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July 8, 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 Motion for Clarification.

Please contact this office 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 line extending to the right.

Sharon Cooper
Legal Assistant

Attachment

cc: UM 1725 Service List

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
8 Standard Contract Term, for Approval of
9 Solar Integration Charge, and for Change
in Resource Sufficiency Determination.

**IDAHO POWER COMPANY'S MOTION
FOR CLARIFICATION**

10 **I. INTRODUCTION**

11 Pursuant to ORS 756.561, OAR 860-001-0720, and OAR 860-001-0420, Idaho
12 Power Company ("Idaho Power" or "the Company") files this Motion for Clarification of
13 Order No. 15-199 issued in this proceeding on June 23, 2015.¹ Idaho Power appreciates
14 the Commission's thoughtful ruling temporarily lowering the eligibility cap for Idaho
15 Power's standard contracts to 3 MW; the Company seeks clarification only to ensure
16 implementation consistent with the Commission's intent. *First*, Idaho Power requests that
17 the Commission clarify that the nine solar projects, sized at 5 and 10 MW that requested
18 Energy Sales Agreements (ESAs) *after April 24, 2015 but before June 24, 2015* may not
19 circumvent the Commission's Order by revising downward the nameplate capacity of their
20 projects in order to receive contracts with the old avoided cost rates. *Second*, Idaho
21 Power requests that the Commission clarify that, by directing parties to comment on solar
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25 ¹ *Applications to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract*
26 *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").

.1 integration charges in UM 1610, it did not intend to defer or delay consideration of the
2 Company's pending application for approval of solar integration charges in UM 1725.²

3 II. BACKGROUND

4 UM 1725 – Order No. 15-199

5 On April 24, 2015, Idaho Power filed three separate but related applications (“the
6 Applications”) requesting that the Commission modify the terms and conditions under
7 which Idaho Power enters into power purchase agreements with Qualifying Facilities
8 (“QFs”) pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”).
9 Specifically, the Applications requested that the Commission (1) lower the standard
10 contract eligibility for wind and solar QFs to 100 kilowatts (“kW”) and reduce the term of
11 wind and solar QF contracts to 2 years; (2) approve a solar integration charge; and (3)
12 modify the Company's resource sufficiency period. Concurrent with the Applications,
13 Idaho Power also filed a Motion for Temporary Stay of its Obligations to Enter into New
14 Power Purchase Agreements with QFs (“Motion for Stay”), requesting that the
15 Commission temporarily suspend the Company's standard contract PURPA obligations
16 while the Commission investigates the issues raised by the Applications. The
17 Commission docketed the three Applications and Motion for Stay as UM 1725. Numerous
18 parties filed briefs in opposition to Idaho Power's Motion for Stay, and Idaho Power filed a
19 reply.

20 On June 23, 2015, the Commission issued its Order 15-199. While the
21 Commission denied the Company's request to stay its obligation to enter into additional
22 solar and wind contracts, it found sufficient cause to grant other interim relief pending its
23 investigation of the Applications, noting that “there has been an unprecedented growth in
24 the number of applications and expressions of interest by QF developers—particularly,

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26 ² See Idaho Power's Application for Approval of Solar Integration Charge (April 24, 2015), docketed
as UM 1725.

1 solar.”³ The Commission concluded that given the numbers presented in Idaho Power’s
2 motion, and even assuming that not all the projects will be built, “we are convinced that a
3 sufficient number of projects will proceed and eventually require Idaho Power, without
4 some form of interim relief, to enter into substantial long-term contracts that exceed the
5 Company’s actual avoided costs.”⁴ Accordingly, the Commission determined that it should
6 grant relief to Idaho Power that is “narrow, targeted and proportionate.”⁵ To that end, the
7 Commission reduced the eligibility cap for Idaho Power’s standard contracts to 3 MW for
8 solar QFs, effective April 24, 2015—the date on which Idaho Power filed its Applications
9 and Motion for Stay. Order No. 15-199 provided further that “[d]evelopers that requested
10 but did not receive ESAs prior to [April 24, 2015] may seek a determination of whether
11 those requests created a legally enforceable obligation in individual complaint
12 proceedings.”⁶

13 In Order No. 15-499, the Commission also pronounced that, given the rapid growth
14 in solar QF activity, it is now time to address the issue of solar integration charges.
15 Accordingly, Order No. 15-199 directs parties to address the level of solar integration
16 charges to incorporate into avoided cost rates in Docket UM 1610 (Phase II of the
17 Commission’s generic investigation into QF contracting and pricing).⁷ Order No. 15-199
18 does not address or otherwise refer to Idaho Power’s pending application for approval of
19 solar integration charges (one of the three Applications filed on April 24, 2015).

