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June 5, 2015

Filing Center
Public Utility Commission of Oregon
PO Box 1088
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Salem, OR 97308-1088

RE: *In the Matter of IDAHO POWER COMPANY Motion for Temporary Stay of its
Obligations to Enter in New Power Purchase Agreements with Qualifying Facilities*
Docket No. UM 1725

Enclosed for filing please find an errata to the Staff Response to Motion for Temporary Stay filed on June 2, 2015, as well as a copy of the Staff Response Motion for Temporary Stay with the changes incorporated.

In its June 2, 2015 response, Staff mistakenly recommended temporarily reducing the eligibility cap for all qualifying facilities from 10 MW to 100 kW and reducing the contract term for non-standard contracts (those over 100 kW) to 5 years. Staff intended that this recommendation should only apply to wind and solar QFs. The errata enclosed with this letter inserts language qualifying the scope of Staff's recommendation and limiting the recommendation to solar and wind QFs.

Thank you for your attention.

Sincerely,

Stephanie S. Andrus
Senior Assistant Attorney General
Business Activities Section

Enc.
c. UM 1725 Service list

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1725

In the Matter of

IDAHO POWER COMPANY

Motion for Temporary Stay of its Obligation
to Enter into New Power Purchase Agreements
with Qualifying Facilities.

ERRATA TO
STAFF RESPONSE TO MOTION FOR
TEMPORARY STAY

The June 2, 2015 Staff Response to Motion for Temporary Stay is modified as follows:

Page 2, line 7, insert “**for solar and wind QFs**” after “standard contracts”

Page 2, line 7, insert “**solar and wind**” after “contract term for”

Page 2, line 15, insert “**for solar and wind QFs**” after “prices”

Page 2, line 17, insert “**for solar and wind QFs**” after “non-standard contracts”

Page 6, line 2, insert “**for solar and wind**” after “for standard contracts”

Page 6, line 3, insert “**solar and wind**” after “contract term for”

Page 6, line 10, delete “a” before “solar contract”

Page 6, line 10, substitute “**solar contracts**” for “solar contract”

Page 6, line 10, insert “**solar and wind QFs**” after “solar contracts”

Page 6, line 11, insert “**for solar and wind QFs in**” “as they apply to”

Page 6, line 12, insert “**territory**” after “Idaho Power”

Page 6, line 20, insert “**for wind and solar QFs**” after “consistent policies”

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Page 8, line 12, insert “**for wind and solar QFs that are**” after “PURPA contracts”
Page 9, line 1, insert “**for solar and wind QFs**” after “eligibility cap”
Page 9, line 14, delete “**all**” after “prices for”
Page 9, line 14, insert “**solar and wind**” before “QFs 10 MW”
Page 10, line 7, insert “**for solar and wind QFs**” after Avoided Cost prices
Page 10, line 8, insert “**for solar and wind QFs**” after QF contracts

DATED this 5th day of June 2015.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General



Stephanie S. Andrus, #92512
Senior Assistant Attorney General
Of Attorneys for Staff of the Public Utility
Commission of Oregon

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1725

In the Matter of

IDAHO POWER COMPANY

Motion for Temporary Stay of its Obligation
to Enter into New Power Purchase Agreements
with Qualifying Facilities.

STAFF RESPONSE TO MOTION FOR
TEMPORARY STAY

(CORRECTED)

I. Introduction.

Idaho Power Company (Idaho Power) has asked the Commission to modify some of its policies implementing the Public Utility Regulatory Procedures Act (PURPA). Specifically, Idaho Power asks the Commission to lower the eligibility cap for Standard Avoided Cost prices and standard contracts from 10 megawatts (MW) to 100 kilowatts (kW), (2) shorten the maximum term for contracts for qualifying facilities (QFs) over 100 kW from 20 years to two years, (3) authorize Idaho Power to incorporate a solar integration charge into the calculation of standard and negotiated avoided cost prices, and (4) postpone the starting year of Idaho Power's next deficiency period from 2016 to 2021.¹ Idaho Power also asks the Commission to issue an order temporarily staying Idaho Power's obligation to enter into standard fixed-price contracts until after the Commission has issued an order resolving the four requests listed above.² In the

¹ Idaho Power Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term (April 24, 2015), Application for Change in Resource Sufficiency Determination (April 24, 2015), and Application for Approval of Solar Integration Charge (April 24, 2015).

² Motion for Temporary Stay of Obligation to Enter Into New Power Purchase Agreements with Qualifying Facilities (April 24, 2015) ("Motion for Temporary Stay").

