

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1725

In the Matter of)	
)	
IDAHO POWER COMPANY,)	RENEWABLE ENERGY COALITION
)	RESPONSE TO MOTION TO STAY
)	
Application to Lower Standard Contract)	
Eligibility Cap and to Reduce the Standard)	
Contract Term, for Approval of Solar)	
Integration Charge, and for Change in)	
Resource Sufficiency Determination.)	
_____)	

I. INTRODUCTION

Pursuant to OAR § 860-001-0420 and the Administrative Law Judge’s May 28, 2015 Ruling, the Renewable Energy Coalition (the “Coalition”) submits this response to Idaho Power Company’s (“Idaho Power”) motion to stay its obligation to enter into new power purchase agreements (“PPA”) with qualifying facilities (“QFs”) (“Motion to Stay”). The Coalition opposes any stay in Idaho Power’s obligations to purchase power from QFs under the Public Utility Regulatory Policies Act (“PURPA”) because it would be illegal and inconsistent with sound public policy.

Idaho Power alternatively requests other interim relief, including the reduction in the contract term and size threshold for solar and wind QFs, a change in its resource sufficiency period, and approval of solar integration charges. The Coalition is not opposed in principle to granting Idaho Power narrowly tailored interim relief under appropriate circumstances. Idaho Power, however, has not presented clear and convincing evidence that it or its ratepayers will suffer immediate and permanent harm

absent interim relief. Therefore, the Oregon Public Utility Commission (the “Commission” or “OPUC”) should deny Idaho Power’s requests for relief, without prejudice for Idaho Power to provide sufficient evidence in the future. If the Commission, however, grants Idaho Power any relief, then the Commission should further narrow the company’s request to provide no more relief than is absolutely necessary.

In the end, the Coalition urges the Commission to thoughtfully consider the information provided by Idaho Power and the potential harm that granting any aspect of Idaho Power’s filing would have on its PURPA policies. Despite all the hyperbole about an impending solar wave, the utilities have not identified whether any significant solar PURPA projects have actually been built in Oregon. There remain significant hurdles for the development of new projects, including those that have entered into PPAs. High interconnection and transmission costs, the continuing downward trend in avoided cost rates, stonewalling behavior by the utilities, and the very existence of filings like Idaho Power’s are likely to have a chilling impact on the development of solar QFs, regardless of what actions the Commission takes. The Commission should not make any rash decisions that could inflict long-term damage on the Commission’s PURPA policies. The Coalition has reviewed the response filed today by the Community Renewable Energy Association, and supports the arguments therein regarding a collateral attack on Order No. 14-058.

II. BACKGROUND

On January 30, 2015, Idaho Power filed a request before the Idaho Public Utilities Commission (“IPUC”) to shorten the contract term for QFs above the published rate size

threshold from twenty years to two years.¹ PacifiCorp, doing business as Rocky Mountain Power, and Avista filed similar requests. On an interim basis, the IPUC shortened the contract term for new PPAs above the size threshold to five years until the conclusion of its investigation regarding permanent relief. The IPUC is addressing all three utility requests in a single consolidated proceeding, and did not stay any PURPA obligations.

On April 24, 2015, Idaho Power made its filing in this proceeding, requesting: 1) a temporary stay of its PURPA obligations; 2) to lower the standard contract eligibility cap to 100 kW for wind and solar; 3) to lower the standard contract term to two years for wind and solar; 4) approval of a solar integration charge; and 5) to change its resource sufficiency determination. On May 20, 2015, a prehearing conference was held that set a schedule to address the Motion to Stay, and took under advisement proposed schedules to address Idaho Power's requests for permanent relief. On May 28, 2015, the dates for addressing the Motion to Stay were revised. PacifiCorp attended the May 20, 2015 prehearing conference, but did not indicate that it would also seek similar relief.

On May 21, 2015, PacifiCorp filed a copycat request to reduce the contract term for all QFs from fifteen to three years, and to reduce the eligibility for standard contracts for wind and solar QFs to 100 kW. PacifiCorp's request to lower the contract term is broader than Idaho Power's because it would reduce the contract terms for all QFs rather than wind and solar QFs.

¹ Idaho Power did not request a reduction in the contract term for QFs larger than the size threshold for published rates. Idaho Power also did not request a reduction in the size threshold for published rates, because the eligibility in Idaho is 100 kW for wind and solar and 10 MW for all other resources. Oregon's size threshold for published rates and standard contracts is 10 MW.

