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June 8, 2015

VIA ELECTRONIC MAIL

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

**Re: UM 1733 – Idaho Power Company’s Answer to Gardner Capital Solar
Development’s Complaint**

Attention Filing Center:

Attached for filing in the above-referenced docket is an electronic copy of Idaho Power Company’s Answer to Gardner Capital Solar Development’s Complaint.

Please contact me with any questions.

Very truly yours,

A handwritten signature in black ink that reads "Sharon Cooper". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sharon Cooper
Legal Assistant

Attachment

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1733

In the Matter of
Gardner Capital Solar Development, LLC,
Complainant,
v.
IDAHO POWER COMPANY,
Respondent.

IDAHO POWER COMPANY'S ANSWER

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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 Gardner Capital Solar Development, LLC ("Gardner Capital") filed on May 18, 2015, and served on Idaho Power on May 19, 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 Gardner Capital's requests for Oregon Standard Energy Sales Agreements ("ESA") for six 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 Gardner Capital and Idaho Power is whether, as Gardner Capital contends, applicable law requires Idaho Power to offer Gardner Capital draft ESAs under currently applicable terms and pricing, pending the outcome of recently-filed requests to update those prices and alter the terms and

1 conditions under which they are offered, *even when the current terms and prices will result*
2 *in an undue burden on Idaho Power's customers.* Idaho Power maintains that neither
3 Schedule 85 nor any other applicable law can be read to require Idaho Power or this
4 Commission to abrogate PURPA's requirements that avoided cost prices paid by a utility
5 for the purchase of electricity from a QF be just and reasonable to utility customers and in
6 the public interest¹ and that such prices not exceed the utility's actual avoided cost.² On
7 the contrary, under the circumstances now existing, as discussed in the following
8 paragraph, the Commission has authority to stay Idaho Power's obligation to enter into
9 additional standard contracts for solar and wind PURPA generation, or to modify rates and
10 terms on an interim basis, until the Commission completes its investigation into current
11 prices and terms in order to protect Idaho Power customers.

12 4. Recent events in Idaho Power's Oregon service territory reveal both a
13 widening gap between Idaho Power's actual avoided costs and current QF prices, and an
14 increasingly high volume of requests for long-term QF contracts in Oregon. As detailed in
15 Idaho Power's Motion to Stay and accompanying applications, including the May 1, 2015,
16 annual avoided cost update, the Company's standard avoided costs are overstated by an
17 average of \$12-\$38/MWh. The Company currently purchases power from 6 operational
18 QF projects in its Oregon service territory; there are 11 new QF projects under contract but
19 not yet operational, and another 16 to 26 projects proposed.³ If all of these projects
20 become operational, it will increase Idaho Power's must-buy obligation from 21 MW to

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

24 ² 18 CFR § 292.304(a)(2).

25 ³ Idaho Power estimates that 26 projects are actively seeking standard QF contracts. This figure
26 includes the 16 projects that have requested but not yet executed an ESA, as well as 10 projects
that have made initial inquiries about a Schedule 85 ESA but not yet submitted a request as of
Idaho Power's April 24, 2015 filing with the Commission.

1 almost 400 MW. Even assuming that only half of this 400 MW comes online, it would
2 represent nearly a 10-fold increase in the Company's must-buy obligation in the Oregon
3 jurisdiction. Idaho Power currently has a penetration level of 320 MW of solar QFs under
4 contract. Solar integration costs are \$3.12/MWh for penetration levels at 400 MW, and
5 escalate to over \$18/MWh for penetration levels over 1,400 MW.⁴

6 5. Idaho Power maintains that these special circumstances preclude it from
7 offering draft ESAs, or entering into new ESAs, that include terms and prices that would
8 essentially create irrevocable long-term commitments for the Company and its customers
9 to purchase power from QFs at prices well above Idaho Power's actual avoided costs.
10 Accordingly, and as explained in detail below, Idaho Power has acted promptly and
11 properly and within its legal rights, duties, and obligations by suspending the processing of
12 Gardner Capital's requests for ESAs and bringing the matter before the Commission for
13 expedited consideration.

