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 PREHEARING LEGAL BRIEF OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION

I. INTRODUCTION

The Community Renewable Energy Association ("CREA") hereby respectfully submits this prehearing legal brief to the Public Utility Commission of Oregon ("OPUC"). Pursuant to Administrative Law Judge Pines' direction, this brief concisely summarizes CREA's position.

II. BACKGROUND

Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA") "seeks to *encourage* the development of cogeneration and small power production facilities." *FERC v. Mississippi*, 456 U.S. 742, 750 (1982) (emphasis added); 16 U.S.C. § 824a-3(a). Congress found this to be necessary because "traditional electricity utilities were reluctant to purchase power from, and to sell power to, the nontraditional facilities." *Mississippi*, 456 U.S. at 750. Congress further determined these facilities need to be *encouraged* because "cogenerators and small power producers are different from electric utilities*, not being guaranteed a rate of return on their activities generally* or on the activities vis-a-vis the sale of power to the utility *and whose risk in proceeding forward in the cogeneration or small power production enterprise is not guaranteed to be recoverable*." *Amer. Paper Institute, Inc. v. Amer. Elect. Power Serv. Corp.*, 461 U.S. 402, 414 (1983) (internal quotation omitted) (emphasis added). The law directs the Federal Energy

Regulatory Commission ("FERC") to establish regulations to implement the requirement that electric utilities must purchase power from qualifying facilities ("QFs"). 16 U.S.C. § 824a-3(a)(1). In turn, PURPA requires state regulatory authorities to implement FERC's regulations. *Mississippi*, 456 U.S. at 751; 16 U.S.C. § 824a-3(f).

Oregon law itself declares that it is "the policy of the State of Oregon to . . . [i]ncrease the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens" and to "[c]reate a settled and uniform institutional climate for qualifying facilities in Oregon." ORS 758.515(3). More recently, Oregon enacted its renewable portfolio standard ("RPS"), which requires utilities to obtain a certain percentage of their load requirements with specified "renewable energy sources." ORS 469A.005-300. The RPS further provides, "The Legislative Assembly finds that community-based renewable energy projects . . . are an essential element of Oregon's energy future." ORS 469A.210. The RPS therefore "declares that it is the goal of the State of Oregon that by 2025 at least eight percent of Oregon's retail electrical load comes from small-scale renewable energy projects with a generating capacity of 20 megawatts or less." *Id.* The law even mandates that all executive department agencies, including the OPUC, "*shall* establish policies and procedures promoting the [eight percent] goal declared in this section." *Id.* (emphasis added).

III. ARGUMENT

The OPUC must require Oregon utilities to purchase QF output at the purchasing utility's *full* avoided costs. *See Amer. Paper Institute, Inc.*, 461 U.S. at 417-18; *see also Small Power Prod. and Cogeneration Facilities; Regulations Implementing Sec. 210 of the Pub. Util. Reg. Pol. Act of 1978*, Order No. 69, 45 Fed. Reg. 12,214, 12,222-12,223 (Feb. 25, 1980) (directly

rejecting proposals to provide less than the *full* avoided cost). Yet, several utility proposals in this proceeding would provide utilities, which are *reluctant to purchase* QF output, with the unchecked ability to discount rates paid through individual negotiation of rates and terms for very small projects. Idaho Power best exemplifies the intent of the utilities' proposals with its suggestion that the OPUC should not "focus on encouraging the development of renewable resources." Idaho Power/400, Stokes/6. To the contrary, the OPUC should do everything within its power to *encourage* QF development because federal and state law mandates that it do so.

A. ISSUE 1. AVOIDED COST PRICE CALCULATIONS

Issue 1. A. What is the most appropriate methodology for calculating avoided cost prices?

i. Should the Commission retain the current method based on the cost of the next avoidable resource identified in the company's current IRP, allow an "IRP" method-based on computerized grid modeling, or allow some other method?

The OPUC should retain the current method for calculating standard rates based upon the avoided energy and capacity costs for the next avoidable resource in the IRP. CREA/200, Reading/2-9. The OPUC should reject proposals to adopt a computerized grid modeling methodology for calculating standard (for projects under 10 MW) or non-standard (for projects over 10 MW) avoided cost rates. In the words of the OPUC's Staff, "model-based approaches are not transparent to the QF developers and their lenders[,]" and "the results remain only as accurate as the forecasts and other inputs." Staff/100, Bless/9. It is especially important not to adopt a model based approach for small QFs under 10 MW because they will lack the resources to negotiate complex modeling and inputs with a utility. *See* CREA/100, Hilderbrand/11-12.

