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July 17, 2015

VIA EMAIL

ATTN: PUC Filing Center
Public Utility Commission of Oregon
550 Capitol Street NE, Suite 215
P.O. Box 1088
Salem, OR 97308-1088

Re: Reply of Gardner Capital Solar Development, LLC to Idaho Power Company's Motion for Clarification
(UM 1725 Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Change, and for Change in Resource Sufficiency Determination.)

Attention Filing Center:

Enclosed for filing, please find Gardner Capital Solar Development, LLC's ("Gardner Solar") Reply to the Motion for Clarification presented by Idaho Power Company. Gardner Solar is filing its Reply pursuant to Administrative Law Judge Allan J. Arlow's July 17, 2015 ruling granting Gardner Solar's emergency motion to extend the time to file its Reply.

Gardner Solar notes that prior to making this filing, earlier today it polled all the parties in UM 1725 as to whether they objected to Gardner Solar filing an additional motion for late filing in order to submit its Reply. No objections were raised by Idaho Power Company, Portland General Electric Company, the Community Renewable Energy Association, Obsidian Renewables, LLC, the Renewable Energy Coalition, the Oregon Department of Energy, Pacific Power, Commission Staff, and Pacific Northwest Solar, LLC. And while we have not yet heard back from Cypress Creek Renewables, LLC, given that yesterday's motion to extend the time for filing was granted, we are filing our Reply now.

If you have questions regarding this filing, please contact me at the address and phone number above or at tmullooly@foley.com.

Sincerely,

Thomas McCann Mullooly
Thomas McCann Mullooly

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Washington, D.C. 20007

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

UM 1725

In the Matter of	)	
	)	
IDAHO POWER COMPANY	)	
	)	**GARDNER CAPITAL SOLAR**
Application to Lower Standard Contract	)	**DEVELOPMENT, LLC'S REPLY TO**
Eligibility Cap and to Reduce the Standard	)	**IDAHO POWER COMPANY'S**
Contract Term, for Approval of Solar	)	**MOTION FOR CLARIFICATION**
Integration Change, and for Change in	)	
Resource Sufficiency Determination.	)	

INTRODUCTION

Pursuant to the Administrative Law Judge's ("ALJ") ruling of July 9, 2015, Gardner Capital Solar Development, LLC ("Gardner Solar") provides this Reply to the Motion for Clarification presented by Idaho Power Company ("Idaho Power"). The Motion seeks a declaration that solar qualifying facilities ("QF") that submitted ESA requests to Idaho Power between April 24 and June 24, 2015, are not eligible for standard contracts at the pre-June 24 rates and that, instead, such projects have no eligibility at all for standard contracts. The Motion requests that the Commission order that such projects either seek a negotiated rate ESA or that the projects be withdrawn in favor of new requests for projects sized at 3 MW or lower.

Gardner Solar concurs that a clarification order is appropriate from the Commission. Such an order should clearly state the Commission's directives regarding three categories of projects:

(1) projects submitted prior to April 24, 2015;

(2) projects submitted between April 24 and June 24, 2015; and

(3) projects submitted after June 24, 2015.

For category 1, Gardner Solar requests Commission clarification that these pre-April 24, 2015 projects are eligible for standard contracts at the prior pricing. **For category 2**, Gardner Solar requests Commission clarification the projects submitted between April 24 and June 24, 2015, be allowed, at the option of the applicant, to downsize to meet the 3 MW size limit and enter into standard contracts subject to post-June 24 pricing without submission of a new request; Gardner Solar concurs with Idaho Power that, to the extent such projects wish to remain above the 3 MW limit, they would be eligible to enter into negotiated rate contracts with Idaho Power at their current size. **For category 3**, Gardner Solar suggests a restatement of the Commission's decision that standard contracts for post-June 24, 2015 projects would be subject to a 3 MW limitation and post-June 24 pricing.

In addition, Idaho Power requested a clarification regarding the solar integration charge issue being considered in this docket. Gardner Solar believes that the issue would be more appropriately handled in UM 1610 as suggested in the initial Order.