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21 ³ Order No. 15-199 at 6.

22 ⁴ *Id.*

23 ⁵ *Id.* at 7.

24 ⁶ *Id.*

25 ⁷ By so ordering, the Commission is following through on its commitment in Order No. 14-058 in UM
26 1610 to revisit the issue of whether and how to adjust avoided cost for solar QFs to address
integration costs “in the future after more solar development occurs.” *Investigation into Qualifying
Facility Contracting and Pricing*, Docket UM 1610, Order No. 14-058 at 15 (February 24, 2014).

1 with any clarification that it deems warranted or helpful.⁹ Here, the issues raised by Idaho
2 Power are central to the order, and the parties require clarification as to how the
3 Commission intends that its order be implemented. Accordingly, the Commission should
4 grant Idaho Power's motion and issue an order clarifying that (1) solar projects with a
5 capacity greater than 3 MW that requested an ESA *after* April 24, 2015 are *not* eligible for
6 standard contracts, and that any downward revision of nameplate capacity made after the
7 Commission issued the Order will be considered a new request; and (2) the Commission
8 does not intend to defer or delay consideration of the Company's pending application for
9 approval of solar integration charges in UM 1725.

10 **B. Solar QF Requests Made Between April 24 and June 24**

11 The Commission's Order is clear as to the rights of developers who requested QF
12 contracts before April 24, 2015, and it is clear about the rights of developers who request
13 QF contracts after June 24, 2015. Developers that requested QF contracts *before* April 24
14 have the opportunity through complaint processes to establish a legally enforceable
15 obligation ("LEO"), and if so, they may receive an ESA at the avoided cost rates in effect
16 on the date of their request, so long as the project is 10 MW or lower.¹⁰ Developers
17 making requests *after* June 24 may take one of two paths: (1) if their project is over 3
18 MW, they may negotiate a QF contract using IRP methodology; and (2) if the project is 3
19 MW and under, they may receive a standard contract with the newly-approved avoided
20 cost pricing.¹¹ However, the Order does not specifically address the appropriate treatment

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23 ⁹ See, e.g., *In the Matter of Kootenai Electric Cooperative v. Idaho Power Company*, Order No. 14-
24 027 (2014) (granting Idaho Power's motion for clarification regarding the appropriate avoided cost
price to paid to Kootenai).

25 ¹⁰ Order No. 15-199 at 7.

26 ¹¹ *Id.*

.1 of requests for ESAs that Idaho Power received *between* April 24 and June 24. During
2 this time period, Idaho Power received the following requests:

3 **April 27, 2015:** Pacific Northwest Solar LLC (PNW) submitted ESA requests for
4 eight solar QF projects (either 5 or 10 MW each).

5 **May 6, 2015:** Gardner Capital Solar Development, LLC (Gardner Capital)
6 submitted an ESA request for one 5 MW solar project.

7 Idaho Power believes that these developers have two choices. They may either
8 (1) maintain their requests for the 5 MW or 10 MW projects, which would entitle them to
9 negotiate QF contracts for avoided cost rates using the IRP methodology; or (2) initiate
10 new requests for projects sized at 3 MW or lower and receive the newly-approved
11 standard rates. PNW and Gardner Capital, however, disagree with Idaho Power's
12 interpretation of the Commission's order. They believe that they can modify the requests
13 made in this interim period (April 24-June 24), replacing each request for a 5 MW or 10
14 MW project with one or more 3 MW projects. Gardner Capital and PNW have each
15 asserted that they should be entitled to the old standard rates, notwithstanding the fact
16 that they are making these new requests after the effective date of the new standard rates
17 (June 24).