14 II. BACKGROUND

15 A. Idaho Power's Schedule 85

16 6. On February 19, 2015, Idaho Power put both the Commission and QF
17 developers in Idaho Power's Oregon service territory on notice that the Company intended
18 to "bring as separate case filings matters related to: (1) revision of the standard rate
19 eligibility cap; (2) the appropriate maximum contract term; (3) implementation of solar
20 integration charges; and (4) revision of Idaho Power's resource sufficiency period."⁵
21 Additionally, the annual May 1 avoided cost update is directed by the Commission in Order
22 No. 14-058 issued February 24, 2014.

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24 ⁴ Idaho Power currently has approximately 1,326 MW of proposed QF solar penetration across its
25 Idaho and Oregon jurisdiction.

26 ⁵ *Re Investigation into Qualifying Facility Contracting and Pricing*, UM 1610, Stipulation re: Issues
List (February 19, 2015).

1 **B. Timing of Gardner Capital's Requests and Idaho Power's Filings**

2 7. On April 7, 2015, Gardner Capital sent Idaho Power requests for ESAs for
3 five separate solar projects. Idaho Power acknowledged receipt of these requests and
4 indicated that they were under review.

5 8. On April 24, 2015, Idaho Power filed three separate applications requesting
6 that the Commission investigate (1) whether to lower the standard contract eligibility for
7 wind and solar QFs to 100 kilowatts ("kW") and reduce the term of QF contracts to 2
8 years; (2) whether to approve a solar integration charge; and (3) whether to modify the
9 Company's resource sufficiency period. The Company also formally requested that the
10 Commission suspend its PURPA obligations pending those investigations by
11 simultaneously filing a Motion for Temporary Stay of its Obligation to Enter into New
12 Power Purchase Agreements with Qualifying Facilities. These applications and the motion
13 for stay have been merged and docketed as UM 1725.

14 9. Idaho Power reviewed Gardner Capital's request for the five ESAs, and
15 concluded that it could not, in good faith, provide Gardner Capital with draft ESAs that
16 included terms that would potentially bind Idaho Power and its customers to long-term
17 commitments to purchase power at prices in excess of the Company's avoided cost and
18 under terms harmful to customers.

19 10. On April 27, 2015, within the 15-day response window provided for in
20 Schedule 85, Idaho Power responded by letter to Gardner Capital's requests, informing it
21 of the Company's April 24th filings with the Commission and indicating that Idaho Power
22 would not take further action on its requests until the Commission has ruled on the motion
23 for a temporary stay.

24 11. On May 1, 2015, Idaho Power filed an annual update to its standard avoided
25 cost prices as required by Order No. 14-058 ("May 2015 Update"). The Company also

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1 filed an alternative updated schedule (incorporating a 2021 capacity sufficiency date). The
2 avoided cost prices in both filings are significantly lower than the current prices (between
3 \$12/MWh and \$38/MWh lower on a levelized basis).

4 12. On May 6, 2015, Gardner Capital submitted a request for an ESA for a sixth
5 project ("Fairway Solar").

6 13. On May 8, Idaho Power supplemented its Motion for Stay to request that the
7 Commission stay its QF contracting obligations pending the outcome of the Commission's
8 actions on the May 2015 Update as well. Gardner Solar submitted a Protest and
9 Opposition to Idaho Power's Motion for Stay on May 13.

10 14. On May 18, 2015, Gardner Capital filed this Complaint alleging that Idaho
11 Power has "failed to comply with Oregon Schedule 85 and provide standard Energy Sales
12 Agreements with current long-term standard avoided cost prices" to Gardner Capital.

13 15. The Commission held a Prehearing Conference regarding Idaho Power's
14 Motion for Stay and applications (UM 1725) on May 20, 2015. All parties, including
15 Commission Staff, responded to Idaho Power's Motion for Stay on June 2, and Idaho
16 Power will submit its reply on June 9, 2015. The parties expect the Commission to rule on
17 Idaho Power's motion on an expedited time frame. If the Commission grants Idaho
18 Power's Motion for Stay, as it should, this complaint must be dismissed for failure to state
19 a claim. If the Commission grants partial relief to Idaho Power regarding pending QF
20 requests for standard contract, any unresolved issues regarding Gardner Capital's
21 requests may be resolved in this docket.