Even if the OPUC adopts a modeling method for non-standard rates, the OPUC should

reject Idaho Power's "single run" methodology. CREA/200, Reading/4-7. This methodology pretends that, unlike utility-owned plants, QF output cannot support off-system sales and thereby "ignores the full value QFs contribute." CREA/200, Reading/5. Thus QFs ineligible for standard rates "would not only need to negotiate rates with the utility, but they would also be guaranteed a rate that does not pay the full avoided costs." CREA/200, Reading/7; *see also* Staff/200, Bless/12 (agreeing with CREA on this point).

ii. Should the methodology be the same for all three electric utilities operating in Oregon?

CREA generally supports using the same methodology for all three Oregon utilities. This would allow for simplicity and ease of review. However, if Idaho Power is permitted to have a different method for consistency with Idaho rules, Idaho Power's proposals should not apply to Portland General Electric Company ("PGE") and PacifiCorp. CREA/200, Reading/9.

Issue 1. B. Should QFs have the option to elect avoided cost prices that are levelized or partially levelized?

The OPUC should provide QFs the option to elect levelized pricing. *See* CREA/200, Reading/9-12; CREA/400, Hilderbrand/1-4. Unlike when this issue was raised but not addressed in 2005, sufficiency periods proposed at this time would extend up to six years in length and include prices that are at times *zero* or *even negative*. CREA/400, Hilderbrand/2. Because lenders require QFs to meet strict debt coverage ratios even in the early years of a project, these proposed sufficiency periods "will most likely stop any small community QF projects in Oregon – unless there is the option for levelized pricing." CREA/400, Hilderbrand/4. FERC specifically recognized this potential problem when it first promulgated its avoided cost rules, and specifically endorsed the use of levelized pricing "to match more closely the schedule of debt

service of the facility." Order No. 69, 45 Fed. Reg. at 12,224. "During periods with a lengthy surplus period, levelization would allow QFs to build smaller increments of capacity on the system during that surplus period while leaving ratepayers indifferent over the life of the contract." CREA/200, Reading/12.

Issue 1. C. Should QFs seeking renewal of a standard contract during a utility's sufficiency period be given an option to receive an avoided cost price for energy delivered during the sufficiency period that is different than the market price?

The OPUC should allow QFs renewing a contract to receive the full deficiency period rates in a follow-on contract. CREA/200, Reading/13. "An existing QF's capacity would have already been included in the utility's load and resource balance and could not be considered surplus power." *Id.* (quoting the Idaho PUC). Even Idaho Power implicitly agrees with the merit of this proposal by supporting its use for Idaho Power, despite not supporting several other IPUC policies. Idaho Power/400, Stokes/24; *see also* CREA/200, Reading/12.

Issue 1. D. Should the Commission eliminate unused pricing options?

CREA supports removal of the schedules for the gas market and banded gas market indexed options, so long as these options are available by request. CREA/200, Reading/13-14.

B. ISSUE 2. RENEWABLE AVOIDED COST PRICE CALCULATION

Issue 2. A. Should there be different avoided cost prices for different renewable generation sources? (for example different avoided cost prices for intermittent vs. base load renewables; different avoided cost prices for different technologies, such as solar, wind, geothermal, hydro, and biomass.)

The renewable avoided cost rates should be adjusted upwards during the deficiency period to compensate those renewable QFs who allow the utility to partially or fully avoid the costs of integrating renewable power from the avoided large utility wind plant. CREA/300, Svendsen/3-7. PacifiCorp's proposal to not to make an upward adjustment would be an illegal

failure to compensate renewable QFs for the full avoided costs. *See* CREA/302. An upward adjustment should apply to baseload QFs, solar QFs, and even wind QFs that are too small to impose significant integration costs or that contract with a third party or a transmission provider to integrate their output prior to delivery to the utility. CREA/300, Svendsen/5-7.

Issue 2. B. How should environmental attributes be defined for purposes of PURPA transactions?