1 alternative, Idaho Power asks the Commission to order interim relief by immediately granting the
2 four requests listed above pending the Commission’s final decisions on these requests.³

3 Staff recommends that the Commission deny Idaho Power’s request to stay Idaho
4 Power’s obligation to enter into all standard contracts.⁴ Staff also recommends, however, that
5 the Commission grant part of the interim relief asked for by Idaho Power. Specifically, Staff
6 recommends that the Commission reduce the eligibility cap for Standard Avoided Cost prices
7 and standard contracts **for solar and wind QFs** from 10 MW to 100 kW and shorten the
8 maximum contract term **for solar and wind QFs** over 100 kW to five years, both on an interim
9 basis, until the Commission has addressed Idaho Power’s request to make these modifications to
10 PURPA policies as they apply to Idaho Power on a permanent basis.

11 Staff does not recommend that the Commission grant Idaho Power’s request to change
12 the resource sufficiency/deficiency demarcation for Standard Avoided Cost prices or to include
13 solar integration costs in the calculation of avoided cost prices. The potential harm to ratepayers
14 that Idaho Power proposes to address with these changes to Commission orders is adequately
15 addressed by temporarily limiting the availability of Standard Avoided Cost prices **for solar and**
16 **wind QFs** to QFs 100 kW and less and temporarily limiting the maximum term of QF contracts
17 for non-standard contracts **for solar and wind QFs** to five years.

18 **II. Pertinent statutes, rules, and orders.**

19 ORS 756.568 authorizes the Commission, upon notice to the public utility or
20 telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to
21 756.610, to rescind, suspend or amend any order made by the commission. ORS 756.568 does
22 not specify a standard for Commission action under that statute.

23 _____
24 ³ Motion for Temporary Stay 9.

25 ⁴ A standard contract is a term “used to describe a standard set of rates, terms and conditions that
26 govern a utility’s purchase of electrical power from QFs at avoided cost.” (Order No. 05-584 at
16-17.)

1 Gardner Capital Solar Development, LLC (Gardner Capital) notes in its opposition to Idaho
2 Power's Motion for a Temporary Stay that the Commission has previously stated that it will use
3 the criteria for granting a stay in Oregon's Administrative Procedures Act (APA)⁵ as a guide
4 when considering a request to stay compliance with an order, even though the Commission is
5 statutorily exempt from those standards under ORS 756.610(2).⁶

6 The criteria for a stay in the Oregon APA are not directly applicable to Idaho Power's
7 request for stay. The issue is not whether there is a colorable claim of error in the Commission's
8 most recent orders regarding the policies at issue, but whether the circumstances as they exist
9 now warrant an immediate change of those policies for Idaho Power to avoid harm to ratepayers.

10 As Idaho Power notes in its Motion for a Temporary Stay, the Commission has
11 previously suspended the application of certain administrative rules regarding PURPA based on
12 its conclusion that the challenged rules appear to be unlawful holding that "no new [qualifying]
13 facilities should be undertaken that might harm ratepayers."⁷ The Commission has also
14 temporarily suspended Idaho Power's obligation to enter into standard contracts for 60 days
15 pending the Commission's acknowledgment of Idaho Power's IRP and Idaho Power's
16 subsequent avoided cost filing based on inputs from the acknowledged IRP.⁸

17 ⁵ ORS 183.482(3)(a), which provides the standard for granting a stay for agencies fully subject
18 to Oregon's APA, requires a petitioning party to show:

19 (A) Irreparable injury to the petitioner; and

20 (B) A colorable claim of error in the order.

21 If the agency finds in petitioners' favor on these two issues, the agency must grant the stay unless
22 it determines that substantial public harm will result if the order is stayed.

23 ⁶ See Gardner Capital Comments 4. *See also In re Portland General Electric*, Order No. 01-842
24 (2001 WL 1335757).

25 ⁷ Order No. 87-1154 at 1-2 (The Commission did not suspend the utilities' obligations to enter
26 into QF contracts, only certain rules regarding QF contracts).

⁸ Order No. 12-042.

