

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1610 PHASE II**

4 In the Matter of PUBLIC UTILITY
5 COMMISSION OF OREGON

6 Staff Investigation into Qualifying Facility
7 Contracting and Pricing.

8 **RESPONSE TO IDAHO POWER COMPANY'S**
9 **APPLICATION FOR RECONSIDERATION,**
10 **REHEARING AND/OR CLARIFICATION**

11 **I. Introduction**

12 Idaho Power Company asks for reconsideration, rehearing, and/or clarification of the
13 Commission's decisions in Order No. 16-174 regarding "(1) Issues 3 and 4 that direct
14 modifications to the capacity contribution of Qualifying Facilities ("QF") in standard avoided
15 cost prices; and (2) Issue 7 that directs the imposition of the wholesale power price forecast as a
16 floor for non-standard avoided cost prices."¹ Idaho Power also asks that the Commission
17 suspend Idaho Power's compliance with these elements of Order No. 16-174 pending the
18 Commission's resolution of the request for reconsideration, rehearing, and/or clarification.

19 Staff opposes Idaho Power's requests. Idaho Power raises nothing new in its application,
20 but repeats arguments it made in the underlying proceeding. Contrary to Idaho Power's
21 assertion, the Commission's decisions are consistent with the Public Utility Regulatory Policy
22 Act (PURPA) and reconsideration is not authorized on the ground there is an error of law
23 essential to the decision.

24 Staff recommends that the Commission not stay compliance with the Commission's
25 order. Idaho Power's arguments on these issues are without merit and there is little chance of
26 success on this issue, and compliance with the order will not cause irreparable harm.

¹ Idaho Power's Compliance Filing and Application for Reconsideration, Rehearing, and/or Clarification 1.

1 **A. Standard of Review**

2 **1. Request for reconsideration.** The Commission may reconsider an order under
3 ORS 756.561 if “sufficient reason therefor is made to appear.” The Commission has specified
4 by rule the circumstances in which it will exercise its discretion to reconsider an order. Under
5 OAR 860-001-0720, the Commission may grant reconsideration if the application shows that
6 there is:

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- 8 (a) New evidence that is essential to the decision and that was unavailable and not
 reasonable discoverable before issuance of the order;
 - 9 (b) A change in the law or policy since the date the order was issued relating to an
10 issue essential to the decision;
 - 11 (c) An error of law or fact in the order that is essential to the decision; or
 - 12 (d) Good cause for further examination of an issue essential to the decision.

13 **2. Request for stay.**

14 The Commission has held that it will apply the standard in Oregon’s Administrative
15 Procedures Act (APA) when asked to stay an order, even though it is not statutorily required to
16 do so.² The standard is found ORS 183.482(3), which provides,

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- 18 (3)(a) The filing of the petition shall not stay enforcement of the agency order, but the
 agency may do so upon a showing of:
 - 19 (A) Irreparable injury to the petitioner; and
 - 20 (B) A colorable claim of error in the order.
 - 21
 - 22 (b) When a petitioner makes the showing required by paragraph (a) of this
23 subsection, the agency shall grant the stay unless the agency determines that
24 substantial public harm will result if the order is stayed. If the agency denies the
25 stay, the denial shall be in writing and shall specifically state the substantial
26 public harm that would result from the granting of the stay.

² *In re Portland General Electric Company* (Docket No. UE 115), Order No. 01-842.

1 **B. Response to Request for Reconsideration**

2 **1. Capacity contribution adjustment.**

3 Idaho Power once again challenges the capacity contribution adjustment. Idaho Power
4 does not raise a new issue, but based on previously-made arguments asserts that the capacity
5 contribution adjustment is inconsistent with the Public Utility Regulatory Policies Act (PURPA),
6 and therefore based on an error of law essential to the decision. Specifically, Idaho Power
7 argues,

8 [Order No. 16-174] has little discussion of the issues raised, and no discussion or
9 acknowledgment of the specific issues raised several times by Idaho Power that
10 the proposed modification to Order No. 14-058's capacity calculation may result
11 in prices to solar QFs that exceed the 100 percent contribution to peak of the
12 proxy resource, and therefore unlawfully exceed avoided cost prices for Idaho
Power, harming customers. Now, with the actual prices calculated in compliance
with the modified capacity contribution calculation, it shows that the avoided cost
prices for solar QF resources do in fact exceed those calculated for the 100
percent proxy resource.³

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14 Subsequently, Idaho Power clarifies that it is discussing the hourly price, not the overall
15 payments made to solar QF: “[Order No. 16-174]’s revised contribution calculation results in a
16 solar QF avoided cost price that exceeds the price paid to a base load QF resource (on a dollar
17 per megawatt-hour basis).”⁴

18 The fact that the hourly price for solar resources may exceed those for base load
19 resources is not revelatory. The more material point is that over the course of a year, a solar QF
20 and base load QF are eligible to receive compensation for capacity that is commensurate with
21 their respective contributions to the utility’s peak load. The base load QF that has a much higher
22 contribution to the utility’s peak load than a solar QF will receive much more compensation for
23 capacity over the course of a year than the solar resource (assuming no operational issues),

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25 ³ Idaho Power Company’s Compliance Filing and Application for Reconsideration, Rehearing,
and/or Clarification 7.