DISCUSSION

Gardner Solar generally agrees—with one reservation—with Idaho Power's statement that the "spirit of the Commission's ruling in Order 15-199 was to accommodate the reasonable expectations of QF developers prior to the Motion to Stay while at the same time protecting Idaho Power's customers from assuming new long-term contracts at the old [inflated][1] rates." The Commission primarily accomplished this objective by drawing a line in the sand at April 24, 2015, the day Idaho Power filed its Motion for Stay, and determined that projects submitted before that date had reasonable expectations that differ significantly from projects submitted after that date.

[1] Gardner Solar disputes that use of the term "inflated" in this statement. Such rates have been thoroughly vetted, examined and approved by the Commission, and while after June 24 they should be considered out of date, it is inappropriate to term them inflated.

A clarification order from the Commission would be appropriate to further the spirit of the Commission's ruling. While Idaho Power seeks clarification only on the category 2 interim period between April 24 and June 24, 2015, it would be appropriate and helpful to the industry for the Commission to clarify its ruling regarding each of the three periods. Gardner Solar will consider each period in turn.

I. Pre-April 24, 2015 ESA Requests

By drawing a line in the sand at April 24, 2015, the day Idaho Power filed the Motion to Stay its obligations under its tariff, the Commission responded to the concerns identified by Idaho Power that there was a significantly large number of potential projects in the pipeline, that it expected it would soon be able to justify lower avoided cost prices, and that the potential impact of this situation on ratepayers required some prophylactic response from the Commission. The Commission's Order 15-199 denied Idaho Power's Motion to Stay, meaning that Idaho Power is currently obligated to continue processing QF applications. The order also changed the rules that would apply to projects submitted after April 24, 2015.

In contrast to the potentially scary and unpredictable total capacity of projects in the pipeline which might actually achieve operation,[2] the April 24, 2015 demarcation freezes the number and total capacity of projects which, consistent with developer expectations and extensive precedent,[3] continue to be eligible for contracts under the then-existing size limits and

[2] The order appropriately acknowledges that, as to that pipeline, "some of these solar QF projects may not be built." *Order 15-199* at 6.

[3] *See, e.g., Re Investigation of Qualifying Facility Contracting and Pricing*, Docket UM 1610, Order No. 14-058 (Feb. 24, 2014) ("our proposed consideration of any proposal to revise the rates, terms, and conditions for QF standard contracts is done on a prospective basis only"); *Order No. 21332, Idaho Public Utilities Commission,* at 1-2 *(July 13, 1987)* (suspension of utility obligations "would be inapplicable as to those QF projects that prior to the issuance of [its previous order] had satisfied [the applicable requirements and] would otherwise be entitled to a contract and a lock-in of avoided cost rates"); *Application of the Pub. Serv. Co. of Colo. For a Moratorium Regarding Indep. Power Prod. Facilities*, Colo. PUC Dec. No. C87-1690, at 37 (Dec. 16, 1987) (grandfathering from contract moratorium any QF developers that had "contacted Public Service prior to the filing of this application").

pricing. Footnote 11 of Order 15-199 stated that there were only 7 projects with 55 MWs of capacity in this category.

As to this limited number of pre-April 24, 2015 projects, Order 15-199 contained only one footnoted sentence describing the Commission's conclusions as to treatment going forward. The Commission stated:

> Developers that requested but did not receive ESAs prior to that date may seek a determination of whether those requests created a legally enforceable obligation in individual complaint proceedings.[4]

The footnote to this sentence identified the two complaint proceeding dockets commenced by the affected projects.[5] But the sentence itself raises issues which require clarification.

Gardner Solar specifically requests clarification that the Commission did not intend to pre-judge or otherwise limit the issues to be considered in the complaint proceeding. For example, beyond the legal issue as to whether or not a "legally enforceable obligation" (or "LEO") has arisen, the Gardner Solar complaint (Docket UM 1733) also raises the simple issue as to the result that should follow when a utility has failed to meet its required (and un-stayed) tariff obligations. Aside from whether or not a LEO was created, the complaint simply requests an order that Idaho Power be obligated to provide the ESAs that it was required to provide in response to the April 7, 2015 applications for 5 projects from Gardner Solar. Despite the absence of a stay of its obligations, Idaho Power to this day has not provided the ESAs, as required. Indeed, the Commission could avoid the need for the full complaint proceeding now by simply stating that, by denying the Motion for Stay, it determined that Idaho Power had no right to avoid its Schedule 85 obligations and that it must now meet them.