1 **III. Current Commission policies regarding standard contract eligibility cap, contract**
2 **term, inclusion of solar integration costs, and resource sufficiency/deficiency**
3 **demarcation.**

4 ***Eligibility cap for standard contracts:*** Section 18 C.F.R. §292.304(c) of Federal Energy
5 Regulatory Commission (FERC) rules implementing PURPA require that state commissions
6 establish standard avoided cost rates for QFs up to 100 kW, and authorize state commissions to
7 make standard rates available to larger QFs. In 2005, the Commission exercised its authority
8 under section 18 C.F.R. §292.304(c)(2) to make Standard Avoided Cost rates available to QFs
9 with nameplate capacity of 10 MW and below.⁹

10 In Order No. 14-058, the Commission declined to lower the eligibility cap for standard
11 contracts from 10 MW. The Commission explained that standard contract rates, terms, and
12 conditions are intended to be used as a means to remove transaction costs associated with QF
13 contract negotiation, when such costs as well as asymmetric information and an unlevel playing
14 field, act as a market barrier to QF development.¹⁰ Based on testimony from several parties that
15 lowering the eligibility cap would deter QF development in Oregon because of the transaction
16 costs associated with negotiating a contract, the Commission decided to leave the eligibility cap
17 where it had been since 2005.¹¹

18 ***Maximum term of contract:*** In 2005, the Commission decided that QFs should be
19 authorized to ask for PURPA contracts with a maximum term of 20 years because this contract
20 term would help ensure that the QFs' projects would be financed.¹² The Commission concluded
21 that it would authorize forecasted avoided cost prices for only the first 15 years of a 20-year
22 contract, however, noting a "divergence between forecasted and actual avoided costs must be
23

24 ⁹ Order No. 05-584 at 15.

25 ¹⁰ Order No. 05-584 at 16, *citing* Order No. 09-1605 at 2.

26 ¹¹ See Order No. 14-058 at 7.

¹² Order No. 05-594 at 19.

1 expected over a period of 20 years.”¹³ Although parties asked the Commission to re-visit the
2 maximum term of PURPA contracts in Phase I of UM 1610, the Commission did not.

3 ***Solar integration charge:*** In Phase I of Docket No. UM 1610, the Commission
4 considered whether it should authorize the inclusion of costs to integrate solar resources in the
5 calculation of Standard Avoided Cost prices. Several parties argued against incorporating such
6 costs into the calculation of Standard Avoided Cost prices, asserting that solar QF development
7 is too small to pose harm to ratepayers, and there is too little data to produce accurate solar
8 integration cost estimates.¹⁴ In Order No. 14-058, Commission decided that it would not
9 authorize inclusion of integration costs for solar resources in the calculation of standard avoided
10 cost rates, “but . . . will revisit this issue in the future after more solar development occurs.”¹⁵

11 ***Demarcation of resource sufficiency and deficiency periods:*** In 2010, the Commission
12 determined that the demarcation of resource sufficiency and deficiency will be based on the start
13 date of the first major resource acquisition in the most recently-acknowledged Integrated
14 Resource Plan (IRP) Action Plan.¹⁶ Idaho Power’s current Standard Avoided Cost prices are
15 based on the resource deficiency/sufficiency demarcations taken from its most recently
16 acknowledged IRP Action Plan, which shows a resource deficiency period beginning in 2016.

17 **IV. Staff recommendation.**

18 Staff recommends that the Commission deny Idaho Power’s request to temporarily
19 suspend Idaho Power’s obligation to enter into standard contracts with all QFs. 18 C.F.R.
20 §292.304(c)(1) requires that standard avoided cost rates be available for QFs that are 100 kW
21 and less. The potential harm that Idaho Power identifies does not warrant a Commission order
22 circumventing this federal requirement.

23

24 ¹³ Order No. 05-584 at 20.

25 ¹⁴ See Order No. 14-058 at 14-15.

26 ¹⁵ Order No. 14-058 at 15.

¹⁶ Order No. 10-488 at 3, 8.

1 However, Staff recommends that the Commission grant the interim relief asked for by
2 Idaho Power, in part, by reducing the eligibility cap for standard contracts **for solar and wind**
3 QFs to 100 kW and reducing the maximum contract term for **solar and wind** facilities over 100
4 kW to five years. For reasons explained below, Staff recommends that the Commission make
5 this relief effective as of the day Idaho Power filed its Motion for Temporary Stay, which is
6 April 24, 2015. To the extent a QF submitted a request for an Energy Service Agreement (ESA)
7 prior to that date that satisfies the criteria of Idaho Power's Schedule 85,¹⁷ that QF should be
8 allowed the opportunity to establish a legally enforceable obligation to sell under the terms and
9 conditions regarding standard contracts in effect prior to April 24, 2015.¹⁸

10 Staff's recommendation to temporarily change the eligibility cap for a standard contracts
11 **for solar and wind QFs** and the maximum term of any contract over 100 kW, as they apply to
12 **solar and wind QFs in Idaho Power territory**, is based in large part on the unique
13 circumstances of Idaho Power. The Commission has previously imposed different PURPA
14 policies for Idaho Power so that Idaho Power is subject to consistent policies for wind and solar
15 resources in both Oregon and Idaho given that most of Idaho Power's service territory is in
16 Idaho.¹⁹

17 In 2011, the IPUC reduced the eligibility cap for standard contracts for wind and solar
18 QFs to 100 kW.²⁰ And, the IPUC recently reduced the maximum contract term for PURPA
19 contracts to five years pending its investigation of Idaho Power's request to reduce the maximum
20 term to two years.²¹ Staff's recommendation to grant interim relief would allow Idaho Power to
21 operate under consistent policies **for wind and solar QFs** regarding eligibility for standard
22

23 ¹⁷ Idaho Power's Schedule 85 sets forth terms and conditions for standard contracts.

