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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorney for Idaho Conservation League

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER IF THE )  
COMMISSION'S INVESTIGATION )  
INTO DISSAGGREGATION AND AN )  
APPROPRIATE PUBLISHED )  
AVOIDED COSTS RATE ELIGABILITY )  
CAP STRUCUTRE FOR PURPA )  
QUALIFYING FACILITIES. )

CASE NO. GNR-E-11-01

The Idaho Conservation League (ICL) submits the following statement of position and strawman proposal. In Order Numbers 32176 and 32195, the Idaho PUC solicited:

“information and investigation of a published avoided costs rate eligibility cap structure that: (1) allows small wind and solar QFs to avail themselves of published rates for projects producing 10 aMW or less and (2) prevents large QFs from disaggregating in order to obtain a published avoided cost rate that exceeds a utilities avoided cost.”

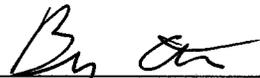
The attached strawman attempts to answer this solicitation by laying forth criteria and a procedure to determine if a QF is eligible for the published rate. Of course, a complete resolution of this dispute requires addressing two elements; which QFs are eligible to receive published rates, and how to set an appropriate avoided rate upon which published rates are based. This strawman focuses only on a mechanism to define which QFs are eligible to receive the published rate. The second critical issue to improve the avoided cost rate structure and

methodology for all sizes of QFs. ICL believes that determining which QFs are eligible to receive published rates is an important first step that will feed into establishing an appropriate avoided cost rate structure.

The Strawman is divided into two sections. First, it sets forth four primary criteria that interested parties can use to determine the size of a qualifying facility. Those criteria are: energy source, ownership, location, and time. ICL modeled these criteria on the federal regulations promulgated to implement PURPA, specifically 18 C.F.R. § 292.204. Second, the strawman sets forth an administrative and enforcement mechanism. The goal of this section is to devise a system that allows the QF and utility to determine of whether the QF exceeds the 10 aMW limit with minimal involvement from the Commission. The other goal of the section is provide a self-enforcement provision by incorporating the obligation to remain within the maximum size criteria for the length of the power purchase agreement.

ICL offers this strawman in the hopes all parties can work together to resolve this issue. With this in mind, ICL encourages all parties to review the strawman and consider convening an informal workshop to discuss and revise this proposal.

Respectfully submitted this 25<sup>th</sup> day of March 2011,

  
\_\_\_\_\_  
Benjamin J. Otto  
Idaho Conservation League

## **Strawman Mechanism for Determining the Size of a Qualifying Facility That is Eligible to Receive the Published Rate**

### **Basic Rule:**

The maximum size of a qualifying facility eligible to receive the published rate is 10 average megawatts. The average megawatt output of the qualifying facility is measured on a monthly basis.

### **Criteria for measuring the size of a qualifying facility:**

When measuring the maximum size of a qualifying facility that is comprised of more than one electrical generator the following factors apply:

- I. **Energy Source:** Each electrical generator that comprises the qualifying facility uses the same energy resource.
  - A. Eligible energy resources include biomass, geothermal, sun, waste, water, or other resources that meet the fuel use criteria under PURPA as specified in 18 C.F.R. § 292.204(b).
- II. **Ownership:** Each electrical generator that comprises the qualifying facility is either:
  - A. Owned by the same person or affiliate; or
  - B. The same person or affiliate has the power to control the management, operation, or policies of the person who owns each electrical generator.
    - i. For the purpose of this criteria the following definitions apply
      1. “Owns” means the same person or affiliate holds more than 50% of the equity ownership in the electrical generator.
      2. “Person” means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.
      3. “Affiliate” means any other Person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.
        - a. “Affiliate” does not include passive investors whose sole ownership interest in the electrical generator is using production tax credits, green tag values, or depreciation, or a combination of these.
      4. “Control” means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management, operations, or policies of a person, whether through the ownership of stock, by contract, or otherwise.