The definition should specify that the renewable QF conveys RECs necessary for compliance with Oregon's RPS during the deficiency period, but retains any remaining environmental attributes such as greenhouse gas offsets. CREA/300, Svendsen/7-11. At all other times, QF contracts should specify that the QF retains all environmental attributes. *Id.* PGE and PacifiCorp do not dispute this approach. *See* PAC/400, Griswold/2; PGE/300, Macfarlane-Morton/2.

Issue 2. C. Should the Commission amend OAR 860-022-0075, which specifies that the non-energy attributes of energy generated by the QF remain with the QF unless different treatment is specified by contract?

The OPUC need not amend the regulation. Renewable QF contracts can require the renewable QF to convey RECs to the utility, and QFs choosing to sell at the non-renewable rates should continue to retain all environmental attributes. CREA/300, Svendsen/11-12. PGE and PacifiCorp agree. *See* PAC/400, Griswold/2; PGE/300, Macfarlane-Morton/2. There is no basis for Idaho Power's proposal to require QFs to cede their RECs to obtain non-renewable avoided cost rates because those rates do not compensate QFs for RECs. *See Morgantown Energy Assoc.*, 140 FERC ¶ 61,223, at P 24 (2012), *deny'g recon.*; *In Re Rulemaking to Adopt and Amend Rules Related to Ownership of the Non-energy Attributes of Renewable Energy (Green Tags), Energy Service Supplier Certification Requirements, and Use of Terms "Electric Utility"*

and "Electric Company," Oregon PUC Case No. AR 495, Order No. 05-1229, at 8 (2005).

C. ISSUE 3. SCHEDULE FOR AVOIDED COST PRICE UPDATES

Issue 3. A. Should the Commission revise the current schedule of updates at least every two years and within 30 days of each IRP acknowledgement?

Generally speaking, the utilities control the filing of any price updates, and the OPUC should therefore ensure that whatever schedule is adopted is fair and predictable to create a "settled and uniform climate" for QFs. *See* ORS 758.515(3); CREA/100, Hilderbrand/7-11. CREA supports proposals to supplement the full updates occurring after IRP acknowledgement with an annual update limited to gas prices, market prices, new loads and contracts in excess of four years, *and* the status of production tax credit. CREA/400, Hilderbrand/4; Staff/200, Bless/23; One Energy/200, Eddie/5. This is fair and predictable.

Issue 3. B. Should the Commission specify criteria to determine whether and when mid-cycle updates are appropriate?

The OPUC should specify transparent criteria of a year from the last update or a set date each year to provide predictability. *See* CREA/400, Hilderbrand/4; Staff/200, Bless/23.

Issue 3. C. Should the Commission specify what factors can be updated in mid-cycle? (such as factors including but not limited to gas price or status of production tax credit.)

CREA's position is set forth above in Issue 3.A.

Issue 3. D. To what extent (if any) can data from IRPs that are in late stages of review and whose acknowledgement is pending be factored into the calculation of avoided cost prices?

CREA agrees with Staff that the OPUC should only allow for use of acknowledged IRPs or *acknowledged* IRP updates. *See* Staff/200, Bless/23.

Issue 3. E. Are there circumstances under which the Renewable Portfolio Implementation Plan should be used in lieu of the acknowledged IRP for purposes of

determining renewable resource sufficiency?

CREA has no specific position on this issue.

D. ISSUE 4. PRICE ADJUSTMENT FOR SPECIFIC QF CHARACTERISTICS

Issue 4. A. Should the costs associated with integration of intermittent resources (both avoided and incurred) be included in the calculation of avoided cost prices or otherwise be accounted for in the standard contract? If so, what is the appropriate methodology?

Small QFs (under 10 MW) should not have avoided cost rates reduced for integration because they do not impose the same integration costs as a large utility wind plant. *See* CREA/200, Reading/14-17. At least one Northwest utility that has studied the issue has concluded that smaller, dispersed projects impose lower wind integration costs on a utility. CREA/200, Reading/16. The utilities are unable to provide a study concluding to the contrary.

