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 Change, and for Change in Resource Sufficiency Determination.	)	CASE NO. UM 1725 POST-HEARING BRIEF OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION

I. INTRODUCTION AND SUMMARY

The Community Renewable Energy Association ("CREA") hereby submits its post-hearing brief to the Public Utility Commission of Oregon ("OPUC or "Commission") in the above-captioned case regarding the Public Utility Regulatory Policies Act of 1978 ("PURPA"). CREA maintains the position set forth in its pre-hearing brief: (1) the Commission should maintain the eligibility cap at 10 megawatts ("MW") for all qualifying facility ("QF") resource types, and (2) the Commission should *increase* the length of the contract term for fixed avoided cost rates to 20 years. Nothing in Idaho Power's or Staff's pre-hearing briefs changes CREA's position that state and federal law require the Commission to encourage QF generation by maintaining the eligibility cap at 10 MW and increasing the length of the contract term to at least 20 years. The combined effect of lowering the eligibility cap and shortening the contract terms will indisputably halt PURPA development altogether, just as Idaho Power now admits has occurred in Idaho since that state shortened contract terms. *See* Idaho Power/500, Allphin/2:20-22. The Commission should maintain its long-standing policy of providing viable opportunities for cost-effective QF projects and reject Idaho Power's proposals.

II. ARGUMENT

A. The Commission Should Maintain the 10 MW Eligibility Cap for All QF Resources.

As CREA explained in its pre-hearing brief, Oregon's legislature has affirmatively instructed the Commission to go beyond the federally mandated minimum requirements of PURPA, ORS 758.515(3). Therefore, the Commission should exercise the discretion granted to it in the Federal Energy Regulatory Commission's ("FERC") regulations to maintain the eligibility cap for standard rates at 10 MW. *See* 18 C.F.R. § 292.304(c). In contradiction to Oregon law, lowering the cap to the bare minimum federal requirement for any class of QFs would *decrease* the marketability of QFs in Oregon and promote an individualized and *non-uniform* institutional climate. *See* ORS 758.515(3).

Idaho Power suggests that QF development can "flourish even with a lower eligibility cap," pointing to several non-standard Idaho contracts executed in Idaho after the Idaho Public Utilities Commission ("Idaho PUC") lowered its eligibility cap for standard solar rates to 100 kilowatts ("kW"). *Idaho Power's Pre-Hearing Brief* at 9. However, Idaho Power fails to mention that the non-standard contracts from Idaho contained *20-years of fixed prices* – something that is not currently available in Oregon and which Idaho Power opposes in this case. Idaho lowered the eligibility cap to 100 kW in 2011, *see* IPUC Order No. 32262, Case No. GNR-E-11-01, but left in place the availability of 20-year fixed-price rates until 2015. *See* IPUC Order No. 33357 at 11, 13-14, Case No. IPC-E-15-01 (noting term of fixed-prices was 20 years in Idaho from 2002 until interim order reducing term in 2015). In any event, many of these non-standard solar contracts from Idaho have subsequently been terminated, apparently because the rates or terms the developers were able to obtain from Idaho Power were not financeable. *See id.*

at 19-20.

Idaho Power ignores the unique aspects of Oregon law, however, and asks the OPUC to simply adopt the policies of Idaho for purposes of "administrative efficiency." *See Idaho Power's Pre-Hearing Brief* at 11-12. The OPUC should not do so. Oregon has its own unique laws and its own unique implementation of PURPA. Oregon directs the OPUC to implement a stable institutional environment that will encourage the development of PURPA projects in the Oregon. ORS 758.515. Idaho law contains no such direction to the Idaho PUC, and comparison to policies in Idaho is therefore inapt.

Staff suggests the eligibility cap should be lowered to 100 kW for wind and solar QFs because some entities that may have the resources to negotiate a non-standard contract have taken advantage of the standard contract option. *Staff's Pre-Hearing Brief* at 4. CREA disagrees. Staff's proposal would result in no standard contracts for virtually all wind and solar QFs. There is no evidence that locally owned facilities will be able to negotiate non-standard contracts. The Commission's findings from Order No. 05-584 that many small QFs under 10 MW are unable to overcome asymmetric information and adverse economics prior to contract execution remain valid. The level of PURPA development under standard contracts will remain relatively low in Oregon as long as the eligibility cap is 10 MW, and utilities enforce the requirement that a single entity cannot own more than two projects within five miles of each other. Additionally, with regular avoided cost updates and resource-specific pricing developed in docket UM 1610, the risk of overpayments is substantially reduced through sending accurate price signals to prospective QFs.

Lowering the eligibility cap will not cause QF development to flourish, as Idaho Power

alleges. Instead, lowering the eligibility cap will severely restrict the ability of small, community-based projects to successfully negotiate a contract and construct a renewable energy facility. The OPUC should maintain the eligibility cap for standard rates to 10 MW.

