

McDowell Rackner & Gibson PC



WENDY MCINDOO
Direct (503) 595-3922
wendy@mcd-law.com

May 26, 2015

VIA ELECTRONIC MAIL

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

**Re: UM 1731 – In the Matter of PACIFIC NORTHWEST SOLAR, LLC, Complainant, vs.
IDAHO POWER COMPANY, Defendant**

Attention Filing Center:

Attached for filing in the above-captioned docket is Idaho Power Company's Answer to the Complaint filed by Pacific Northwest Solar, LLC on May 6, 2015.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo
Office Manager

Enclosures
cc: Service List

1
2
3
4
5
6
7
8
9
10

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1731

In the Matter of
PACIFIC NORTHWEST SOLAR, LLC,
Complainant,
v.
IDAHO POWER COMPANY,
Defendant.

IDAHO POWER COMPANY'S ANSWER

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. INTRODUCTION

1. Pursuant to ORS 756.512(1) and OAR 860-001-0400(3) Idaho Power Company ("Idaho Power" or "Company") hereby files with the Public Utility Commission of Oregon ("Commission") its Answer to the Complaint filed by Pacific Northwest Solar, LLC ("PNW") on May 6, 2015, and served on Idaho Power on May 6, 2015.

2. This Complaint arises under the Public Utility Regulatory Policies Act ("PURPA"), 16 U.S.C § 2601 *et seq.* and involves a dispute regarding PNW's requests for Oregon Standard Energy Sales Agreements ("ESA") for nine solar projects that it intends to develop as qualified facilities ("QFs") pursuant to PURPA and Idaho Power's Schedule 85.

3. The central point of contention between PNW and Idaho Power is whether, as PNW contends, applicable law requires Idaho Power to offer PNW draft ESAs under currently applicable terms and pricing, pending the outcome of recently-filed requests to update those prices and alter the terms and conditions under which they are offered, when the current terms and prices will result in an undue burden on Idaho Power's customers.

1 Idaho Power maintains that neither Schedule 85 nor any other applicable law can be read
2 to require Idaho Power or this Commission to abrogate PURPA's requirements that
3 avoided cost prices paid by a utility for the purchase of electricity from a QF be just and
4 reasonable to utility customers and in the public interest¹ and that such prices not exceed
5 the utility's actual avoided cost.² On the contrary, under the circumstances now existing,
6 as discussed in the following paragraph, the Commission has authority to stay Idaho
7 Power's obligation to enter into additional standard contracts for solar and wind PURPA
8 generation until the Commission completes its investigation into current prices and terms.

9 4. Recent events in Idaho Power's Oregon service territory reveal both a
10 widening gap between Idaho Power's actual avoided costs and current QF prices, and an
11 increasingly high volume of requests for long-term QF contracts in Oregon. As detailed in
12 Idaho Power's Motion to Stay, and accompanying applications including the May 1, 2015,
13 annual avoided cost update, the Company's standard avoided costs are overstated by an
14 average of \$12-\$38/MWh. The Company currently purchases power from 6 operational
15 QF projects in its Oregon service territory; there are 11 new QF projects under contract but
16 not yet operational, and another 16 to 28 projects proposed. If all of these projects
17 become operational, it will increase Idaho Power's must-buy obligation from 21 MW to
18 almost 400 MW. Even assuming that only half of these projects come online, it would
19 represent nearly a 10-fold increase in the Company's must-buy obligation in the Oregon
20 jurisdiction. Idaho Power currently has a penetration level of 320 MW of solar QFs under
21 contract. Solar integration costs are \$3.12/MWh for penetration levels at 400 MW, and
22 escalate to over \$18/MWh for penetration levels over 1,400 MW.³

23
24 ¹ 16 U.S.C. § 824a-3(b)(1) & (2); OAR 860-029-0040(1)(a).

25 ² 18 CFR § 292.304(a)(2).

26 ³ Idaho Power currently has approximately 1,326 MW of proposed QF solar penetration across its Idaho and Oregon jurisdiction.

1 Company's resource sufficiency period. The Company also formally requested that the
2 Commission suspend its PURPA obligations pending those investigations by
3 simultaneously filing a Motion for Temporary Stay of its Obligation to Enter into New
4 Power Purchase Agreements with Qualifying Facilities. These applications and the motion
5 for stay have been merged and docketed as UM 1725.

6 9. Idaho Power reviewed PNW's request for an ESA, and concluded that it
7 could not, in good faith, provide PNW with a draft ESA that included terms that would
8 potentially bind Idaho Power and its customers to long-term commitments to purchase
9 power at prices in excess of the Company's avoided cost and under terms harmful to
10 customers.