26 ⁴ Idaho Power Company’s Compliance Filing and Application for Reconsideration, Rehearing,
and/or Clarification 8-9.

1 notwithstanding that the hourly price for the solar QF may exceed the hourly price of the base
2 load resource.⁵ This truth has been explained repeatedly and by different parties since questions
3 regarding the application of the capacity contribution adjustment first arose more than two years
4 ago in April 2014.⁶

5 The Commission's capacity contribution adjustment does not unfairly compensate solar
6 QFs and is not unlawful. Idaho Power' dissatisfaction with the Commission's decision is not a
7 basis for reconsideration.

8 **2. Market-price floor.**

9 Idaho Power asserts that reconsideration of the market- price floor is warranted because
10 the decision to impose the floor is unlawful because it conflicts with PURPA.⁷ Staff disagrees.
11 The Commission's policy of requiring market prices as a floor for sufficiency-period avoided
12 cost prices dates back to 2005. In 2005, the Commission considered how to compensate
13 qualifying facilities (QFs) for energy and capacity during resource sufficiency periods and
14 resource deficiency periods. With respect to resource deficiency periods, the Commission
15 required PGE and PacifiCorp to base avoided cost prices on the costs of a Combined Cycle
16 Combustion Turbine (CCCT).⁸ With respect to sufficiency-period prices, the Commission
17 rejected PGE's and PacifiCorp's method of basing sufficiency-period avoided cost prices on the
18 variable costs of operating existing generating resources. The Commission required PGE and

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21 ⁵ See UM1610 Staff Brief (12/18/2014).

22 ⁶ See e.g., UM 1610 Staff/300; Staff/400, Staff/500, Staff/600, Obsidian/200, Obsidian/300,
23 Obsidian/400, ODOE/600, ODOE/700.

24 ⁷ Idaho Power Company's Compliance Filing and Application for Reconsideration, Rehearing,
25 and/or Clarification 11-13.

26 ⁸ *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff's Investigation Relating
to Electric Utility Purchases from Qualifying Facilities* (Docket No.UM 1129), Order No. 05-
584 at 27-28. (The Commission allowed Idaho Power to use a different methodology, the SARS
method, that it used in Idaho and allowed Idaho Power to use this methodology for both
sufficiency- and deficiency-period prices.)

1 PacifiCorp to set sufficiency-period avoided-cost prices at market, concluding this methodology
2 “embeds the value of incremental QF capacity in the total market-based avoided cost rate.”⁹

3 Having determined that calculation of avoided costs will be
4 differentiated to reflect a utility’s resource position, we next address the more
5 fundamental dispute among the parties regarding the scope and nature of such
6 differentiation. We conclude that the basis for differentiation should not be
7 whether capacity is valued at all, but how it is valued. When in a period of
8 resource sufficiency, PGE and PacifiCorp have historically calculated avoided
9 costs based only on the variable costs of operating existing generating resources.
10 Staff and several other parties, however, challenged the lack of capacity
11 payments to QFs when a utility is in a resource sufficient position, arguing that
12 QF capacity has at least some value to utilities at all times and that this value
13 should be compensated for.

14 When a utility is in a resource sufficient position, we adopt Staff’s
15 recommendation that QF capacity be valued based on the market. Although
16 valuation of QF capacity based on the market price of capacity itself has
17 significant appeal, we are concerned about inconsistent evidence regarding the
18 viability of the market for capacity. * * * Consequently, of the two market-based
19 valuation methodologies proposed by Staff, we adopt the methodology that
20 values avoided costs when a utility is in a resource sufficient position at monthly
21 on- and off-peak forward market prices as of the utility’s avoided cost filing.
22 We agree with Staff that this approach embeds the value of incremental QF
23 capacity in the total market-based avoided cost rate. We find this valuation
24 mechanism to be appropriate given the likelihood that a utility will address
25 probable gaps between increasing demand and actual resources, in the absence
26 of incremental QF capacity, with purchases of energy and capacity on the
27 market. Indeed, we find PGE’s recent history of buying significant resources on
28 the market prior to a commitment to build new utility plant to be illustrative. To
29 the extent that a party can provide evidence regarding the market pricing of
30 capacity, however, we remain open to reconsideration of this decision in the
31 next phase of this proceeding.¹⁰