In the alternative, if the OPUC implements an integration charge for small QFs, the OPUC can only ensure that small QFs are compensated at the *full* avoided costs by implementing upward adjustments to the standard rates to fully account for many benefits small QFs provide (discussed below in Issues 4 B. and C.). The problem with the proposal to isolate and apply wind integration charges to small QFs is that it cuts against the framework established in UM 1129. *See, e.g., In Re Staff's Investigation Related to Electric Utility Purchases from Qualifying Facilities*, OPUC Docket No. UM 1129, Order No. 05-584, 38-39 (2005). There, the OPUC consciously chose to calculate rates in the aggregate and overlook granular individual costs *as well as benefits* of small QFs. *Id.* Thus the OPUC's standard rates fail to account for many characteristics that would <u>*increase*</u> avoided cost rates for small projects. *See, e.g.,* CREA/200, Reading/14-16, 23-28; CREA/300, Svendsen/14-17; One Energy/200, Eddie/1-2.

Furthermore, any integration charge should not apply to solar QFs. RNP/100, Lindsay/8-

9. It should also be reduced for partially or fully integrated wind deliveries to provide small wind QFs with the opportunity to secure balancing services from third parties in a more cost effective manner than the utilities may estimate in avoided cost rate calculations. *See* CREA/200, Reading/16-17; CREA/300, Svendsen/5.

CREA strongly opposes, however, any proposal that any QF *must* secure wind balancing services from its balancing authority area ("BAA") to be entitled to a PURPA contract, as Staff proposed in its opening testimony. Staff/100, Bless/27. Such a requirement may defeat a QF's federal right to sell power because the QF cannot always secure such services. CREA/400, Hilderbrand//6-7. This would also violate PURPA because a utility may not require QFs delivering "non-firm" wind output to "firm" their output as a precondition to receive a contract containing fixed, long-term rates. *See Exelon Wind 1, LLC v. Smitherman*, Case No. A-09-CA-917-SS, 2012 Westlaw 4465607 at * 8 (W.D. Tex. Sept. 25, 2012), *appeal pending*.

Staff's revised proposal is still flawed because it appears to adjust avoided cost rates downward even if the wind QF purchases integration services from a third party, such as its BAA, and thus delivers a balanced product. Staff/200, Bless/14; Staff/202, Bless/2. It also focuses on charges the BAA would assess to the off-system QF, which are irrelevant to the purchasing utility's avoided costs. If wind integration will apply to standard contracts, the OPUC should use the approach adopted in UM 1129 for large QFs. CREA/400, Hilderbrand/7. Large QFs have the option of using the purchasing utility's estimated wind integration costs as a reduction to the avoided cost rates, *or* agree in the contract to secure such services from a third party and receive no reduction to the avoided cost rates. *Id*.

Finally, PURPA prohibits implementation of any integration charge for any small QF

with an existing legally enforceable obligation. 16 U.S.C. § 824a-3(e). "Congress did not intend to impose traditional ratemaking concepts on sales by qualifying facilities to utilities." *Amer. Paper Institute, Inc.*, 461 U.S. at 414. Thus the rates in a QF's long-term PPA are not subject to later revision for changed circumstances – such as increased wind integration costs. *See Or. Trail Elec. Consumers Co-op, Inc. v. Co-Gen Co.*, 7 P.3d 594, 604-06 (Or. App. 2000).

Issue 4. B. Should the costs or benefits associated with third party transmission be included in the calculation of avoided cost prices or otherwise accounted for in the standard contract?

For PGE and PacifiCorp, the avoided cost rate calculation should include an avoided transmission cost adder. CREA/200, Reading/17-20; CREA/300, Svendsen/12-15. FERC has expressly declared that a state commission may include the costs of avoided transmission in calculation of the avoided cost rates. *Calif. Pub. Util. Commn.*, 133 FERC ¶ 61,059, P 31 (2010). The OPUC's policy for small QFs is to require the QF to pay for all interconnection and transmission costs to the utility's system, and even any network upgrades to get the output to the utility's load. *See* OAR 860-0082-0035(4). Worse yet, PacifiCorp even proposes to assign third-party transmission costs to move QF output between PacifiCorp's "load pockets," which according to PacifiCorp includes its entire Oregon system. *See* CREA/200, Reading/18-20.[1] The utility thereby avoids transmission costs associated with its avoided generation resource.

