BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER THE PUBLIC UTILITY COMMISSION OF OREGON Investigation Into Qualifying Facility Contracting and Pricing	)	CASE NO. UM 1610 COMMENTS IN OBJECTION BY THE COMMUNITY RENEWABLE ENERGY ASSOCIATION

I. INTRODUCTION

The Community Renewable Energy Association ("CREA") respectfully submits these Comments in Objection to approval of Idaho Power Company's Application for Approval of Avoided Cost Rates, Schedule 85, and Standard Contracts in Compliance with Order No. 14-058 ("Compliance Filing"). CREA understands that the Public Utility Commission of Oregon ("OPUC" or "Commission") currently plans to address the Compliance Filing at the public meeting on May 27, 2014 – just a few weeks after the 788 page filing was made. As explained below, CREA objects to use of an unapproved Integrated Resource Plan ("IRP") to calculate the rates, and objects to the capacity component calculation for solar qualifying facilities ("QF"). CREA also objects to Idaho Power's proposed revisions to the standard contract that have no relation to the directives in Order No. 14-058.

CREA therefore recommends that if the Commission is inclined to approve the rates, it should make such approval effective only if and when the Commission approves Idaho Power's 2013 IRP and direct that Idaho Power make a revision to take into account any changes to the capacity component calculation on clarification or reconsideration of Order No. 14-058. CREA further recommends rejection of Idaho Power's proposed standard contract revisions, as

discussed herein.

II. COMMENTS

CREA has concerns with both the rate calculations and the new contract terms contained in Idaho Power's Compliance Filing. These concerns and the limited time for review support suspension of the filing for further investigation, or at a minimum approval that is subject to significant revisions to the rates and contracts.

A. Comments on Avoided Cost Rates

Oregon law requires the Commission to *review* and approve avoided cost rates. The law specifically states "each electric utility shall prepare, publish and file with the Public Utility Commission a schedule of avoided costs . . . . Prices contained in the schedules filed by public utilities shall be reviewed and approved by the commission." ORS 758.525(1). While the Commission set broad policy guidelines in Order No. 14-058, it reviewed no rates. Nor could the Commission or stakeholders possibly conduct an adequate review in the few weeks that have passed since Idaho Power filed its Compliance Filing on April 25, 2014.

Although CREA lacked the time and resources to fully review the inputs and assumptions to Idaho Power's rates, CREA notes that Idaho Power states that it calculated the avoided costs from data contained in its unapproved 2013 IRP. *See Compliance Filing* at 2, lines 22-23. As the Commission recently concluded in suspending PacifiCorp's compliance filing, Idaho Power should not have used data from an *un-approved* IRP. While the proposed updates to the avoided cost rates using the 2013 IRP figures appear to increase the rates for certain resource-types, CREA nevertheless submits that for the sake of consistency these new rates should not go into effect unless and until the 2013 IRP is approved.

Additionally, CREA and other parties filed for clarification/reconsideration of the

calculation of the capacity component of the avoided cost rates, particularly for solar QFs. Staff agreed conceptually that the new capacity calculation needed revision, and no other parties filed a response opposing the motions for clarification/reconsideration. Thus, the capacity component in Idaho Power's rates should be changed to correct the "double discount" for solar QFs, consistent with the outcome of the clarification/reconsideration motions.

B. Standard Contract Revisions

While Order No. 14-058 called for a few limited revisions to the standard contracts, Idaho Power's filing includes several additional revisions to the standard contracts that are beyond the scope of Order No. 14-058. Specifically, Order No. 14-058 requires revision only to the mechanical availability guarantee ("MAG") in Idaho Power's standard contract. Idaho Power's revision to the MAG is not fully compliant. Additionally, CREA urges the Commission to reject Idaho Power's other contract revisions that have no relation to Order No. 14-058.