PacifiCorp has not yet requested an immediate stay of its PURPA obligations, although it is likely to do so if the Commission grants Idaho Power's request. While the alleged factual situation facing PacifiCorp is far less serious than Idaho Power, the distinction is unlikely to stop PacifiCorp from filing its own request to stay its obligation to purchase QF power. Portland General Electric Company may also file a similar request.

III. RESPONSE

1. The Commission Cannot Suspend Any Utility's PURPA Obligations

The Commission should reject Idaho Power's Motion to Stay because it does not have the legal authority to suspend a utility's PURPA obligations. Both federal and state laws expressly require utilities to purchase electricity made available by QFs, and do not provide the Commission the ability to stay that obligation.

The Federal Energy Regulatory Commission's ("FERC") regulations require a utility to purchase the net output of a QF, subject to specific exemptions that do not apply here. FERC's regulations state that: "Each electric utility shall purchase ... any energy and capacity which is made available from a qualifying facility" 18 C.F.R. § 292.303(a). Such purchases must be consistent with FERC's regulations, including those regarding the rates paid to QFs. 18 C.F.R. § 292.304.²

Despite what was likely exhaustive legal research, Idaho Power only identifies one case in which the company claims that FERC has "suggested" that a state commission can stay a utility's PURPA purchase obligation. Motion to Stay at 6 citing

² FERC, and not the Commission, can grant a limited exemption from the utility's obligation to purchase when QFs have access to specific markets to sell their power; however, Idaho Power does not allege that the exemption applies. 18 C.F.R. §§ 292.303(a), 292.309, 292.310.

Southern California Edison, 70 FERC 61,215 (1995). Idaho Power overstates the extent of FERC’s “suggestion.” FERC did not stay any utility’s PURPA obligations, but instead barred the utilities from entering into specific contracts based on an illegal avoided cost methodology. Southern California Edison, 70 FERC 61,215 at 26-27 (1995). FERC also encouraged the utilities and QFs to enter into contracts with lawful rates. Id. Idaho Power is not alleging that the Commission’s long standing avoided cost methodology is illegal, but is arguing that there should be specific and limited changes to account for solar integration costs and a changed resource sufficiency period.

The Commission also does not have the authority under Oregon law to suspend a utility’s obligation to purchase power from a QF. Oregon’s state PURPA law specifically requires an electric utility to “offer to purchase energy or energy and capacity whether delivered directly or indirectly from a qualifying facility.” ORS § 758.525(2). Idaho Power does not cite any Oregon statute or court case that authorizes the Commission to ignore or otherwise stay PURPA’s mandatory purchase obligations.

Idaho Power claims that there are two Commission decisions that support its request to stay its PURPA obligations. First, Idaho Power cites a 1987 Commission decision in which the Commission suspended its PURPA administrative rules pending an investigation. Motion to Stay at 4-5 citing Re Investigation into Rules for Cogeneration and Small Power Production Facilities, Docket AR 174, Order No. 87-1154 at 1-2 (Nov. 3, 1987). The Commission did not stay PURPA, but instead repealed its rules. Docket AR 174, Order No. 87-1154 at 1-2. Notably, the Commission did not expect that there would be any new projects, even without repealing its rules. Id. Therefore, the

suspension of the rules does not appear to have any practical impact on any utility's actual PURPA obligations.

Idaho Power also refers to the Commission's decision temporarily suspending the company's obligation to enter into standard contracts in 2012. Motion to Stay at 5 citing Re Idaho Power Company, Docket UE 244, Order No. 12-042 (Feb. 14, 2012). The Commission did not stay Idaho Power's PURPA obligation, and actually rejected a request by the company to stay its PURPA obligation only two months later than the order cited by Idaho Power. Re Idaho Power, Docket Nos. UM 1590 and UM 1593, Order No. 12-146 (April 25, 2012). During the two months in which standard contracts were not available, the Commission confirmed that "QFs are eligible to negotiate and enter into non-standard contracts with Idaho Power."