32 Idaho Power’s assertion that market-based sufficiency-period prices can overcompensate
33 QFs when embedded cost methodology (ICIRP) reflects that Idaho Power could acquire energy
34 more cheaply than at market ignores the Commission’s 2005 order on this very issue. Basing
35 avoided cost prices on the utility’s own variable costs does not compensate QFs for avoided

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⁹ *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff’s Investigation Relating
37 to Electric Utility Purchases from Qualifying Facilities* (Docket No. UM 1129), Order No. 05-
38 584 at 27-28.

¹⁰ *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff’s Investigation Relating
39 to Electric Utility Purchases from Qualifying Facilities* (Docket No. UM1129), Order No. 05-
40 584 at 27-28.

1 capacity. The Commission is authorized under PURPA to require utilities to pay QFs for
2 avoided capacity purchases. Its decision to do so for non-standard avoided cost prices does not
3 conflict with PURPA.

4 Idaho Power's assertion that the Commission's decision conflicts with PURPA is also not
5 true for deficiency-period prices. Idaho Power notes that "FERC defines avoided cost as, 'the
6 incremental costs to an electric utility of electric energy or capacity or both which, but for the
7 purchase from the qualifying facility or qualifying facilities, such utility would generate itself or
8 purchase from another source.'"¹¹ Idaho Power then asserts that its embedded cost differential
9 methodology (ICIRP) implements this FERC standard because,

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11 The ICIRP uses the proposed QF's hourly generation profile compared to Idaho
12 Power's hourly displaceable generation resources that are online and operating to
13 serve load. For each hour that the QF supplies generation to Idaho Power, it
14 receives the value of the highest cost displaceable resource that is operating
15 during that hour. The highest cost displaceable resource can be a utility owned
16 generation resource or a purchase. * * * Imposition of the market price as an
17 avoided cost price floor, by definition imposes costs that exceed avoided costs for
18 all hours in which the Company has lower cost displaceable resources operating
19 to serve load.¹²

20 The flaw with Idaho Power's argument is that the Commission does not allow utilities to
21 base deficiency-period prices on the utility's "displaceable resources operating to serve load."
22 Instead, the Commission specifies that avoided costs should be based on the next avoidable
23 market purchase or the fixed and variable costs of the next avoidable resource. Idaho Power's
24 complaint that market prices may exceed the costs of its displaceable generation resources is
25 irrelevant. Idaho Power is not authorized in Oregon to use the costs of its operational and
26 displaceable generation resources to calculate avoided cost prices in any circumstance.

25 ¹¹ Idaho Power Company's Application for Reconsideration, Rehearing, and/or Clarification 11-
26 12.

¹² Idaho Power Company's Application for Reconsideration, Rehearing, and/or Clarification 12.

1 Idaho Power appears to miss the point of the Commission’s decision to allow Idaho
2 Power to use the ICIRP methodology. By authorizing Idaho Power to use the ICIRP, the
3 Commission has not authorized Idaho Power to ignore the bedrock Commission policy that
4 avoided cost prices should compensate QFs for avoided capacity, during sufficiency periods and
5 deficiency periods. Imposing a market-price floor for avoided costs at all times ensures that QFs
6 will always receive compensation for avoided capacity given that capacity value is embedded in
7 such prices. While avoided cost prices based on the fixed and variable costs of the next
8 avoidable resource may typically be higher than market prices, the floor imposed by the
9 Commission will ensure QFs always receive compensation for capacity if Idaho Power’s ICIRP
10 method does not capture the value of avoided capacity acquisitions.

11 **C. Response to Motion to Stay**

12 Staff recommends that the Commission deny Idaho Power’s request to stay compliance
13 with the market-based price floor because the criteria for stay are not satisfied. For the reasons
14 stated above, there is no colorable claim of error. Further, there would be no irreparable injury if
15 Idaho Power complied with the order. The Commission’s decisions to impose the capacity
16 contribution adjustment and the market-price floor are within its authority. The fact that
17 calculating avoided cost prices under these new policies may result in different (but still legal)
18 avoided cost prices than would be obtained under the Commission’s previous policies does not
19 necessarily “irreparably *harm*” the utilities or their customers.

20 **D. Conclusion**

21 Staff opposes Idaho Power’s request to reconsider imposition of the capacity
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1 contribution adjustment and a market-based price floor avoided cost prices and its
2 request to stay their compliance with these portions of Order No. 16-174.

3 DATED this 26th day of July, 2016.

4 Respectfully submitted,

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