22 **III. ANSWER**

23 16. Idaho Power hereby answers Gardner Capital's Complaint as follows. Idaho
24 Power denies any allegation not specifically admitted herein and reserves the right to
25 supplement this Answer if Gardner Capital amends its Complaint. With respect to the
26 particular paragraphs of the Complaint, Idaho Power answers as follows:

1 **IDENTITY OF THE PARTIES**

2 17. Idaho Power has insufficient information or knowledge to admit or deny the
3 truth of the allegations in paragraph 1 of the Complaint, which relate to the identity and
4 corporate structure of Gardner Capital, and those allegations are thus denied.

5 18. The factual allegations in paragraph 2 are admitted.

6 **APPLICABLE STATUTES AND ADMINISTRATIVE RULES**

7 19. Idaho Power admits the allegation in paragraph 1⁶ that the Commission has
8 jurisdiction over this Complaint and Idaho Power pursuant to ORS 756.040 and 756.500.
9 With regard to the Federal Energy Regulatory Commission (“FERC”), Idaho Power admits
10 that certain of its operations are subject to FERC jurisdiction, but denies that this
11 Complaint is subject to FERC jurisdiction.

12 20. Paragraph 2 identifies provisions of PURPA, FERC’s implementing
13 regulations, and Oregon’s PURPA-implementing statutes and administrative rules. The
14 allegations in this paragraph are conclusions of law that require no response, and are thus
15 denied.

16 **FACTUAL BACKGROUND**

17 21. Idaho Power has insufficient information or knowledge to admit or deny the
18 truth of the allegations in paragraph 1 of the Complaint, which describe Gardner Capital’s
19 development efforts, and those allegations are thus denied.

20 22. Idaho Power has insufficient information or knowledge to admit or deny the
21 truth of the allegations in paragraph 2 of the Complaint, and those allegations are thus
22 denied; however, Idaho Power does not challenge the QF status of Gardner Capital’s
23 proposed solar projects.

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25 ⁶ In Gardner Capital’s Complaint, the paragraph numbering under each new heading restarts at
26 “paragraph 1,” resulting in multiple paragraphs with the same number. Idaho Power’s Answer tracks
the headings and numbering from the complaint, so references to paragraph by number refer to the
paragraph of the Complaint under the corresponding heading.

1 23. Regarding the allegations in paragraph 3, the Company admits that Gardner
2 Capital made initial requests for draft ESAs for five projects on April 7, 2015, and for one
3 project on May 6, 2015, under Idaho Power's Oregon Schedule 85.

4 24. Idaho Power denies the allegation in paragraph 4 that it has a Commission
5 approved tariff implementing standard contracts pursuant to PURPA. Idaho Power admits
6 that Schedule 85 is Idaho Power's Commission-approved Schedule implementing
7 standard contracts for QFs pursuant to PURPA, but denies the remaining allegations in
8 paragraph 4.

9 25. Idaho Power denies the allegations in paragraph 5, except that it admits that
10 Idaho Power sent Gardner Capital the letter set forth as Exhibit 104 to the testimony of Joe
11 Benga accompanying Gardner Capital's Complaint ("Benga testimony") on April 27, 2015,
12 which letter speaks for itself. Idaho Power additionally responded to Gardner Capital by
13 letter dated May 8, 2015, set forth in Exhibit 106 to the Benga testimony, which letter
14 speaks for itself.

15 26. Regarding the allegations in paragraph 6 Idaho Power admits that it sent
16 Gardner Capital the letter set forth as Exhibit 104 to the Benga testimony on April 27,
17 2015, which letter speaks for itself.

18 27. Idaho Power denies the allegations in paragraph 7, except that it admits that
19 it received the letter from Gardner Capital set forth as Exhibit 105 to the Benga testimony,
20 which letter speaks for itself.

21 28. Regarding the allegations in paragraph 8 Idaho Power admits that it sent
22 Gardner Capital the letter set forth as Exhibit 106 to the Benga testimony on May 8, 2015,
23 which letter speaks for itself.

24 29. Idaho Power admits that it filed a Supplement to its Motion for Stay on May 8,
25 2015, but denies the remaining allegations in paragraph 9. The May 8, 2015, Supplement
26 to Motion for Temporary Stay speaks for itself.

