BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

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.	))))))))	CASE NO. UM 1725 MOTION FOR CLARIFICATION OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION AND THE RENEWABLE ENERGY COALITION

Pursuant to OAR 860-001-0420 and OAR 860-001-0720, the Community Renewable Energy Association ("CREA") and the Renewable Energy Coalition ("REC") move the Public Utility Commission of Oregon ("OPUC or "Commission") for clarification of its determination in Order No. 16-129 (the "Order"). CREA and REC emphasize that we are not seeking to alter or change any aspect of the Order, but only ensure that it is not inadvertently read in a manner inconsistent with the Commission's existing policy, as reaffirmed by the Order.

The Commission may clarify ambiguity in its orders. *See* Order No. 14-027; ORS 756.561, 756.568. In this case, the Commission denied Idaho Power Company's ("Idaho Power") request to reduce the contract term of qualifying facility ("QF") contracts from 20 years to two years under the OPUC's implementation of the Public Utility Regulatory Policies Act of 1978 ("PURPA").[1] However, due to the potential for ambiguity, CREA and REC seek clarification that the Commission did not intend to change the existing policy that the period for

[1] Similarly, the Commission's final order in docket UM 1734 relied upon the Order in this docket as resolving the parallel dispute initiated by PacifiCorp. *See* Order No. 16-130 at 5 (merely referencing the Order and stating "we adhere to our current policy" on the contract term).

15 years of fixed prices commences at the time the QF achieves operation, not the earlier date prior to construction when the QF signs the power purchase agreement.

The Order rejected Idaho Power's request to change the OPUC's current policy on QF contract terms, which is that all QFs are entitled to 15 years of fixed prices and an additional five years of market-based prices. *See* Idaho Power's Schedule 85 at 9 (providing fixed avoided cost prices for "contract years one (1) through (15) fifteen" and market-based prices for "all periods after the end of the fifteenth (15th) contract year").[2] At the time of the Order, the "contract years" and thus the 15 years of fixed prices began to run on the date that the QF achieved operation, not on the much earlier date the contract is executed.

Specifically, Article V of Idaho Power's Schedule 85 standard contract provides, in pertinent part: "Term - Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the date first written and shall continue in full force and effect for a period of ________ (not to exceed 20 years) Contract Years from the Operation Date."[3] Article VII further provides: "For the first fifteen (15) Contract Years the Seller shall be paid the On-Peak and Off-Peak prices, less any identified Integration Charge applicable to the Facility resource type as specified in Schedule 85 and included as Appendix E of this Agreement for Net Energy deliveries during On Peak or Off Peak hours."[4] Under Article I, the "Contract Year" means: "The period commencing each calendar year on the same calendar date as the Operation Date

2 Available at: https://www.idahopower.com/AboutUs/RatesRegulatory/Tariffs/default.cfm?state=or.

3 *See id.*

4 *See id.*

and ending 364 days thereafter."[5] Thus, the policy that emerged from docket UM 1129 was that the 15 years of fixed prices commences on the date of operation, not contract execution.[6]

This policy makes good sense. In first adopting it, the Commission specifically relied upon testimony of the Oregon Department of Energy that, for financing purposes, a QF needs a fixed revenue stream for a *minimum* period of 15 years in order to match the term of a typical loan. *See* Order 05-584 at 19 (finding 15 years to be the *minimum* period found to be necessary "to ensure that the terms of the standard contract facilitate appropriate financing for a QF project."). Because the minimum period of fixed revenue must be 15 years and QFs cannot sell electric energy for revenue prior to construction and operation, the 15 years must commence when the QF achieves operation – not the date up to three years earlier, prior to financing and construction, when the standard contract is initially executed. *See* Order No. 15-130 at 2 (allowing QFs at least three years to achieve commercial operation after signing a contract).

However, the Order could be construed to have inadvertently suggested an outcome different from the existing policy. Specifically, CREA and REC seek clarification of the following statement in the Order:

"Longer term contracts help align the financing period with an asset's useful life,

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5 *See id.*

6 Similarly, Section 5 of PacifiCorp's standard contract provides: "In the event Seller elects the Fixed Price, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in Schedule 37 during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market." Available at: https://www.pacificpower.net/env/nmcg/qf.html. Portland General Electric Company ("PGE") has also executed standard contracts with the 15-year period of fixed prices running from the operation date. For example, PGE's contract with OneEnergy Solar, LLC states in Section 5.1 that the fixed prices apply "for the first 15 years following the Commercial Operation Date" and the deadband index prices apply "for the 16th year following the Commercial Operation Date and continuing until the end of the Term." Available in docket RE 143 at http://edocs.puc.state.or.us/efdocs/RPA/re143rpa10953.pdf.

> making the investment less risky and likelier to obtain far more reasonable financing terms . . . . [W]e conclude that our current policy appropriately balances these interests. That policy provides for 20-year contracts, with prices fixed at avoided cost rates *in place at the time of signing remaining in effect for a 15-year period*, and indexed pricing for the remaining five years, continues to have merit."

Order at 8 (emphasis added). Although the Order left the existing policy in place, the emphasized language could invite a dispute as to whether the 15-year term commences at the time of contract execution or at the time the QF achieves operation.

The Commission should remove ambiguity and clarify that the quoted statement does not change the current status quo that the 15-year term for fixed prices begins when the QF achieves operation. This is appropriate given that the current tariff and standard contract unambiguously call for the 15-year period to begin when the QF achieves operation and *not* at the time of signing the contract, no party proposed changing this aspect of the current policy, and the Order "denied" the application to change the existing policy. Absent such clarification, the potential for ambiguity in the Order would likely lead to needless disputes over proper implementation of the contract term. This issue is significant for QFs because a contrary outcome would often result in only 12 years of predictable revenue upon which QFs may rely for financing after the typical lead time of up to three years to complete financing, interconnection, facility construction, and 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 14th day of April, 2016.

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