24 ¹⁸ Such a showing would have to be made in a separate proceeding, e.g., under the dispute
25 resolution processes agreed to by the Stipulating Parties in Docket No. UM 1610.

26 ¹⁹ Order No. 05-584 at 26.

²⁰ IPUC Order No. 32262, Case No. GNR-E-11-01.

²¹ *Idaho Power Co.*, Case No. IPC-15-01, Order No. 33222 (Feb. 6, 2015).

1 contracts and maximum contract duration in both Idaho and Oregon, pending the Commission's
2 final resolution of Idaho Power's proposed changes to the Commission's PURPA policies as
3 applied to Idaho Power.

4 Idaho Power alleges that developers outside of Oregon have indicated interest in
5 obtaining standard contracts in Oregon to take advantage of Oregon's 10 MW eligibility cap for
6 Standard Avoided Cost rates and the 20-year maximum term.²² This concern is credible. In
7 2014, a QF developer insisted on obtaining a standard contract in Oregon notwithstanding the
8 OPUC's initial conclusion that the QF was not entitled to an Oregon contract given the delivery
9 point for the QFs energy into Idaho Power's system appeared to be in Idaho.²³

10 Staff recognizes that the Commission addressed the eligibility cap for standard contracts
11 in Phase I of UM 1610 only 16 months ago, in February 2014. The Commission concluded at
12 that time that the eligibility cap for standard contracts should remain at 10 MW to eliminate the
13 barrier to entry posed by costs to negotiate non-standard contracts.²⁴ However, the contacts from
14 QF developers that Idaho Power has received since Staff filed its last round of Phase I testimony
15 in April 2013 suggest that the 10 MW eligibility cap is not needed to eliminate barriers to entry.

16 Information provided by Idaho Power in response to a Staff Data Request reflects that
17 Idaho Power has received 22 requests for PURPA contracts since August 2013.²⁵ Of those
18 requests, 17 have been for proposed 10 MW facilities. The bulk of these 17 requests has been
19 made by only a few QF developers seeking ESAs for multiple 10 MW facilities.²⁶ This
20 information showing that the majority of requests for ESA are by developers with multiple
21 proposed projects, each at the 10 MW standard contract eligibility cap, suggests that the
22 Commission's 10 MW eligibility cap on standard contracts is not used as a tool to eliminate

23 ²² Motion for a Temporary Stay at 4.

24 ²³ See Order No. 14-027.

25 ²⁴ Order No. 14-058 at 7.

26 ²⁵ Staff Exhibit A, Idaho Power Response to Staff DR 5.

²⁶ Staff Exhibit A, Idaho Power Response to Staff DR 5.

1 barriers to entry, but as a tool to obtain advantageous standard contract prices for the largest
2 amount of MWs possible.

3 In any event, representations in Idaho Power's Application to Lower Standard Contract
4 Eligibility Cap and to Reduce the Standard Contract Term reflect that the QFs like those
5 currently seeking Oregon contracts do not need the protection of the 10 MW eligibility cap for
6 standard contracts.²⁷ Idaho Power represents that since the IPUC reduced the eligibility cap for
7 standard contracts for wind and solar QFs, Idaho Power has negotiated separate contracts in
8 Idaho for a total of 401 MW of QF generation in Idaho.²⁸ Idaho Power also states that it has
9 current requests from an additional 47 proposed projects for a total of 1,081 MW of additional
10 QF solar generation, all with the applicability of a 100 kW standard rate eligibility cap.²⁹ This
11 information reflects that QF development is not impeded by the fact that QFs over 100 kW must
12 negotiate contracts.

13 Similarly, the maximum term of 20 years is intended to ensure that QFs can obtain
14 financing by showing a steady stream of revenue for an extended period, rather than to ensure
15 that QFs can lock in favorable avoided cost prices for an extended period.³⁰ In light of the
16 potential harm from allowing PURPA contracts **for wind and solar QFs that are** based on rates
17 that the Commission may determine exceed Idaho Power's actual avoided costs, Staff
18 recommends that the Commission temporarily shorten the term of contracts to mitigate the
19 potential harm and also, to reduce the incentive for out-of-state QFs to seek contracts in Oregon
20 to obtain a contract term that is longer than what is available in surrounding states.