## **Strawman Mechanism for Determining the Size of a Qualifying Facility That is Eligible to Receive the Published Rate**

- III. Location: Each electrical generator that comprises the qualifying facility is located at the same site.
- A. “same site” means an electrical generator is within one mile of another electrical generator regardless of the person who owns the land upon which each electrical generator is located.
- B. For purposes of hydroelectric generators only, “same site” means either:
- i. for natural water courses the same impoundment; or
  - ii. for non-natural water courses, the same location where the water level changes, i.e. canal drop,
- IV. Time the QF comes on-line: In the power purchase agreement, each electrical generator will begin delivering electricity to the purchasing utility within the same 24-month period.

### **Administrative and enforcement mechanism**

The qualifying facility and purchasing utility will work together to make an initial determination of the maximum size of a qualifying facility that requests a power purchase agreement at the published rate.

- I. Initial size determination:
- A. *Qualifying facility responsibility*: At the time the qualifying facility initiates a formal request to enter into a power purchase agreement for the published rate the qualifying facility must submit sufficient documentation to reasonably allow the purchasing utility to make an initial determination of the maximum size.
- B. *Purchasing utility responsibility*: Within fifteen (15) days of receiving the documentation described above, the purchasing utility will provide to the qualifying facility a written explanation, based solely on the criteria described above, whether the maximum size of the qualifying facility is 10 average megawatts. If the purchasing utility determines the maximum size exceeds 10 average megawatts, the written explanation must describe the criteria and documentation upon which it made such determination.
- II. Challenging the initial determination
- A. *Qualifying facility right to challenge*: Within fifteen (15) days of receiving the purchasing utility’s written explanation described above, the qualifying facility may ask the Commission to review the documentation submitted by the qualifying facility and the utility’s written explanation making the initial determination.
- B. *Commission review*: Unless the Commission requests more information, the documentation supplied by the qualifying facility to the utility and the utility’s written

## **Strawman Mechanism for Determining the Size of a Qualifying Facility That is Eligible to Receive the Published Rate**

explanation of its initial determination will form the entire record upon which the Commission will review and resolve the dispute.

### **III. Final determination of maximum size**

- A. *Qualifying facility and purchasing utility agree:* If the parties agree the qualifying facility does not exceed the maximum size of 10 average megawatts the utility's written explanation of such determination will serve as the final determination. Such final determination will be incorporated into the power purchase agreement as described below.
- B. *Qualifying facility and purchasing utility disagree:* If the Commission is asked to review and resolve the initial determination, the Commission's final order resolving such dispute will serve as the final determination. This final order will be incorporated into the power purchase agreement as described below.

### **IV. Power Purchase Agreement:**

In each contract wherein the utility agrees to purchase, and the qualifying facility agrees to sell, the electrical output for the published rate, the qualifying facility shall:

- A. Warrant that the maximum size of the qualifying facility is 10 average megawatts.
- B. Warrant and represent the qualifying facility will not make any changes in its ownership, control, or management during the term of the contract that would cause it to exceed the maximum size eligible for the published rate.
- C. Agree to provide at the reasonable request of the purchasing utility, but no more frequently than every two years, with documentation of continued eligibility under the criteria described, subject to the utility maintaining the confidentiality of the documentation provided; and
- D. Acknowledge that, if the purchasing utility believes, based on documentation received from the qualifying facility, that the maximum size of the qualifying facility exceeds 10 average megawatts; the purchasing utility may request the Commission to make a new determination of the size of the qualifying facility.
- E. Acknowledge that, if the Commission determined the qualifying facility exceeds the maximum size based on the same criteria used to make the initial determination, the qualifying facility will be in default under the contract.

## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2011 true and correct copies of the foregoing STATEMENT were delivered to the following persons via the method of service noted:

### Hand delivery:

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Commission Secretary (Original and seven copies provided)  
Idaho Public Utilities Commission  
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