Finally, Idaho Power cites three state commission decisions from California, Colorado, and Idaho. Motion to Stay at 5-6. First, it does not appear that any of those decisions were challenged at FERC or any court of law, nor can they apply to Idaho Power's obligations under Oregon's PURPA. Second, as even cursory review demonstrates, the state commission decisions are riddled with exemptions and case specific factual circumstances. See id. Therefore, it is difficult to ascertain whether they had much (if any) practical impact on individual QFs.

2. Idaho Power Has Failed to Provide Clear and Convincing Evidence Demonstrating Extraordinary Harm Would Occur Absent Interim Relief

The Commission should reject Idaho Power's request for temporary relief pending the outcome of this case. The Coalition is not opposed in principle to the Commission temporarily revising its PURPA policies in extreme situations, and the Coalition also recognizes that Idaho Power may be experiencing a significant and

unprecedented situation that could warrant temporary changes. Idaho Power, however, has simply not provided clear and convincing evidence that would justify such a change at this time. Unsupported and broad allegations do not warrant the radical relief requested by Idaho Power.

A. The Commission Should Not Grant Temporary Relief Absent Extraordinary Circumstances and Proof of Irreparable Harm

The Commission has the legal authority to rescind, suspend, or amend its prior orders, including those that require Idaho Power to enter into fifteen year fixed price standard contracts with small QFs 10 MWs and without solar integration charges. See ORS § 756.568. The Commission has previously concluded that unique circumstances warrant waiving the requirements in a PURPA order. Re Lower Ridge Wind Farm LLC & High Plateau Wind Farm LLC, Request for Waiver of the Five-Mile Radius Requirement, Docket No. UM 1596, Order No. 12-188 at 1 (May 23, 2012). The Commission has also concluded that, when considering granting a stay, it will rely upon the standards in the Administrative Procedure Act and consider whether: 1) there is an irreparable injury to the petitioner; 2) a colorable claim of error in the order; and 3) substantial public harm will result if the order is stayed. In the Matter of Metro One Telecommunications, Inc., Docket No. IC 1, Order No. 03-462 at 1-2 (Aug. 1, 2003).

There should be a particularly high standard in this case because the Commission has twice rejected similar requests to lower the standard contract eligibility threshold and contract length. Over the objection of Idaho Power and other utilities, the Commission provided QFs the opportunity to enter into fifteen year fixed price contracts with a 10 MW size threshold in 2005. Re Investigation Into QF Contracting and Pricing, Docket No. UM 1129, Order No. 05-584 at 15-18 (May 13, 2005). After extensive factual

arguments and legal briefing on these two specific issues, the Commission reaffirmed these policies only last year. Re Investigation Into QF Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 7-8 (Feb. 24, 2014). The Commission should not allow Idaho Power to make a collateral attack on these policies that have been in place for a decade and just reaffirmed one year ago absent clear and convincing evidence of irreparable harm and extraordinary circumstances.

Idaho Power's request to change its avoided cost rates immediately is essentially a request to update its costs early, which the Commission has previously described as an "out of cycle update." Over the years, the Commission has both accepted and rejected out of cycle updates. Re Idaho Power, Docket No. UE 241, Order No. 11-414 (Oct. 11, 2011); Docket No. UM 1129, Order No. 07-199 at 2-3 (May 22, 2007); Re Idaho Power, Docket No. UE 244, Order No. 12-042 (Feb. 14, 2012). A little over a year ago the Commission established guidelines regarding whether out of cycle updates should be allowed, stating that it would make it more difficult for parties to obtain updates outside of the normal process:

we will continue to allow requests for mid-cycle updates for significant changes to avoided cost prices. However, in light of our decision here to require annual updates in addition to updates following IRP acknowledgement, we caution stakeholders that the "significant change" required to warrant an out-of-cycle update will be very high.
We expect the parties to use this option infrequently.

Docket No. UM 1610, Order No. 14-058 at 25-26 (emphasis added). Idaho Power has failed to provide clear and convincing evidence to meet this "very high" standard for an early adjustment in its avoided cost rates.

B. Idaho Power Has Not Provided Evidence Demonstrating that It Is Actually Facing Extraordinary Circumstances that Would Result in Irreparable Harm

Idaho Power supports its request based on the claims that: 1) it is facing an unprecedented request for new solar PPAs; and 2) entering into these new PPAs under current rates would significantly harm ratepayers. Idaho Power, however, has failed to demonstrate facts to support these allegations.