18 In fact, within hours of the issuance of the Commission's Order No. 15-199 on
19 June 23, 2015, Idaho Power was contacted by developers inquiring about obtaining
20 contracts for 3 MW projects. Idaho Power has had discussions with both Gardner Capital
21 and PNW regarding Idaho Power's position that they may either enter into contract for 3
22 MW projects at the newly-approved standard avoided cost rates, or receive negotiated
23 rates for their projects of 5 MW and 10 MW in size. Idaho Power is currently in the
24 process of running the incremental cost IRP modeling based upon each proposed
25 project's unique generation profile in order to give Gardner Capital and PNW indicative
26 avoided cost pricing for a negotiated rate contract. However, both developers have

.1 asserted that they are entitled to standard rate contracts under the previously-effective,
2 much higher standard rates. Nothing in Order No. 15-199 or applicable law supports the
3 developers' position that post-April 24 requests for ESAs for projects that exceed the
4 Commission's 3 MW eligibility cap can now be modified into *entirely different* projects and
5 still retain the right to ESAs at the pre-June 24 standard rates. Certainly, the projects have
6 no legally enforceable obligation to the previously effective rates. Schedule 85 itself
7 expressly provides that Idaho Power's obligation to provide a project-specific draft ESA
8 does not arise until "all information described in Paragraph 2 above has been received in
9 writing from the Seller."¹² Under Paragraph 2, the information that the Seller must provide
10 in order to obtain a Project specific draft ESA includes the following:

- 11 • The Company/Organization that will be the contracting party;
- 12 • Verification that the QF meets the "Eligibility for Standard Rates and
13 Contract" criteria;
- 14 • Location of the proposed project, including general area and specific legal
15 property description;
- 16 • Nameplate and maximum capacity of the proposed project; and
- 17 • Point of Delivery and status of Generation Interconnection Process.¹³

18 A drastic reduction in nameplate capacity is significant and, from the Company's
19 perspective, represents a request for an entirely new project. Moreover, it seems likely
20 that such a significant change in nameplate capacity may also require changes to other
21 aspects of the project, such as location and point of delivery. To permit the project
22 developers to circumvent the requirements of Schedule 85 for the sole purpose of locking
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25 ¹² See Idaho Power Company, Schedule 85, Cogeneration and Small Power Production Standard
Contract Rates, PUC Oregon No. E-27, Sheet 85-4 and 85-5 (filed July 3, 2014).

26 ¹³ *Id.*

.1 Idaho Power into purchase of power at outdated and inflated prices is not only inconsistent
2 with Schedule 85, but also with the overall intent of the Commission's order.

3 The spirit of the Commission's ruling in Order 15-199 was to accommodate the
4 reasonable expectations of QF developers prior to the Motion to Stay, while at the same
5 time protecting Idaho Power's customers from assuming new long-term contracts at the
6 old inflated rates. By making the eligibility cap effective on April 24, 2015, the date of
7 Idaho Power's Applications and Motion for Stay, the Commission has achieved that
8 outcome. When PNW and Gardner Solar submitted the requests at issue here on April 27
9 and May 6, respectively, they were on notice that Idaho Power had asked the Commission
10 to modify its PURPA obligations. Given that the Commission's order evinces a desire to
11 protect the Company from excessive avoided costs for any project that did not request an
12 ESA before April 24, 2015, it seems unlikely that the Commission intended for the order to
13 require Idaho Power to enter into long-term contracts for ineligible projects that submitted
14 requests after April 24th 2015, to the clear detriment of its ratepayers. However, Idaho
15 Power acknowledges that the Order does not expressly address this issue. For this
16 reason, Idaho Power asks the Commission to clarify that PNW and Gardner Capital may
17 either (1) maintain their requests for the 5 MW and 10 MW projects, which would entitle
18 them to negotiate QF contracts for avoided cost rates using the IRP methodology; or (2)
19 they may initiate new requests for projects sized at 3 MW or lower and receive the newly
20 approved standard rates.

21 **C. Solar Integration Charges**

22 In Order No. 15-199, the Commission states that parties should address the level
23 of solar integration charges to incorporate into avoided cost rates in Docket UM 1610.¹⁴
24 Idaho Power requests that the Commission clarify that the Commission does not intend to

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26 ¹⁴ Order No. 15-99 at 7.