B. The Commission Should Reject the Proposal to Shorten Contract Terms.

Idaho Power's proposal to shorten the contract term to two years is inconsistent with federal and state law. As we explained in our pre-hearing brief, FERC's PURPA rules require the Commission to offer long-term contracts with prices fixed for a period longer than two years, and Oregon's own PURPA statute itself requires that fixed prices be made available for at least 20 years. *See CREA's Pre-hearing Brief* at 6-16.[1]

Idaho Power makes several misplaced arguments in support of its illegal proposal. For example, Idaho Power argues, "No party has challenged Idaho Power's evidence that long-term forecasts used to develop avoided cost rates have systematically harmed customers." *Idaho Power's Pre-Hearing Brief* at 14. If this statement is true, it is merely reflective of the fact that Idaho Power is the only party to this proceeding that possesses the vast resources (paid for by its ratepayers) to continually relitigate the issues in this case over and over again. CREA and other QF parties have successfully challenged arguments against long-term PURPA contracts in multiple past dockets. That no party but Idaho Power has the resources to relitigate the issue again in this docket proves nothing.

Moreover, the "evidence" to which Idaho Power points misleadingly compares the energy-only costs of Idaho Power's rate-based resources to the long-term avoided costs paid for

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[1] Notably, Renewable Northwest, Northwest Energy Coalition, and the Renewable Energy Coalition each also argue that Oregon law specifically requires that fixed prices be available for at least 20 years. *Renewable Northwest & NW Energy Coalition's Prehearing Brief* at 3-4; *Renewable Energy Coalition's Prehearing Brief* at 8-9.

energy *and capacity* in existing PURPA contracts. Idaho Power relies on the following statement in its testimony: "At $62.49 per MWh, the average cost of PURPA purchases is greater than the average cost of coal at $22.79 per MWh, greater than gas at $33.57 per MWh, greater than non-PURPA purchases of $50.64 per MWh, and significantly greater than what is being sold as surplus sales at $22.41 per MWh." Idaho Power/100, Allphin/4-5. But Idaho Power's comparison includes only a portion the energy costs (such as fuel and operation and maintenance) for "coal" and "gas," and completely ignores the capital costs of its own resources.

For example, Mr. Allphin argues that the "average cost of coal" is "$22.79 per MWh," and cites Idaho Power's Exhibit 103 in support. Idaho Power/100, Allphin/4: 25. In turn, Exhibit 103 derives the $22.79 per MWh figure for 2013 solely from the costs included in FERC Account 501. However, FERC Account 501 is *not* the all-in costs that ratepayers pay for Idaho Power's ownership and operation of its coal plants. Under FERC's uniform system of accounts, Account 501 includes only the cost of "Fuel" at a coal plant. 18 C.F.R. Part 101.501 ("This account shall include the cost of fuel used in the production of steam for the generation of electricity . . . ."). Mr. Allphin's exhibit and his $22.79 per MWh figure failed to include other costs assessed to ratepayers for coal-fired electricity, including several other operation and maintenance expenses, the rate-based capital costs of the facilities, and the return on that rate-based cost – not to mention the ever increasing and still unknown capital costs for environmental upgrades at Idaho Power's coal-fired facilities. *See, e.g.,* 18 C.F.R Part 101.312 (containing Account 312 for boiler plant equipment placed in service); *id.* at Part 101.502 through 101.509 (containing additional operation and maintenance costs for steam plants in FERC Accounts 502-509). Similar omissions exist for Idaho Power's portrayal of costs for gas-fired generation and

market purchases.

When Idaho Power acquires a long-term resource, it does not cap its recovery at energy costs alone or at the future, short-term market prices. There is no basis to suggest that long-term PURPA contracts should be held to that standard either. This is hardly a record upon which the Commission should administratively repeal Oregon's PURPA statute, which directs that 20 years of fixed avoided costs be provided to all QFs.

Idaho Power also argues that shortening the contract term will not limit QF development, but then it admits the Idaho PUC's decision to permanently reduce the contract term to two years resulted in the withdrawal of most pending QF contract requests in Idaho. *See Idaho Power's Pre-Hearing Brief* at 15. Any QF that is provided only a two-year contract term will be unable to finance its construction. Idaho Power has presented no evidence to the contrary.

Staff supports maintaining the contract term at only 15 years of fixed prices, but Staff's pre-hearing brief did not address the requirements of Oregon's PURPA statute. For the reasons explained in detail in CREA's pre-hearing brief, Oregon law requires the Commission increase the length of the contract term for fixed avoided cost rates to 20 years.

III. CONCLUSION

For the reasons set forth above, the Commission should maintain the eligibility cap at 10 MW for all resource types, and the Commission should increase the length of the contract term for fixed avoided cost rates to 20 years.

RESPECTFULLY SUBMITTED this 10th day of December, 2015.

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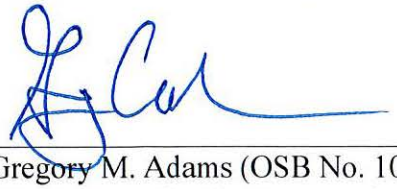

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