Idaho Power has a history of exaggerating the level of expected new QFs. In 2012, Idaho Power claimed it was facing a “deluge” of over 70 MWs of new Oregon wind QFs. This deluge quickly dried up with Idaho Power entering into far fewer contracts, none of which are operating. Idaho Power now states that it entered into 461 MWs of new solar generation in Oregon and Idaho. Application to lower standard contract eligibility cap and to reduce the standard contract term (“Application”) at 1-2. Idaho Power, however, admits that almost a third or 144 MWs have already had their contracts terminated. Id.

Idaho Power also alleges that it currently has an extraordinary level of requests for new PURPA contracts, including “additional 1,326 MW of solar capacity actively seeking PURPA contracts, 245 MW of which are in Oregon.” Application at 2. Far more projects request initial information than eventually enter into PPAs, and Idaho Power has not explained what it means by “actively seeking” contracts. There is only one actual request by a project developer for “standard QF contracts for 5 new QF solar projects totaling 40 MW.” Id.

Idaho Power claims that it will soon have a large amount of wind and solar QFs on its system, specifically identifying PPAs for 60 MWs of new solar QF generation and

50 MWs of new wind QF generation. Motion to Stay at 7. It appears that Idaho Power had entered into most of these contracts before the final order reaffirming the contract length and size threshold in UM 1610. Therefore, Idaho could have requested that the Commission grant rehearing or reconsideration of its order based on these facts, but elected not to do so.

Idaho Power does not explain what the likelihood of these projects coming on line is, whether they have entered into interconnection agreements, or whether they have started construction. These are critical facts. For example, many projects sign PPAs, but often find that interconnection and transmission costs are prohibitively expensive. Idaho Power's response to staff discovery requests indicate that any new QFs will be required to pay for expensive transmission upgrades. Specifically, Idaho Power states:

The five Oregon Qualifying Facility ("QF") wind projects and the six Oregon QF solar projects will require network transmission upgrades for network transmission service. These projects will use all of the incremental transmission capacity from their respective network transmission upgrades leaving no transmission capacity for additional generation projects, regardless of size, in this area of Idaho Power's transmission system

Attachment A (Idaho Power Response to Staff data request 11 (emphasis in original)). It is extremely unlikely that Idaho Power will have sufficient available interconnection and transmission capacity to accommodate 245 MWs of solar generation, especially given the current the historically low avoided cost rates.

Idaho Power also alleges significantly higher costs to ratepayers if temporarily relief is not granted. Motion to Stay at 7-8; Application at 6-8. These estimates may be overstated. For example, Idaho Power's cost comparison may only include the energy costs of its resources, which would result in an unfair comparison if they fail to include

their capacity costs. See Application at 7-8. Idaho Power also does not account for the potentially high costs that it may incur to comply with carbon regulations, including the Environmental Protection Agency’s proposed Section 111(d) rules.

In addition, higher or lower avoided cost rates by themselves do not warrant a radical modification of the Commission’s carefully established PURPA policies. For example, in 2007, there was a dramatic change in natural gas prices that warranted an increase in avoided cost rates; however, the Commission rejected a request by QFs to update the prices early because an update would be filed soon. Docket No. UM 1129, Order No. 07-199 at 2-3. The Commission concluded that an early update was not warranted given that rates would soon be modified. Id.

Before taking any action, the Commission should require Idaho Power to provide more detailed information to support its allegations, including: 1) the status of those QFs under contract; 2) what is meant by the status of the QFs “actively seeking PURPA contracts”; 3) how many QFs that sign PPAs in the past have become operational; 4) how many QFs that were “actively seeking” contracts in the past have become operational; and 5) more accurate cost comparisons. The Commission should be fully informed before deciding whether Idaho Power will be irreparably harmed, there are actually extraordinary circumstances, or there will be substantial public harm.

3. Any Interim Relief Should Use the Least Restrictive Means to Address Idaho Power’s Alleged Problems

While the Coalition opposes granting any interim relief, if the Commission elects to provide Idaho Power some relief, then it should issue a carefully crafted order that is not overbroad. First, the Commission should only reduce the size threshold and contract term for solar and wind QFs, as requested by Idaho Power. Second, the Commission

should only grant relief on matters that have been thoroughly vetted and that the Commission believes are supported by strong evidence. Finally, any order should not apply to any QFs that have already submitted a contract request.