1. Incomplete Revisions to the MAG terms.

The Commission adopted PacifiCorp's MAG with two modifications. First, the Commission determined that the utility can increase the annual availability requirement to 90% *in contract year three* for new projects and in all years for renewal contracts, whereas PacifiCorp's prior standard contract called for annual availability of 80% in the first year, 85% in the second year, and 87.5% in the third year. Order No. 14-058 at 30. Second, the Commission directed that the MAG allow for 200 hours of planned maintenance per turbine per year, whereas PacifiCorp's prior MAG allowed for 240 hours per turbine per year. *Id.* The Commission further rejected Portland General Electric Company's ("PGE") proposal to penalize failure to meet the MAG with termination of the contract, and requested further comment on the appropriate calculation of replacement damages in Phase 2. *Id.*

Idaho Power's proposed standard contract in its Compliance Filing is non-compliant because it does not use the same language used in PacifiCorp's standard contract. *See, e.g., Compliance Filing*, "Oregon Standard Energy Sales Agreement for Intermittent Resource – Redline Format," at §§ 1.10, 1.24, 1.40, 1.42, 6.4, 7.4, 7.5, and 7.6. Using a different MAG than PacifiCorp increases the burden on the Commission and stakeholders to review each different utility's standard contracts. The Commission should require the same language in each utility's contract on the MAG to ensure that an onerous and project-stopping clause – such as PGE's right to terminate for falling below a 95% guarantee – does not become a "standard" and non-removable term of any utility's standard contract. Aside from not mirroring the language in PacifiCorp's MAG, Idaho Power's proposed MAG sets the availability guarantee at 90% in years one and two, whereas the Commission directed that the availability guarantee be 80% in year one and 85% in year two. *See id.* at § 6.4.

CREA has reviewed PacifiCorp's revisions to the MAG in its Advice No. 14-007, and (unlike many other elements of PacifiCorp's filing) the MAG revision is consistent with Order No. 14-058. To ease the burden on the Commission and the parties, the Commission should simply direct that all three utilities use the same language as exists in PacifiCorp's Advice No. 14-007 for the MAG. Alternatively, if the Commission allows Idaho Power to use distinct language from PacifiCorp's MAG, the Commission should direct that Idaho Power correct the availability requirement in years one and two for new projects as noted above.

2. Impermissible and unsupported revisions.

In addition to revising the MAG, Idaho Power completely re-wrote its standard contract to include extensive revisions with no relation to Order No. 14-058. The Compliance Filing contains no testimony or discussion of these revisions. Without reviewing the contracts in detail,

nobody would even know Idaho Power proposed these extensive revisions. The Commission should reject *all* of these revisions as unsupported and beyond the scope of Order No. 14-058. Some of these clauses address issues already noticed for inclusion in Phase 2 of docket UM 1610, but Idaho Power has already included its chosen resolution of the issue in its proposed standard contract. Additionally, a preliminary review of some of these new contract provisions indicates they are unfair to QFs and contradictory to existing Commission orders. To demonstrate, just a few of the proposed changes are discussed below.

a. Changes to default security options.

In docket UM 1129, the Commission determined to require "a QF unable to satisfy credit rating requirements to provide a reasonable amount of default security by one of the following means, *selected at the QF's discretion:* senior lien, *step-in rights,* a cash escrow or a line of credit." Order No. 05-584 at 45 (emphasis added). The Commission did not change this directive in any subsequent orders, including Order No. 14-058. Yet Idaho Power's Compliance Filing eliminates step-in rights as an option for the QF. *See, e.g., Compliance Filing,* "Oregon Standard Energy Sales Agreement for Intermittent Resource – Redline Format," at §§ 1.29 (deleted), 4.1.7. This change is unwarranted and unsupported. It should be rejected as non-compliant.

Idaho Power also re-wrote the definition of "Default Security" in a manner that will significantly increase the amount of liquid default security a QF must post. *Id.* at § 1.6. This was yet another issue that was not addressed in Order No. 14-058. The change is unexplained and unwarranted.

b. Reduction in payment during start-up testing.

Idaho Power proposed to materially reduce compensation to QFs during start-up testing,

in the period prior to full commercial operation. During that period, Idaho Power's currently approved standard contract provides QFs with payment at a market price for non-firm energy and relies on the non-firm Mid-Columbia market index price set by the Dow Jones index. The Compliance Filing proposes adopting the firm Mid-Columbia "Avg" index prices posted by Inter-Continental Exchange index ("ICE"), with a discount of 82.4% to reduce the firm price to a price that is non-firm. *See Compliance Filing*, "Oregon Standard Energy Sales Agreement for Intermittent Resource – Redline Format," at § 1.26. This limited change alone is not necessarily objectionable because 82.4% of the firm ICE index rate is roughly proportional to the no-longer-available non-firm Dow Jones rate in Idaho Power's existing standard contract. However, Idaho Power's proposed revisions then implement a further unexplained discount of 85% of the value equal to the non-firm valuation. *Id*. at § 7.2.