PGE implicitly agrees by already including a transmission component in its avoided cost rates, but PGE's estimate is unrealistically low. CREA/300, Svendsen/14-15. PacifiCorp includes *no* transmission cost adder, even though its conventional and renewable plants will need third-party transmission or upgrades to PacifiCorp's own system. *Id.*; *see also* CREA/200,

[1] CREA stands by, and incorporates by reference, its legal briefing on PacifiCorp's "load pocket" issue, filed in UE 235 on November 17, 2011.

Reading/17-20; CREA/202. The OPUC should require both PGE and PacifiCorp to include reasonable transmission cost assumption in calculation of the avoided cost rates to ensure that the utilities compensate QFs for the *full* avoided costs.

Issue 4. C. How should the seven factors of 18 CFR § 292.304(e)(2) be taken into account?

For standard rates, the OPUC should apply the seven factors in the aggregate and should include reasonable adders for all components of the applicable avoided resource and deferral of "lumpy" utility investments. CREA/200, Reading/20-28; CREA/300, Svendsen/15-17. FERC's regulation allows for consideration of these factors in the aggregate and to the extent practicable. *See* 18 C.F.R. § 292.304(e)(2)(vi). Utility complaints that Oregon QFs are not "dispatchable" are wholly unfounded because the Oregon avoided cost rates *do not pay QFs to be dispatchable*. *See* CREA/200, Reading/22. Furthermore, the utilities are *not* including proper assumptions for avoided transmission, avoided gas transportation and storage, avoided costs associated with deferring large utility investments, or avoided line losses for very small QFs (under 3 MW). CREA/200, Reading/17-20, 23-28; CREA/300, Svendsen/14-18; ODOE/400, Carver/6.

The OPUC Staff has proposed to differentiate the capacity component of rates for small QFs. CREA opposes this proposal because of the complexity it inserts into calculation of standard rates. CREA/400, Hilderbrand/6; CREA/200, Reading/4. If the OPUC adopts this proposal, CREA supports use of the Effective Load Carrying Capability ("ELCC") method to ensure the avoided cost rates fully account for QF capacity. ODOE/100, Carver/7-8. Finally, as with implementation of a wind integration charge, implementation of a capacity component to small QFs will result in under-compensation to small QFs if the OPUC does not also require the utilities to fully account for the avoided costs small projects provide in the aggregate.

E. ISSUE 5. ELIGIBILITY ISSUES

Issue 5. A. Should the Commission change the 10 MW cap for the standard contract?

The OPUC should reject proposals to lower the eligibility cap. CREA/100, Hilderbrand/11-13; CREA/200, Reading/28-30. The OPUC's 10-MW cap is entirely consistent with federal law and with the mandates that the OPUC "[i]ncrease the marketability of" QF energy and "[c]reate a settled and uniform institutional climate" for QFs. ORS 758.515(3). Lowering the cap would undermine QF development in Oregon. *See* ODOE/500, Elliott/3 (noting that several QFs under 10 MW funded by ODOE have unequivocally stated that they would not have built their QFs without standard contracts). Furthermore, the OPUC would fail to be implementing policies to ensure that Oregon meets eight percent of its electricity needs from small projects under 20 MW if it were to lower the cap. *See* CREA/100, Hilderbrand/5-7.

Issue 5. B. What should be the criteria to determine whether a QF is a "single QF" for purposes of eligibility for the standard contract?

The OPUC should reject proposals to eliminate the passive investor exception in the Partial Stipulation because passive investors are an important component of community renewable energy projects. *See* CREA/100, Hilderbrand/13-16; *see also* PacifiCorp/202 (containing the Partial Stipulation). Idaho Power itself admits that the OPUC's five-mile separation rule largely mitigates the risk of widespread disaggregation. Idaho Power/200, Stokes/62 n.54. If the OPUC is concerned, any existing loophole could be closed by utilizing the Internal Revenue Service's ("IRS") definition of "passive investor." *See* CREA/400, Hilderbrand/9. Under IRS rules, a passive investor may not "materially participate" by way of involvement in the operations of the activity that is regular, continuous, and substantial. 26 U.S.C. § 469(c), (h)(1). Inserting this language into the Partial Stipulation would prevent a

single entity from owning and operating more than one small QF within five miles of another, while still preserving the ability of more than one community-scale project to use the same passive investor. CREA remains willing to work with other parties to draft appropriate language.

Issue 5. C. Should the resource technology affect the size of the cap for the standard contract cap or the criteria for determining whether a QF is a "single QF"?