.1 defer or delay consideration of the Company's pending application for approval of solar
2 integration charges in UM 1725.

3 On April 24, 2015, Idaho Power filed an Application for Approval of Solar
4 Integration Charge, which the Commission docketed with the other Applications in UM
5 1725. As explained in detail in that application, the unprecedented level of solar QF
6 development that Idaho Power is experiencing in both Oregon and Idaho makes it critical
7 that the Company's avoided costs for solar energy account for the costs of integrating
8 solar generation into the system. In support of its request, Idaho Power included both its
9 completed 2014 Solar Integration Study and pending 2015 Solar Integration Study. The
10 Idaho Public Utilities Commission ("IPUC") recently approved an all-party stipulation
11 agreeing to implement solar integration costs based on Idaho Power's 2014 study. In
12 that stipulation, whose signatories included the Idaho Conservation League, Sierra Club,
13 and Snake River Alliance, the parties agreed to implement the solar integration charges
14 "as proposed and filed by Idaho Power."¹⁵ The solar integration charges that Idaho Power
15 has proposed in its application to this Commission are identical to those approved by the
16 IPUC. Idaho Power requests that the Commission move quickly to ensure that the
17 Company's purchase of power from solar QFs reflect the true costs avoided by the utility—
18 adopting Idaho Power's proposed solar integration charges is critical to achieving this end.

19 Idaho Power does not dispute that it could be beneficial for the parties to Docket
20 UM 1610 to generally address the issue of solar integration charges. To date, however,
21 this issue has not been included in Phase Two of UM 1610. In fact, in the February 2015
22 stipulation regarding the Issue List for Phase II of UM 1610, the parties agreed that the
23 implementation of solar integration charges would "not be included in the proceedings for
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26 ¹⁵ Idaho Power Company, Case No. IPC-E-14-18, Order No. 33227 (February 11, 2015).

.1 UM 1610.”¹⁶ It is notable that direct testimony was filed by the parties on May 22, 2015,
2 and response testimony on the issues is scheduled to be filed by July 10, 2015, with reply
3 testimony due by July 31, 2015. Moreover, neither Portland General Electric nor
4 PacifiCorp, the other utility participants in UM 1610, have completed solar integration
5 studies. Given these facts, it seems unlikely that the issue will reach any final resolution in
6 Phase II of UM 1610. Idaho Power and its customers cannot wait for the issue to be
7 resolved statewide. Idaho Power has already entered into six 10 MW solar QF contracts
8 (60 MW) in Oregon that do not contain any solar integration charges. The Company’s 461
9 MW of solar QF contracts in the state of Idaho all contain solar integration charges.¹⁷
10 Accordingly, Idaho Power requests that the Commission clarify its intent to consider Idaho
11 Power’s proposal regarding solar integration charges in Docket UM 1725, notwithstanding
12 any discussion of the issue in Docket UM 1610. If any decisions made by the Commission
13 in UM 1610 suggest that any changes need to be made to Idaho Power’s solar integration
14 charges, such changes can be made in a subsequent filing.

15 IV. CONCLUSION

16 For the reasons stated above, Idaho Power requests that the Commission issue an
17 order clarifying its Order No. 15-199 to provide that:

- 18 • For ESA requests for solar QFs submitted to Idaho Power between April 24
19 and June 24, the requesting developer may either (1) maintain its requests
20 for 5 MW and 10 MW projects and enter into negotiations for avoided cost
21 rates using the IRP methodology; or (2) initiate new requests for projects
22 sized at 3 MW or lower and receive the newly approved standard rates.

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24 ¹⁶ *Re Investigation into Qualifying Facility Contracting and Pricing*, Docket UM 1610, *Stipulation re:*
25 *Issues List* at 4 (February 19, 2015).

26 ¹⁷ 141 MW of the Idaho contracts have been terminated, leaving a total of 320 MW under contract
in Idaho and 60 MW under contract in Oregon.

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- Idaho Power’s application for approval of a solar integration charge for solar QFs will be considered in Docket UM 1725.
Respectfully submitted this 8th day of July, 2015.

MCDOWELL RACKNER & GIBSON PC



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