

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1725

In the Matter of)	
)	
IDAHO POWER COMPANY,)	PREHEARING BRIEF OF
)	RENEWABLE NORTHWEST AND
)	NW ENERGY COALITION
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.)	
_____)	

I. INTRODUCTION

Renewable Northwest and the NW Energy Coalition submit this prehearing brief recommending that the Oregon Public Utility Commission (the “Commission”) reject Idaho Power Company’s (“Idaho Power”) proposals to (1) lower the size threshold for wind and solar qualifying facilities (“QF”) to 100 kilowatts (“kW”) and (2) reduce the contract term for QF projects greater than 100 kW to two years. Instead, we recommend that the Commission increase the contract term to twenty years of fixed prices, as required by Oregon law.

II. BACKGROUND

Renewable Northwest and the NW Energy Coalition are nonprofit, member-based organizations that seek to advance the development of clean, affordable, and reliable renewable energy resources. Both of our organizations have QF developers among our ranks, and we have years of experience working with the implementation of the Public Utility Regulatory Policies Act of 1978 (“PURPA”) in the various states in which we operate. We support reasonable and balanced approaches to PURPA implementation. Unfortunately, Idaho Power’s proposal to

address what it perceives to be a flood of PURPA projects on its system is not a reasonable and balanced approach. If the Commission is inclined to make changes to its implementation of PURPA in response to Idaho Power's proposals in this docket, we recommend that the Commission steer away from Idaho Power's proposal to reduce the contract term for QF projects and that the Commission not reduce the size threshold to 100 kW.

III. ARGUMENT

A. The Commission Should Reject Idaho Power's Proposal to Lower the Size Threshold to 100 kW for Wind and Solar QFs.

Idaho Power's proposal to lower the eligibility cap for standard rates to 100 kW for wind and solar QFs is inconsistent with Oregon law. Although Oregon law does not set a specific eligibility cap for standard rates, it provides sufficient direction for Oregon to go beyond the minimum requirements mandated by federal PURPA law. Under Oregon law, the Commission is charged with implementing policies that will "[i]ncrease the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens" and "[c]reate a settled and uniform institutional climate for qualifying facilities in Oregon."¹ If adopted, Idaho Power's proposal to lower the eligibility cap from 10 MW to 100 kW for wind and solar QFs would decrease rather than increase the marketability of energy produced by QFs in Oregon. It would also give rise to a non-uniform institutional climate. Such a drastic reduction in the size threshold for wind and solar QFs would be inconsistent with Oregon law and should therefore be rejected.

B. The Commission Should Reject Idaho Power's Proposal to Shorten QF Contract Terms.

Idaho Power's proposal to shorten the QF contract term to two years is inconsistent with Oregon law and sound public policy. As explained below, Oregon's PURPA statute requires

¹ ORS § 758.515(3).

utilities to offer twenty-year fixed price contracts. In addition to being inconsistent with Oregon law, Idaho Power’s proposal is problematic from a policy standpoint, as it would deprive Oregon ratepayers of the benefits of a utility portfolio that includes QFs with long-term contracts.

1. Oregon Law Requires Fixed Rates for QFs for At Least 20 Years.

Oregon’s statute implementing PURPA requires utilities to offer fixed price contracts of at least twenty years. Specifically, utilities are required “to prepare, publish and file with the Public Utility Commission” their forecasted avoided cost rates “over at least the next 20 years.”² These prices “shall be reviewed and approved by the commission.”³ Similarly, Oregon law allows a QF to have its avoided cost rates “calculated at the time the legal obligation to purchase the energy or energy and capacity is incurred.”⁴ Thus, Oregon QFs have the right to 20-year contracts with published avoided cost rates set when they sign a contract or commit themselves to sell their power.

The legislative history⁵ surrounding adoption of Oregon’s PURPA statute underscores the statute’s requirement that utilities offer QFs fixed-price contracts of at least 20 years. In connection with the passage of Oregon’s PURPA statute, Representative William Bradbury explained that the Oregon law intentionally included requirements that do not exist under federal PURPA law:

The purpose of the bill is to help small power producers or co-generators market their power at a fair price. Federal law has provided since 1978 that utilities have to pay avoided cost to qualifying facilities. They have to pay the cost they avoid by not having to build another plant but by instead buying the small operators or cogenerators power. There are many changes in the

² ORS § 758.525(1).

³ *Id.*

⁴ ORS § 758.525(2)(a).

⁵ *State v. Gaines*, 346 Or. 160, 172 (Or. 2009) (“[A] party is free to proffer legislative history to the court, and the court will consult it after examining text and context, even if the court does not perceive an ambiguity in the statute’s text, where that legislative history appears useful to the court’s analysis.”).

federal law and there are many court challenges related to federal law. It is the desire of the House to provide a fairly settled climate for the development of this power. Basically this bill requires two things of utilities not presently required under federal law. . . .

The second thing the bill requires that the federal law does not require is that utilities must forecast their avoided cost over a 20 year period. They have to be willing to enter into contract with power producers based on those forecasted avoided costs.^[6]

Thus, Oregon's PURPA statute requires utilities to offer QFs fixed-price contracts with terms of 20 years or more, consistent with their forecasted avoided costs for that time period. Idaho Power's proposal to shorten the QF contract length to 2 years is inconsistent with Oregon law and should be rejected. Instead, the Commission should continue to allow QFs to enter into 20-year contracts and should extend the period for which fixed prices are available from 15 years to 20 years.

2. Shortening the Contract Length Would Deprive Ratepayers of the Benefits of PURPA Projects.

Idaho Power's proposal to shorten the QF contract length is problematic from a policy perspective. The ability to enter into a long-term contract is vital to a QF's ability to obtain the necessary financing in order to proceed to development.⁷ If adopted, Idaho Power's request to drastically shorten the QF contract term would make it extremely difficult for QF projects to obtain the necessary financing.⁸ In addition, Idaho Power's proposal would undercut one of the primary benefits of having PURPA projects as a part of utility portfolios: stable energy prices

⁶ Hearing on HB 2320, Oregon Senate Committee on Energy and Environment, Statement of Representative William Bradbury (June 16, 1983) (emphasis added); *see also* Hearing on HB 2320, Oregon Senate Committee on Energy and Environment, Statement of David Philbrick, ODOE (June 15, 1983) (The provisions in the Bill are generally consistent with federal law. In two areas, HB 2320 goes beyond federal law: *it requires avoided costs to be forecasted and, if desired by the facility owner, obligated under contract for at least the next twenty years*, and it encourages reasonable wheeling policies.) (emphasis added).

⁷ Staff/100, Andrus/11-12.

⁸ *See id.*

for ratepayers that result from having long-term, fixed-price contracts.⁹ Locking in the price of a QF contract over the long term provides ratepayers with rate stability and helps businesses better project their energy costs over a longer period of time.¹⁰ Shortening the contract length to two years, as Idaho Power proposes, would significantly inhibit the development of QF projects, depriving ratepayers of the benefits of a portfolio that includes independently owned generation at a long-term fixed price.

IV. CONCLUSION

For the reasons stated above, the Commission should reject Idaho Power's proposals to lower the size threshold for wind and solar QFs to 100 kW and reduce the QF contract term to 2 years; instead, the Commission should retain the current QF contract term length of 20 years and extend the period for which fixed prices are available from 15 years to 20 years.

RESPECTFULLY SUBMITTED this 12th day of November, 2015.

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⁹ Renewable Energy Coalition/100, Lowe/4, 8-9.

¹⁰ See, e.g., *id.*