

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of)	DOCKET NO. UM 1725
)	
IDAHO POWER COMPANY,)	REQUEST FOR LEAVE TO REPLY
)	AND REPLY IN SUPPORT OF MOTION
Application to Lower Standard Contract)	FOR CLARIFICATION OF THE
Eligibility Cap and to Reduce the)	COMMUNITY RENEWABLE ENERGY
Standard Contract Term, for Approval of)	ASSOCIATION AND THE
Solar Integration Charge, and for Change)	RENEWABLE ENERGY COALITION
<u>in Resource Sufficiency Determination.</u>)	

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”) and the Renewable Energy Coalition (“REC”) hereby request the Public Utility Commission of Oregon (“OPUC” or “Commission”) for leave to reply to Portland General Electric Company’s (“PGE”) response to CREA and REC’s motion for clarification of the OPUC’s determination in Order No. 16-129 (the “Order”), and respectfully submit this reply for the OPUC’s consideration.

II. REQUEST FOR LEAVE TO FILE A REPLY

The OPUC’s administrative rules allow for a reply to a substantive motion, but do not provide for a reply to a response to an application for reconsideration or rehearing without leave of the administrative law judge.¹ Because CREA and REC filed a motion for clarification and not an application for reconsideration/rehearing, the rules appear to allow this reply. To the extent leave is required, the CREA and REC respectfully request leave that the administrative law judge allow and the Commission consider this reply. This reply is necessary because PGE’s

¹ See OAR 860-001-420(6), and -0720(4).

response raised new arguments and made factual assertions that are not correct. Additionally, this reply is filed within seven days of PGE's response and therefore should not impede the Commission's ability to resolve the issue presented by the motion.

III. REPLY ARGUMENT

PGE incorrectly asserts that the requested clarification would result in a change of policy. To the contrary, PGE's argument would re-write existing policy reflected in numerous Commission orders and executed contracts. Thus, the clarification should be made to remove uncertainty and prevent litigation over this important issue.

1. PGE Admits that Its Proposed Approach Is Inconsistent with How PacifiCorp and Idaho Power Have Implemented the Commission's Policies

As PGE concedes, both Idaho Power Company and PacifiCorp's Commission-approved standard contracts unambiguously declare that the QF may elect to sell under prices that are fixed for a full 15 years from the date the QF achieves operation – *not* on the date that the parties execute the contract.² That fact is undisputed. The point is so well settled that Idaho Power has already filed compliance filings containing the exact same treatment in this docket. There is no basis for special treatment for PGE.

PGE's approach would ensure that essentially no QF will receive 20 years of payments under a contract or receive 15 years of payments at fixed prices. New QFs generally need years

² See *Motion for Clarification* at 2-3 & n.6.

between the date they sign a contract and the date they achieve operation.³ This is because they cannot obtain financing for construction and interconnection before obtaining a contract. PGE's approach essentially means that, for all practical purposes, the maximum term of fixed prices available to all new QFs would be only 12 years (or less), rather than the 15 years assumed to be necessary for financing in the Commission's orders.

Similarly, existing QFs almost always enter into new power purchase agreements before expiration of their current contract in order to obtain financing for upgrades, offset initial years of low prices, and plan their operations. In order to receive 15 years of fixed-price payments, PGE's approach would unreasonably require an existing QF to wait until the last day of its existing contract to execute its new contract – a result that is both logistically unreasonable and clearly at odds with the Idaho Power and PacifiCorp standard contracts.

2. PGE Has Entered Into Contracts Consistent with the CREA/REC Position

It is undisputed that PGE has itself entered into contracts where the 20-year period of the contract or the 15-year period of fixed pricing begins on the date the QF achieves operation. PGE concedes this fact with respect to the OneEnergy Solar, LLC contract, which is cited in the motion.⁴ Moreover, although PGE claims none of its other contracts take a similar approach, a cursory review of its executed contracts demonstrates that PGE is wrong. The PaTu Wind Farm, LLC contract states in section 2.3 that the term runs until "5-31-2031," which is exactly 20 years

³ *Re Commission Investigation into QF Contracting and Pricing*, OPUC Docket No. UM 1610 Phase II, Order No. 15-130 at 2 (April 16, 2015) (QFs can select a scheduled COD anytime within three years of contract execution, and a QF can elect a scheduled COD that is more than three years from contract execution if reasonable).