While CREA would support replacing the Dow Jones non-firm index with the ICE index, CREA objects to the unexplained further discount that would result in payment at 85% of a non-firm rate. Additionally, CREA notes that PacifiCorp's similar contract provisions compensate the QF at 93% of the firm ICE index – not at 85% of an amount equal to 82.4% of the firm ICE index as Idaho Power proposes. Idaho Power's proposed change is unsupported and should be rejected or revised.

c. Network Resource Requirements

Idaho Power also inserted new procedural steps into the contracting process by requiring the QF to progress through Idaho Power's own internal designation of the resource as a network resource. Idaho Power appears to propose that the QF must pay for network resource designation and network transmission upgrades as part of the generator interconnection procedures ("GIA"). *See Compliance Filing*, "Oregon Standard Energy Sales Agreement for

Intermittent Resource – Redline Format," at § 4.1.6, 24.1, and Appendix B.7.

Idaho Power's proposal is inconsistent with FERC orders that establish the QF is not responsible for transmission once the QF power reaches the purchasing utility's system. FERC has explained:

> (1) the QF's obligation to the purchasing utility is limited to delivering energy to the point of interconnection by the QF with that purchasing utility; (2) the QF is not required to obtain transmission service, either for itself or on behalf of the purchasing utility, in order to deliver its energy from the point of interconnection with the purchasing utility to the purchasing utility's load; and (3) the purchasing utility cannot curtail the QF's energy as if the QF were taking non-firm transmission service on the purchasing utility's system.

Pioneer Wind Park I, LLC, 145 FERC ¶ 61,215, P 38 (2013) (footnotes omitted). Idaho Power must obtain network transmission rights for all of its generation resources, not just QFs. The QF has no control over that process or how Idaho Power determines to move power around on its own system, and the QF should not be charged for anything associated with that process. Nor should the process delay a QF's efforts to sign a contract or achieve online status.

d. New curtailment rights

Idaho Power has also proposed to revise the curtailment provisions of the standard contract. FERC's PURPA regulations permit a purchasing utility to curtail a QF's output sold under a long-term contract only in system emergencies, and not for economic reasons pursuant to 18 C.F.R. § 292.304(f), which applies only if the QF is selling its output on a non-contractual or "as available" basis. *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 36. The approved standard contract already includes provisions consistent with PURPA that allow Idaho Power to curtail only for purposes of system emergencies. Yet Idaho Power proposes to insert language into the standard contract that provides Idaho Power with *additional curtailment rights* "[i]f interruption of deliveries is allowed by Section 210 of the Public Utility Regulatory Policies Act

of 1978 and 18 CFR § 292.304." *Compliance Filing*, "Oregon Standard Energy Sales Agreement for Intermittent Resource – Redline Format," at § 11.2(b).

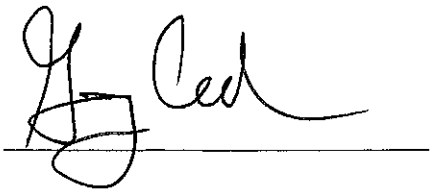
Idaho Power's proposed language appears to be an attempt to provide itself with economic curtailment rights under Section 292.304(f), even for QFs with long-term contracts. Idaho Power made a similar attempt in Idaho, and FERC directly rejected Idaho Power's arguments. *Idaho Wind Partners 1, LLC*, 140 FERC ¶ 61,219 (2012), *order on reh'g*, 143 FERC ¶ 61,248 (2013). Including Idaho Power's proposed language in the standard contract is likely to frustrate the efforts of QFs to finance and construct projects because it will concern lenders to have unnecessary and confusing terms in the contract regarding curtailment. The revised curtailment rights in the Compliance Filing should be rejected.

III. CONCLUSION

If the Commission is inclined to approve Idaho Power's rates, it should make such approval effective at the time the Commission approves Idaho Power's IRP and subject to revision to take into account any changes to the capacity component calculation on clarification or reconsideration of Order No. 14-058. Additionally, the Commission should require Idaho Power to remove the proposed revisions to the standard contract that are unrelated to the changes mandated in Order No. 14-058, as described in these Comments in Opposition.

RESPECTFULLY SUBMITTED this 19th day of May 2014.

RICHARDSON ADAMS, PLLC



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of May, 2014, a true and correct copy of the within and foregoing **COMMUNITY RENEWABLE ENERGY ASSOCIATION'S COMMENTS IN OBJECTION TO IDAHO POWER'S APPLICATION** was served as shown to:

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