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23 ²⁷ Application to Lower Standard Contract Eligibility Cap and to Reduce the Contract Term 12-
13.

24 ²⁸ See Idaho Power Application to Lower Standard Contract Eligibility Cap and to Reduce the
Standard Contract Term 12-13.

25 ²⁹ Idaho Power Application to Lower Standard Contract Eligibility Cap and to Reduce the
Standard Contract Term 12-13.

26 ³⁰ Order No. 05-584 at 19.

1 **V. Effective date of interim relief.**

2 A Commission decision to grant interim relief to Idaho Power, either by issuing a stay or
3 authorizing any of Idaho Power's four requests for policy changes on an interim basis, raises the
4 practical consideration of when such relief should be effective. Staff recommends that the
5 Commission designate the date Idaho Power filed the Motion for Temporary Stay as the effective
6 date for Staff's recommended interim change to the eligibility cap and maximum contract term
7 **for solar and wind QFs**. The practical effect of this demarcation appears to be that six solar QF
8 projects *could potentially* be allowed to sell energy under Schedule 85 prices and terms effective
9 prior to April 24, 2015.³¹ Whether any of these solar projects actually will be able to sell energy
10 under Schedule 85 terms and conditions effective prior to April 24, 2015, would be determined
11 separately from review of the issues in Docket No. UM 1725.

12 Staff recommends April 24, 2015 as the effective date of any interim relief because QFs
13 had notice of the potential change in eligibility for Standard Avoided Cost prices and the length
14 of standard contracts once Idaho Power filed its applications on that day. FERC has previously
15 declined to impose new requirements that may disrupt QF's "settled expectations" regarding
16 PURPA policy.³² Once Idaho Power filed its applications and Motion for Temporary Stay, a QF
17 that had not filed a request for an ESA that was compliant with Idaho Power's Schedule 85 was
18 on notice of the potential for interim and immediate relief, and could not after that date have a
19 "settled expectation" of the availability of Standard Avoided Cost prices for ~~all~~ **solar and wind**
20 QFs 10 MW or less.

21 ³¹ See Comments of Gardner Capital Solar Development, LLC., At 1-2 (noting it had "timely"
22 filed five requests for ESAs for a total of 40 MWs); see also Idaho Power Company's
23 Supplement to Motion for Temporary Stay at 2 (noting one developer had asked for ESAs for
24 five projects on April 7, 2015, and another had asked for an ESA for one project on April 16,
25 2015).

24 ³² See e.g., *Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company,*
25 *L.P., Wheelabrator Environmental Systems*, 83 FERC 611236 (1998 WL 237574) ("[I]t would
26 not be consistent with Congress' directive to encourage cogeneration and small power production
to upset the settled expectations of parties to, and to invalidate any of their obligations under,
such executed PURPA sales contracts.").

1 In contrast, solar and wind QFs that filed requests for ESAs that complied with all the
2 requirements of Idaho Power's Schedule 85 prior to April 24, 2015, could reasonably have had
3 an expectation of receiving the terms and prices in effect at the time the QF established the
4 legally enforceable obligation. Staff recommends that the Commission not disturb these
5 expectations, much as FERC has declined to invalidate utilities' obligations under an executed
6 PURPA sales contract.³³

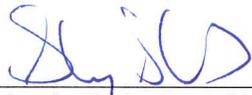
7 **V. Conclusion**

8 Staff recommends that the Commission deny Idaho Power's request to temporarily
9 suspend Idaho Power's obligation to enter into all standard contracts. Staff recommends that the
10 Commission grant Idaho Power's request for alternate interim relief by reducing the eligibility
11 cap for standard contracts and Standard Avoided Cost prices **for solar and wind QFs** from 10
12 MW to 100 kW and by limiting the maximum term of QF contracts **for solar and wind QFs** to 5
13 years. Staff recommends that the effective date of this relief be the date Idaho Power filed its
14 Motion for Temporary Stay, which means that QFs that filed requests for PURPA contracts that
15 are compliant with Idaho Power's Schedule 85 are eligible to establish legally enforceable
16 obligations regarding the proposed QF projects.

17 DATED 5th day of June 2015.

18 Respectfully submitted,

19 ELLEN F. ROSENBLUM
20 Attorney General

21 
22 _____
23 Stephanie S. Andrus, #925123
24 Senior Assistant Attorney General
25 Of Attorneys for Staff of the Public Utility
26 Commission of Oregon

26 ³³ See, *Id.*