 For the fraction of potential projects that actually come to fruition, the status quo is a
7 benefit to all involved, including the Idaho Power rate payers. The fixed price standard contracts
8 that are currently available encourage development and, moreover, provide a strong hedge for rate
9 payers against drastic fluctuations in carbon-based fuel sources – in fact, the standard contracts
10 under Schedule 85 provide the Idaho Power rate payers with stable energy pricing in contrast to
11 other fuel sources. As even Idaho Power must concede, carbon-based fuel sources are subject to
12 wild fluctuations that have been increasingly dramatic in the recent past. Per the U.S. Energy
13 Information Administration, the price of natural gas delivered to Sumas, Washington (a key
14 pricing index) has often varied by double digits up and down on a year over year basis over the
15 last 10 years. *See* U.S. Energy Information Administration, Natural Gas Pipeline Imports (Sumas,
16 WA) (http://www.eia.gov/dnav/ng/hist/na1277_ysums-nca_3M.htm). However, the historical
17 trend demonstrates a clear increasing price basis that is anticipated to continue in an upward
18 direction for the foreseeable future. Additionally, for perspective, the price of natural gas as
19 traded on the open market at the New York Stock Exchange increased by over 20% during the
20 month of April 2015 alone. That increased cost is passed along to the rate payers, who are paying
21 more for the same energy services received. In contrast, solar projects that utilize long term
22 stabilized-price contracts provide increased confidence in pricing over the long haul and resistance
23 to pricing spikes in non-renewable resource costs – **this only serves to benefit rate payers**, not
24 harm them.

25 There will be no significant adverse impact to Idaho Power or its rate payers of allowing
26 the current proposed/possible projects to proceed forward while the OPUC considers the
27 underlying substantive requests of Idaho Power (especially since it is far more likely than not that
28 the true size of those viable projects will be a far cry from 245 MW worth of “indications of

1 interest” – and those projects that are built out will serve a net benefit to rate payers). Moreover,
2 there is no indication in the evidence that there will be onslaught of developer applications if the
3 Motion to Stay is denied (as projects that are not already underway are well behind the
4 development timeline needed to be completed before the reduction of the ITC). Yet, even if that
5 were a concern to the OPUC, such concern could be remedied by simply preventing new projects
6 from being submitted post the ruling on the Motion to Stay (i.e., the Stay would be effective only
7 as to projects where no formal submission for a Schedule 85 ESA had yet been made to Idaho
8 Power).

9 ***B. A STAY WOULD BE THE FUNCTIONAL EQUIVALENT OF ENDING SOLAR***
10 ***DEVELOPMENT IN IDAHO POWER’S OREGON SERVICE AREA***

11 Without delving into the motives and strategy behind a Motion to Stay set so close to the
12 reduction of the ITC (and thus the viable development window), it is a very real possibility that
13 entering the Stay will end all current solar development in Idaho Power’s territory in Oregon.³
14 Projects that are underway currently are slated to be constructed and on-line by the end of
15 December 2016. To meet that timeline, ESAs need to be timely processed (in fact, the unilateral
16 decision by Idaho Power to refuse to honor its obligations under Schedule 85 to provide draft
17 ESAs is already putting an unnecessary strain on project completion viability). Halting the
18 process, even until the end of August (as proposed at the Prehearing Conference), is the death
19 knell to solar development in Idaho Power’s Oregon service area. As such, PNW does not support
20 such a shortened timeline. Regardless of which timeline is adopted for evaluation of Idaho
21 Power’s underlying requests, starting afresh in either September 2015 or January 2016 is simply
22 not going to work as there **will not be enough time** to restart and complete projects before the end
23 of 2016 and the reduction in the ITC.

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26 ³ It is curious to note that Idaho Power seeks, after amendment to its Motion, to only change the contract term and
27 avoided cost analysis for wind and solar projects, but not other renewable resources. If Idaho Power was truly
28 concerned for rate payers alone, then it would not have made such a careful slicing of the pie as it clouds the very
basis of the Motion – Idaho Power is intentionally targeting solar and wind projects with the goal to end them before
they even get off the ground.

1 Any projects that restart after the OPUC decision on the substantive requests of Idaho
2 Power will need to be evaluated for a 2017 completion – the impact of missing the pre-reduction
3 ITC cannot be overstated as it is the driving force behind solar development and future
4 development; beyond the ITC, the development outlook is murky at best. If renewable
5 development were to restart after a decision by the OPUC, it will be after the ITC is reduced and
6 therefore rates would have to be higher to compensate for the loss of the tax incentives (and those
7 higher rates would be passed on to rate payers). In a sense, granting the Motion to Stay does the
8 very opposite of what Idaho Power espouses in its Motion as the stay will ultimately harm rate
9 payers.

10 Accordingly, PNW requests that the Motion to Stay be denied and that the OPUC utilize a
11 schedule for evaluating Idaho Power’s substantive requests that results in a decision in December
12 2015.