⁴ *See Motion for Clarification* at 3 n.6.

after the scheduled commercial operation date of “5/31/2011” specified in section 2.2.2 and over 21 years after execution date of April 29, 2010 specified in the first line of the contract.⁵ In multiple other executed contracts available for review in docket RE 143, the QF designated the term to end on the date 15 years after the commercial operation date – demonstrating an expectation that fixed prices will apply during the entire 15-year period it delivers energy and capacity.⁶

3. PGE’s Standard Contract and Tariff Supports a QF’s Right to be Paid 15 Years of Fixed Prices

Moreover, PGE’s argument contradicts the plain language of its standard contracts for renewable avoided costs. The renewable standard contract’s term regarding ownership of renewable portfolio standard (“RPS”) attributes unambiguously demonstrates that the QF will receive the fixed renewable prices for 15 years after achieving operation – not just for 15 years after execution of the contract. Specifically, section 4.6 of the renewable base-load standard contract provides:

During the Renewable Resource Deficiency Period, Seller shall provide and PGE shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Commercial Operation Date, Seller shall retain all Environmental Attributes in accordance with the Schedule. The Contract Price includes full

⁵ Available in OPUC Docket No. RE 143.

⁶ See, e.g., *id.* at NorWest Energy 16, LLC (July 28, 2015); NorWest Energy14 LLC, (July 28, 2015); Morrow Solar, LLC (Jan. 25, 2016); OE Solar 1, LLC (Jan. 25, 2016); OE Solar 2, LLC (Jan. 25, 2016); OE Solar 3, LLC (Jan. 25, 2016); and OE Solar 4, LLC (Mar. 7, 2016).

payment for the Net Output and any RPS Attributes transferred to PGE under this Agreement. . . .⁷

The tariff further provides on page 12: “Sellers with PPAs exceeding 15 years will receive pricing equal to the Mid-C Index Price and will retain all Environmental Attributes generated by the facility for all years up to five in excess of the initial 15.”⁸

Thus, consistent with the plain language of PacifiCorp’s standard contract and Idaho Power’s standard contract, PGE’s renewable standard contract clearly allows the small QF to elect to sell for 20 years after the date of the commercial operation, and to receive the fixed avoided cost rates for the first 15 years after achieving operation. This treatment is consistent with the terms of a stipulation, signed by PGE, which provided:

Renewable Energy Credit (REC) ownership in the last five years of a 20-year contract. The Stipulating Parties agree that renewable PPAs signed during Phase II will include language assigning ownership of all Environmental Attributes to the QF during the last five years of a 20-year contract when prices paid to the QF are at market.⁹

This term – regarding ownership of RPS attributes and payment for fixed renewable prices – was first inserted into PGE’s standard contract and approved by the Commission at the

⁷ PGE Schedule 201, *Standard Renewable In-System Non-Variable Power Purchase Agreement* at 8-9 (Sep. 23, 2015), available in *PGE’s Compliance Filing*, OPUC Docket No. 1610 (May 27, 2015), <http://edocs.puc.state.or.us/efdocs/HAD/um1610had164557.pdf>, approved by Order No. 15-289.

⁸ PGE Schedule 201, *Qualifying Facility 10 MW or Less Avoided Cost Purchase Information* at Sheet No. 201-1 (September 23, 2015), available in *PGE’s Compliance Filing*, OPUC Docket No. 1610 (May 27, 2015), <http://edocs.puc.state.or.us/efdocs/HAD/um1610had164557.pdf>, approved by Order No. 15-289.

⁹ See *Partial Stipulation*, OPUC Docket UM 1610, at pp. 4-5 (filed Aug. 11, 2014), available at <http://edocs.puc.state.or.us/efdocs/HAR/um1610har84528.pdf>.

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conclusion of Phase I of docket UM 1610, and remains there today.¹⁰ The Commission approved further changes to PGE's standard contracts to implement the terms of a stipulation, and again approved contracts with this term in Order No. 15-289.

In short, adopting CREA/REC's proposed clarification will require no additional modifications to existing compliance filings, but siding with PGE's interpretation will require all three utilities to file new standard contracts and avoided cost tariffs to curtail the QFs' right to 15 years of fixed prices beginning on the date of operation.

Thus, the Commission should clarify that the Order does not change the pre-existing policy that the 15-year term of fixed prices commences when the QF achieves operation.

RESPECTFULLY SUBMITTED this 6th day of May, 2016.

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¹⁰ See Order 14-435 (approving PGE's renewable standard contract filed on November 25, 2014, which including this term); see also *PGE's Compliance Filing*, OPUC Docket No. 1610 (Nov. 25, 2014), available at <http://edocs.puc.state.or.us/efdocs/HAH/um1610hah91524.pdf> (containing this term in each of the renewable standard contracts).

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