11 10. On April 27, 2015, within the 15-day response window provided for in
12 Schedule 85, Idaho Power responded by letter to PNW's request for a draft ESA for the
13 Arcadia Solar project, informing it of the Company's April 24th filings with the Commission
14 and indicating that Idaho Power would not take further action on its requests until the
15 Commission has ruled on the motion for a temporary stay.

16 11. Also on April 27, 2015, PNW submitted ESA requests for eight additional
17 solar QF projects in Idaho Power's Oregon service territory; on April 28, 2015, Idaho
18 Power provided PNW with the same response and explanation provided with regard to the
19 Arcadia Solar request, also within the 15-day response window in Schedule 85.

20 12. On May 1, 2015, Idaho Power filed an annual update to its standard avoided
21 cost prices as required by Order No. 14-058 ("May 2015 Update"). The Company also
22 filed an alternative updated schedule (incorporating a 2021 capacity sufficiency date). The
23 avoided cost prices in both filings are significantly lower than the current prices (between
24 \$12/MWh and \$38/MWh lower on a levelized basis). On May 8, Idaho Power
25 supplemented its Motion for Stay to request that the Commission stay its QF contracting
26

1 obligations pending the outcome of the Commission's actions on the May 2015 Update as
2 well.

3 13. On May 6, 2015, PNW filed this Complaint alleging that "Idaho Power has
4 improperly and illegally stopped processing ESAs in contravention of Schedule 85."

5 **II. ANSWER**

6 14. Idaho Power hereby answers PNW's Complaint as follows. Idaho Power
7 denies any allegation not specifically admitted herein and reserves the right to supplement
8 this Answer if PNW amends its Complaint. With respect to the particular paragraphs of
9 the Complaint, Idaho Power answers as follows:

10 **IDENTITY OF THE PARTIES**

11 15. Idaho Power has insufficient information or knowledge to admit or deny the
12 truth of the allegations in paragraph 1 of the Complaint, which relate to the identity and
13 corporate structure of PNW, and those allegations are thus denied.

14 16. The factual allegations in paragraph 2 are admitted.

15 **APPLICABLE STATUTES AND REGULATIONS**

16 17. Paragraphs 3 and 4 identify provisions of PURPA, FERC's implementing
17 regulations, and Oregon's PURPA-implementing statutes and administrative rules. The
18 allegations in this paragraph are conclusions of law that require no response, and are thus
19 denied.

20 **BACKGROUND**

21 18. Idaho Power has insufficient information or knowledge to admit or deny the
22 truth of the allegations in paragraph 5 of the Complaint, which describe PNW's
23 development efforts, and those allegations are thus denied.

24 19. Idaho Power has insufficient information or knowledge to admit or deny the
25 truth of the allegations in paragraph 6 of the Complaint, and those allegations are thus
26

1 denied; however, Idaho Power does not challenge the QF status of PNW's proposed solar
2 projects.

3 20. The Company admits that PNW made initial requests for draft ESAs under
4 Idaho Power's Oregon Schedule 85 to Michael Darrington of Idaho Power. The remaining
5 allegations in paragraph 7 are legal conclusions that require no response and are thus
6 denied.

7 21. Idaho Power denies the allegations in paragraph 8.

8 22. Idaho Power has insufficient information or knowledge to admit or deny the
9 truth of the allegations in paragraph 9 of the Complaint and those allegations are thus
10 denied, except to admit that it received the letter set forth as Exhibit A to the Complaint.

11 23. Idaho Power admits the allegations in paragraph 10 in that it admits that Mr.
12 Darrington sent the email set forth as Exhibit B to the Complaint on April 21, 2015.

13 24. Idaho Power admits the allegations in paragraph 11 in that it sent the letter
14 set forth as Exhibit C to the Complaint on April 27, 2015.

15 25. Idaho Power denies the allegations in paragraph 12, except that it admits that
16 Mr. Darrington sent the letter set forth as Exhibit C to PNW.

17 26. Idaho Power admits that it received eight additional ESA applications set forth
18 as Exhibit D on April 27, 2015 and that it sent the letter set forth as Exhibit E on April 28,
19 2015. The Company denies that the reason provided by Mr. Darrington in Exhibits C and
20 E is illogical.

21 27. Idaho Power has insufficient information or knowledge to admit or deny the
22 truth of the allegations in paragraph 14, and those allegations are thus denied, except to
23 admit that it received the letter set forth at Exhibit F from PNW.

24 28. The Company admits the allegation in paragraph 15 that it has not provided
25 PNW with any drafts ESAs. The allegation regarding Schedule 85 requirements is a legal
26 conclusion and does not require response. Idaho Power admits that it does not intend to

1 provide PNW with a draft ESA while the Commission's consideration of its Motion for Stay
2 is pending.