13 **C. ALLOWING THE STAY WOULD UPEND THE REASONABLE EXPECTATION**
14 **OF THE PARTIES**

15 As the OPUC is well aware, development of utility-scale projects is not done on a whim.
16 Careful consideration is taken at all stages of development by each of the parties involved,
17 including developers, utilities, and the PUC. The very nature of the process is designed to afford
18 the parties some level of certainty and comfort in the rules to be applied to a given project (and is
19 the very underpinning of the utility development structure). However, what Idaho Power seeks by
20 way of the Motion to Stay is to upend that understanding of the parties and to eliminate the
21 reasonable expectations of developers. The harm that flows from such an action is immediately
22 felt by those developers, who, in relying upon the status quo, started work on projects back in
23 2014 (or earlier) and have spent tens of thousands to hundreds of thousands of dollars in investing
24 in projects that would bring clean, renewable power to the people of Oregon and Idaho. Those
25 investments would be put at risk (and more likely than not would be lost), and aside from the
26 immediate impact from such a loss, the message sent to the solar industry as a whole would be that
27 solar development in Oregon is uncertain (thereby pushing developers out of the State, and leaving
28 behind only carbon-based energy sources forced upon the rate payers). That is precisely the

1 opposite message that should be sent, especially in a time of heightened consumer demand (a
2 demand that is only increasing) and a groundswell of support from the Oregon Legislature away
3 from carbon-based energy and towards clean, renewable energy.

4 The system of development—a system that is mutually beneficial—only works where the
5 reasonable expectations of the parties are honored. The only way to continue to honor those
6 expectations is to deny the Motion to Stay (at least as to already submitted projects) and allow the
7 parties to move forward under the rules in place at the time the projects were initially undertaken.
8 Such a result would be just, fair and reasonable.

9 **II. IDAHO POWER SHOULD NOT BE REWARDED FOR ITS**
10 **INAPPROPRIATE ACTIONS TO DATE**

11 Idaho Power should not be rewarded for intentionally violating the terms of Schedule 85.
12 Idaho Power’s Supplement to the Motion concedes that in the face of legitimate initial requests by
13 PNW for draft ESAs, Idaho Power simply “responded, to *all* of these initial requests under
14 Schedule 85 within the required 15 business days by informing them that Idaho Power had filed
15 [the Motion]. . .” Idaho Power’s Supplement to Motion, 2:21-23 (emphasis in original). Idaho
16 Power intentionally refused to issue draft ESAs as required by Schedule 85, relying solely on
17 having filed the instant Motion. Clearly such a defense is unacceptable inasmuch as even Idaho
18 Power has to concede that simply filing a motion does not relieve a party of its obligations
19 pursuant to well established rules of the OPUC (and even state and federal law). If the reverse
20 were true (i.e., if Idaho Power’s position was tenable), then PNW could simply file a motion to
21 force Idaho Power to immediate execute all ESAs and Idaho Power would have to comply. Of
22 course such a scenario is laughable at best since filing motions does not in and of itself relieve one
23 from ongoing legal obligations. Accordingly, Idaho Power’s reliance upon the instant Motion to
24 abjectly refuse to honor their Schedule 85 obligations is inappropriate and Idaho Power’s lack of
25 clean hands in this process should not be rewarded by now granting the Motion to Stay.

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1 **III. CONCLUSION**

2 In seeking the Stay, Idaho Power hopes to stall (and thereby kill) all solar development in
3 its Oregon service area, knowing full well that timing means everything in the solar industry – the
4 ITC is set to be reduced and any project with a hope of being activated prior to that expiration
5 must be processed now and without delay. Although denying the Motion would not result in
6 irreparable harm to Idaho Power and its rate payers, granting the Motion would surely overtly
7 harm developers like PNW as all solar projects in Idaho Power’s Oregon service area would be
8 abandoned. PNW would have no other choice as the uncertainty surrounding the situation is too
9 much to overcome. There is no equity in such a situation and accordingly the OPUC should deny
10 the Motion to Stay.

11 Even if the OPUC does not deny the Motion to Stay, any stay should be prospective from
12 the date of the Order and not retrospective, such that all projects already underway (i.e., those that
13 have submitted Schedule 85 ESA applications) should be allowed to move forward without delay.

14 Finally, as a collateral issue, PNW does support staff recommendations regarding a
15 timeline for evaluation of the substantive nature of Idaho Power’s request wherein as decision is
16 rendered in December 2015. Such time would allow for sufficient investigation, dialogue, and
17 informed decision-making that will set the stage for future development (where possible).

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19 Respectfully submitted on May 27, 2015,

20 */s/Ryan N. Meyer*

21 Ryan N. Meyer
22 Authorized Representative of Intervenor Pacific
23 Northwest Solar, LLC
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