1 30. Idaho Power denies the allegations in paragraph 10, except that it admits that
2 Gardner Capital filed a Protest and Opposition to Idaho Power’s Motion for Stay on May
3 13, 2015, which Motion speaks for itself.

4 31. The Company admits the allegations in paragraph 11 regarding the
5 procedural schedule set by the Commission.

6 32. The Company denies the allegations in paragraph 12 except that it admits it
7 has not provided Gardner Capital with draft ESAs.⁷ The allegation regarding Schedule 85
8 requirements is a legal conclusion and does not require response. Idaho Power admits
9 that it does not intend to provide Gardner Capital with a draft ESA while the Commission’s
10 consideration of its Motion for Stay is pending.

11 **ANSWER TO COMPLAINANT’S FIRST CLAIM FOR RELIEF**

12 33. In response to paragraph 1 of Complainant’s First Claim for Relief, Idaho
13 Power refers to and incorporates herein paragraphs 1 through 32 above.

14 34. The allegations in paragraph 2 of Complainant’s First Claim for Relief are
15 legal conclusions requiring no response and are therefore denied. That said, Idaho Power
16 maintains that neither Schedule 85 nor any other applicable law requires it to offer draft
17 ESAs to QFs that include terms and prices that would essentially create irrevocable long-
18 term commitments for the Company to purchase power from QFs at prices well above
19 Idaho Power’s actual avoided costs. Idaho Power has acted promptly and properly and
20 within its legal rights, duties, and obligations by suspending the processing of Gardner
21 Capital’s requests for ESAs and bringing the matter before the Commission for expedited
22 consideration.

23 35. The allegations in paragraph 3 of Complainant’s First Claim for Relief are
24 legal conclusions requiring no response and are therefore denied. That said, Idaho Power

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26 ⁷ The Commission approved standard contract for Idaho Power is available online.

1 maintains that neither Schedule 85 nor any other applicable law requires it to offer draft
2 ESAs to QFs that include terms and prices that would essentially create irrevocable long-
3 term commitments for the Company to purchase power from QFs at prices well above
4 Idaho Power's actual avoided costs. Idaho Power has acted promptly and properly and
5 within its legal rights, duties, and obligations by suspending the processing of Gardner
6 Capital's requests for ESAs and bringing the matter before the Commission for expedited
7 consideration. Such actions specifically invoke the Commission's authority to protect the
8 public from harm.

9 36. The allegations in paragraph 4 of Complainant's First Claim for Relief are
10 legal conclusions requiring no response and are therefore denied. That said, Idaho Power
11 expressly denies that the sole action of making an initial request for a draft contract
12 pursuant to Schedule 85 under the factual circumstances and conditions applicable to
13 Gardner Capital creates a legally enforceable obligation obligating customers to rates and
14 terms that do not accurately reflect or approximate the Company's avoided cost. Idaho
15 Power maintains that the factual, as-applied determination of when a PURPA QF
16 establishes the right to a particular avoided cost rate or particular contractual terms and
17 conditions pursuant to a legally enforceable obligation is a determination that lies
18 exclusively with the state authority and the Oregon PUC, and that Idaho Power acted
19 promptly and properly within its legal rights, duties, and obligations to bring significant
20 matters regarding the proper avoided cost rates, as well as the proper terms and
21 conditions contained in its Oregon standard PURPA energy sales agreements, to the
22 Oregon Commission for resolution prior to entering into such agreements and/or incurring
23 such obligations so as to assure the protection of Idaho Power's customers in not entering
24 into contracts or obligations with rates that are far above the Company's avoided cost.

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IV AFFIRMATIVE DEFENSES

First Affirmative Defense – Failure to State a Claim

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

Second Affirmative Defense – Contrary to Public Policy

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

THEREFORE, the Commission should deny the relief sought by Gardner Capital and dismiss the Complaint.

Respectfully submitted this 8th day of June, 2015.

MCDOWELL RACKNER & GIBSON PC



Lisa F. Rackner
Alia Miles

IDAHO POWER COMPANY

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⁸ ORS 756.040(1).