[4] Footnote 11 to this sentence reads: "Idaho Power has identified seven projects that requested ESAs prior to April 24, 2015, for a total of 55 MW. Gardner Solar has filed a complaint against Idaho Power Company docketed as UM 1733, and PNW has filed a complaint as well docketed as UM 1731." *Order 15-199*, at 7.

[5] *Id.*

Finally, to remove any doubt, the Commission should clarify that ESAs applicable to this time period, subject to appropriate fact finding, would be subject to the size limitations and prices that were in effect prior to April 24, 2015. Idaho Power concedes that such projects would not be subject to the 3 MW limit and would be eligible to receive pre-April 24 prices if a LEO has been established.[6]

II. April 24-June 24, 2015 Projects

Gardner Solar concedes the Commission's determination that after April 24, 2015 it was on notice of the potential for a change in rates and terms for QF projects. It has one such project, submitted on May 6, 2015. Because the Commission has determined that the April 24, 2015 date should be used as the demarcation for effectiveness of the prior size limits and pricing, Gardner Solar suggests that the appropriate clarification order for projects in this category would allow a project, at the option of the applicant, to be downsized to the 3 MW size limit and subject to the June 24 pricing that the Commission eventually adopted. That would allow such projects the opportunity to receive a standard contract while still recognizing the point in time at which it was originally submitted and without the prejudice that could result from an obligation to submit a brand new application. The Commission should clarify that, if these projects do choose to downsize to the 3 MW limit, they should not be required to refile their requests or be subject to new interconnection queue dates or be moved to the back of the line of Idaho Power's processing.

Gardner Solar concurs with Idaho Power that, to the extent such projects wish to remain above the 3 MW limit, they would be eligible to enter into negotiated rate contracts with Idaho Power at their current size.

[6] *See* Motion for Clarification at 5, lines 13-16.

III. Post-June 24, 2015 Projects

Gardner Solar concurs with Idaho Power that Order 15-199 is reasonably clear regarding post-June 24, 2015 projects and that they will be subject to both the 3 MW limit and the post-June 24 pricing adopted pursuant to Order 15-204. Nonetheless, to restate that in the clarification order may be useful to the industry and to all participants.

CONCLUSION

Gardner Solar appreciates the Commission's clear desire to fashion an order that would accommodate the reasonable expectations of QF developers while protecting ratepayers and requests that it enter into a clarification order that includes instructions for three categories of projects as follows:

(1) **For pre-April 24, 2015 projects**, the Commission should state that its initial order was not intended to pre-judge or otherwise limit the issues to be considered in related complaint proceedings. It should further state that the initial order, by denying the Motion for Stay, determined that Idaho Power had no right to avoid its Schedule 85 obligations and that it must now meet them by providing ESAs to the relevant projects with the pricing applicable prior to April 24. At a minimum, the Commission should state that the size limits and pricing in effect prior to April 24, 2015 will apply to these projects, subject to the fact finding process in the related complaint proceedings.

(2) **For April 24-June 24, 2015 projects**, if such projects wish to remain above the 3 MW limit, they would be eligible to enter into negotiated rate contracts with Idaho Power at their current size. But at the applicant's option, such projects may be downsized to meet the 3 MW size limit,

without the need to submit new requests or to be subject to new interconnection queue dates or to be moved to the back of the line of Idaho Power's processing, and that such downsized projects would be eligible for standard contracts at the avoided cost pricing adopted pursuant to Order 15-204. For clarity, a 60-day window should be provided for the applicant to decide whether or not to exercise its option.

(3) **For post-June 24, 2015 projects**, the Commission should consider restating that such projects can be eligible for standard contracts if they meet a 3 MW size limitation and that they would be subject to the avoided cost pricing adopted pursuant to Order 15-204.

Dated this 17th day of July, 2015.

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