As a preliminary matter, Idaho Power should be commended for attempting to narrow its requested relief to address the problems it is allegedly facing. In 2012, Idaho Power requested a stay based on its allegations that there would be a significant amount of potential new wind generation in Oregon that would harm customers (wind generation which never materialized). At that time Idaho Power requested broad relief that impacted existing QFs and non-intermittent QFs that were not contributing to the alleged problems. Docket Nos. UM 1590 and UM 1593, Order No. 12-146.

In contrast, Idaho Power is currently proposing a more narrowly tailored solution in this proceeding. In order to address the alleged problem of new wind and solar, Idaho Power has proposed to reduce the size threshold and contract term for only new wind and solar projects. Motion to Stay 1 (errata filing). Idaho Power has taken the first reasonable step of exempting any QFs that all parties agree are not causing any problems.

While Idaho Power has not explained how many wind and solar QFs are actually expected to generate in the next couple of years, the company has presented stronger evidence in support of a solar integration charge. Last year, the Commission accepted wind integration avoided cost rate adjustment, but rejected the concept of a solar integration charge because “solar QF development is too small to pose harm to ratepayers, and there is too little data to produce accurate solar integration cost estimates.” Docket No. UM 1610, Order No. 14-058 at 15. The Commission specifically stated that it “will revisit this issue in the future after more solar development occurs.”

Id. The Commission and the parties may not have expected to revisit the issue this quickly, but Idaho Power has a solar integration tariff approved by the IPUC, and has more data on solar integration costs than last year.

In contrast, Idaho Power has not explained whether a ten-year contract term, or a 3 MW or 5 MW size threshold could not achieve a similar level of relief. If the Commission concludes that there is evidence to warrant temporary relief, then it should modify the request to cause the minimum disruption in its PURPA policies as possible. For example, any reduction in the contract term may have the practical impact of completely stopping new development or shutting down some existing facilities because of the difficulties in obtaining financing for short-term projects.

Finally, the Coalition is aware that one project developer has submitted requests for contracts.³ When ruling upon Idaho Power's Motion to Stay, the Commission should be cognizant of its obligations to help "[c]reate a settled and uniform institutional climate for" QFs in Oregon. ORS § 758.515(3)(b). QFs count on the Commission consistently applying its policies regarding avoided cost rate and policy changes so that they can plan their operations and make informed decisions. Therefore, the Coalition strongly urges the Commission not to adopt any form of relief that would apply to any QFs that have complied with and relied upon the timelines in Commission's rules and policies and Idaho Power's tariffs. Therefore, any temporary relief should not apply to any QFs that have submitted a complete application to Idaho Power.

³ The developer is not a member of, or otherwise associated with, the Coalition.

IV. CONCLUSION

The Commission should reject Idaho Power's Motion to Stay because it does not have the legal authority to suspend Idaho Power's legal obligation to purchase QF power, and Idaho Power has failed to provide clear and convincing evidence in support of interim relief. The Coalition emphasizes that it is not opposed in principle to a temporary change in PURPA policies pending an investigation when there are extraordinary circumstances. Extraordinary circumstances warrant more proof and evidence than Idaho Power has provided to date. However, if the Commission ultimately elects to grant Idaho Power some relief, then it should narrowly tailor any decision to meet its goals with the smallest disruption as possible.

Dated this 2nd day of June 2015.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a large, looped initial "I".

Irion Sanger
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Renewable Energy Coalition

Attachment A

STAFF'S DATA REQUEST NO. 11:

Assume the Oregon QF projects that have been contracted for but are not yet operating (50 MW for five wind projects plus 60 MW for six solar projects) begin generating by their commercial operation dates. Given Idaho Power's existing transmission ownership and rights, please provide an estimate of the number of additional 10 MW capacity generators that the transmission system would be able to reliably interconnect without adding transmission capacity, excluding the required upgrades to the generators' interconnecting substations.

IDAHO POWER COMPANY'S RESPONSE TO STAFF'S DATA REQUEST NO. 11:

The five Oregon Qualifying Facility ("QF") wind projects and the six Oregon QF solar projects will require network transmission upgrades for network transmission service. These projects will use all of the incremental transmission capacity from their respective network transmission upgrades leaving no transmission capacity for additional generation projects, regardless of size, in this area of Idaho Power's transmission system.