Resource technology should not affect the size or criteria for the cap for the reasons stated above in Issue 5. B.

Issue 5. D. Can a QF receive Oregon's Renewable avoided cost price if the QF owner will sell the RECs in another state?

A renewable QF should retain the right to dispose of its RECs in another state during the sufficiency period. CREA/100, Hilderbrand/17; PGE/400, Macfarlane-Morton/4.

F. ISSUE 6. CONTRACTING ISSUES

Issue 6. B. When is there a legally enforceable obligation?

The OPUC should adopt a rule whereby QFs create a legally enforceable obligation ("LEO") by negotiating to a point of disagreement and then requesting that a utility file a disputed contract unexecuted with the OPUC for resolution. *See* CREA/100, Hilderbrand/18-19. This is the FERC policy for interconnection agreements that appropriately recognizes the parties may reach an impasse, and allows for preservation of the queue position by filing the utility's proposed agreement unexecuted for resolution of disputed issues. *Standardization of Generator Interconnection Agreements and Proc.*, Order No. 2003,104 FERC ¶ 61,103, P 240 (2003).

The OPUC's existing administrative rule is illegal because it requires the utility's written agreement to create a LEO. *See* OAR 860-029-0010(29). FERC has emphasized that "the phrase legally enforceable obligation is broader than simply a contract between an electric utility

and a QF and that the phrase is used to prevent an electric utility from avoiding its PURPA obligations by refusing to sign a contract, or . . . delaying the signing of a contract, so that a later and lower avoided cost is applicable." *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006, at P 36 (2011); *see also Grouse Creek Wind Park, LLC*, 142 FERC ¶ 61,187, at P 40 (2013). "[I]f the electric utility refuses to sign a contract, the QF may seek state regulatory authority assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a noncontractual, but still legally enforceable, obligation will be created pursuant to the state's implementation of PURPA." *JD Wind 1, LLC*, 129 FERC ¶ 61,148, at P 25 (2009). Proposals to require a QF to *obtain and accept* a utility's final draft PPA fail because they place creation of the LEO in control of the utility. In contrast, an unexecuted filing rule places control in the hands of the QF and is FERC's own solution for analogous disputes over interconnections.

Finally, the OPUC should reject PGE's proposed rule that QFs be online within one year of forming a LEO because this would require many, or even most, QFs to commence construction prior to financing. CREA/100, Hilderbrand/19-20; CREA/200, Reading/31-35. This proposal, if adopted, would discourage QF development – especially for small projects.

Issue 6. E. How should contracts address mechanical availability?

PacifiCorp's proposed mechanical availability guarantee ("MAG") should apply to all three utilities. *See* CREA/100, Hilderbrand/20-29. PGE's existing MAG in the single PPA it has executed with PaTu Wind Farm, LLC ("PaTu") is commercially unreasonable and would even allow PGE to evade its mandatory purchase obligation by terminating PaTu's PPA for failure to achieve the onerous MAG in any single year. CREA/100, Hilderbrand/22-29. ODOE has even indicated that termination provisions will preclude it from financing QFs, ODOE/200, Elliott/6,

and PGE itself proposes to move to a liquidated damages remedy unless the shortfall is severe or repeated. PGE/300, Macfarlane-Morton/23. The OPUC should direct PGE to renegotiate the PaTu MAG, or at least inform PGE that it would not be penalized in a rate recovery proceeding for agreeing to a more reasonable requirement for PaTu.

Issue 6. I. What is the appropriate contract term? What is the appropriate duration for the fixed price portion of the contract?

The OPUC should not reduce the fixed-rate term to less than fifteen years, particularly since sufficiency periods can be up to six years in length. CREA/400, Hilderbrand/2-3. Instead, the OPUC should extend the fixed-rate term to twenty years or longer, especially for very small QFs. CREA/100, Hilderbrand/30; CREA/200, Reading/35-36; OneEnergy/200, Eddie/21-23 (concluding 25-year fixed rate may be necessary for financing of solar projects under 3 MW).

IV. CONCLUSION

CREA respectfully requests that the OPUC adopt the policies recommended herein.

RESPECTFULLY SUBMITTED this 20th day of May 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of May, 2013, a true and correct copy of the within and foregoing **PREHEARING LEGAL BRIEF OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION** was served as shown to:

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