3 29. Idaho Power has insufficient information or knowledge to admit or deny the
4 truth of the allegations in paragraph 16, and those allegations are thus denied, except to
5 admit that the Company has received interconnection applications from PNW.

6 30. Idaho Power has insufficient information or knowledge to admit or deny the
7 truth of the allegations in paragraph 17, and thus those allegations are denied.

8 31. Idaho Power has insufficient information or knowledge to admit or deny the
9 truth of the allegations in paragraph 18, and thus those allegations are denied.

10 **ANSWER TO COMPLAINANT'S FIRST CLAIM FOR RELIEF**

11 32. In response to paragraph 19 of Complainant's First Claim for Relief, Idaho
12 Power refers to and incorporates herein paragraphs 1 through 31 above.

13 33. The allegations in paragraph 20 of Complainant's First Claim for Relief are
14 legal conclusions and therefore require no response. That said, Idaho Power maintains
15 that neither Schedule 85 nor any other applicable law requires it to offer draft ESAs to QFs
16 that include terms and prices that would essentially create irrevocable long-term
17 commitments for the Company to purchase power from QFs at prices well above Idaho
18 Power's actual avoided costs. Idaho Power has acted promptly and properly and within its
19 legal rights, duties, and obligations by suspending the processing of PNW's requests for
20 ESAs and bringing the matter before the Commission for expedited consideration.

21 34. The allegations in paragraph 21 of Complainant's First Claim for Relief are
22 legal conclusions and therefore require no response. That said, Idaho Power maintains
23 that neither Schedule 85 nor any other applicable law requires it to offer draft ESAs to QFs
24 that include terms and prices that would essentially create irrevocable long-term
25 commitments for the Company to purchase power from QFs at prices well above Idaho
26 Power's actual avoided costs. Idaho Power has acted promptly and properly and within its

1 legal rights, duties, and obligations by suspending the processing of PNW's requests for
2 ESAs and bringing the matter before the Commission for expedited consideration.

3 **III AFFIRMATIVE DEFENSES**

4 **First Affirmative Defense – Failure to State a Claim**

5 35. Defendant alleges that all allegations and claims for relief in the Complaint fail
6 to state a claim for which relief may be granted.

7 **Second Affirmative Defense – Contrary to Public Policy**

8 36. Defendant alleges that granting the relief requested in the Complaint would
9 be contrary to the Commission's most fundamental regulatory duty to "represent the
10 customers of any public utility or telecommunications utility and the public generally in all
11 controversies * * * [and] make use of the jurisdiction and powers of the office to protect
12 such customers, and the public generally, from unjust and unreasonable exactions and
13 practices and to obtain for them adequate service at fair and reasonable rates."⁵ The
14 Commission should dismiss the Complaint as contrary to public policy.

15 **Third Affirmative Defense – Legally Enforceable Obligation**

16 37. Defendant alleges that the factual, as-applied determination of when a
17 PURPA QF establishes the right to a particular avoided cost rate or particular contractual
18 terms and conditions pursuant to a legally enforceable obligation is a determination that
19 lies exclusively with the state authority and the Oregon PUC. Idaho Power acted promptly
20 and properly within its legal rights, duties, and obligations to bring significant matters
21 regarding the proper avoided cost rates, as well as the proper terms and conditions
22 contained in its Oregon standard PURPA energy sales agreements, to the Oregon
23 Commission for resolution prior to entering into such agreements and/or incurring such

24
25 _____

26 ⁵ ORS 756.040(1).

1 obligations so as to assure the protection of Idaho Power's customers in not entering into
2 contracts or obligations with rates that are far above the Company's avoided cost.

3 THEREFORE, the Commission should deny the relief sought by PNW and dismiss
4 the Complaint.

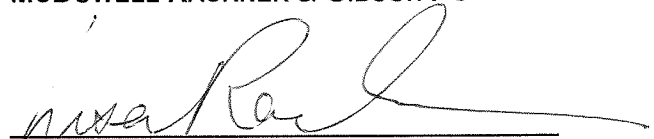
5 Respectfully submitted this 26th day of May, 2015.

6

MCDOWELL RACKNER & GIBSON PC

7

8



9

Lisa F. Rackner
Alia Miles

10

11

12

IDAHO POWER COMPANY

13

Donovan Walker
Lead Counsel
1221 West Idaho Street
P.O. Box 70
Boise, Idaho 83707

14

15

16

Attorneys for Idaho Power Company

17

18

19

20

21

22

23

24

25

26