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Public Utility Commission of Oregon
PO Box 1088
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**Re: UM 1610 – In the Matter of OREGON PUBLIC UTILITY COMMISSION, Investigation
into Qualifying Facility Contracting and Pricing**

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic copy of Idaho Power
Company's Post Hearing Brief.

Please contact this office with any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Wendy McIndoo".

Wendy McIndoo
Office Manager

Attachments

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1610 – PHASE II

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation into Qualifying Facility
Contracting and Pricing.

**IDAHO POWER COMPANY’S POST-
HEARING BRIEF**

1

I. INTRODUCTION

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Pursuant to the March 26, 2015, ruling issued by Administrative Law Judges (ALJ) Shani Pines and Traci A.G. Kirkpatrick, Idaho Power Company (Idaho Power or Company) submits this Post-Hearing Brief. This brief responds to the Prehearing Memoranda filed by Commission Staff (Staff), Oregon Department of Energy (ODOE), Gardner Capital Solar Development (Gardner Capital), the Renewable Energy Coalition (REC), the Community Renewable Energy Project (CREA), OneEnergy Inc. (OneEnergy), and Obsidian Renewables (Obsidian). REC, CREA, OneEnergy, and Obsidian filed memoranda both individually and jointly as the “Joint QF Parties” (Joint QFs).

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In Phase II of this docket, the Public Utility Commission of Oregon (Commission) must address various issues related to Oregon’s implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA). When evaluating the competing proposals in this case, the Commission must balance the interests of customers and Qualifying Facility (QF) developers.¹ In striking this balance, PURPA’s explicit customer protections require that the Commission ensure that QF transactions do not adversely affect customers.²

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¹ *Re Applications 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*, Docket No. UM 1725, Order No. 15-199 at 6 (June 23, 2015).

² *Indep. Energy Producers Ass’n v. California Pub. Utilities Comm’n*, 36 F.3d 848, 858 (9th Cir. 1994).

1 The Commission’s balancing of interests here occurs in the broader context of recent
2 QF development. The Commission has recognized that since Order No. 14-058, Idaho
3 Power has experienced an “unprecedented growth in the number of applications and
4 expressions of interest by QF developers—particularly solar.”³ To protect customers from
5 the “unprecedented pace and volume of QF development,” the Commission recently
6 adopted interim measures designed to prevent customer harm.⁴ The Commission’s
7 balancing here must consider the framework of its recent PURPA decisions and recognize
8 that the balance recently struck should not be unreasonably disturbed.

9 Staff and the QF developers advance several proposals that would materially increase
10 avoided cost prices, *e.g.*, imputing capacity payments during the resource sufficiency
11 period, imputing allegedly avoided transmission costs, or increasing the capacity credit
12 provided to solar QFs. Not only does each of these proposals lack merit, each proposal
13 deviates from the Commission’s decision in Order No. 14-058 and would tip the balance too
14 far in favor of QFs and to the detriment of customers. Adopting these proposals here will
15 exacerbate the very problem that the Commission was trying to mitigate in Order No. 15-
16 199. Thus, the Commission should affirm the methodology for calculating standard avoided
17 cost prices established in Order No. 14-058 and reject calls to inflate avoided costs to the
18 detriment of customers.

³ Order No. 15-199 at 6.

⁴ *Id.* at 7. The Commission adopted similar interim relief for PacifiCorp. *Re PacifiCorp Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap*, Docket No. UM 1734, Order No. 15-241 (Aug. 14, 2015).

1 II. ARGUMENT

2 A. Issues 3 and 4: The Commission should Affirm the Capacity Contribution
3 Calculation for Avoided Cost Prices Established in Order No. 14-058.

4 The parties are in general agreement that if a QF allows a utility to avoid or defer the
5 acquisition of a capacity resource, the QF should receive a capacity payment equal to the
6 avoided capacity cost. The dispute here lies in how to calculate the avoided cost of capacity.

7 1. In Order No. 15-058 the Commission Correctly Accounted for a QF's
8 Contribution to Peak.

9 Idaho Power recommends that the Commission affirm the methodology it adopted in
10 Order No. 14-058 for calculating standard avoided cost prices to account for the capacity
11 contribution of different QF resources. Prior to that decision, the Commission had directed
12 utilities to calculate a QF's capacity contribution based on the capacity factor of the proxy
13 resource—ignoring entirely the different capacity contributions of different QF resources. In
14 Phase I of this proceeding, Staff pointed out this shortcoming and recommended that the
15 Commission consider both capacity factor and contribution to peak. To implement this
16 recommendation, Staff proposed that the Commission add one incremental adjustment to
17 the old methodology, multiplying the result of the capacity cost calculation based upon the
18 combined cycle combustion turbine (CCCT) proxy by the QF's contribution to peak.⁵ The
19 Commission adopted Staff's approach and thereby assured a capacity payment that more
20 closely reflects the utility's actual avoided costs, thus mitigating customer harm.⁶

21 Despite the fact that Staff recommended the methodology, Staff *now* argues that the
22 Commission should alter its approach by considering only contribution to peak, and ignoring

⁵ *Re Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 12, 15 (Feb. 24, 2014).

⁶ *Id.* at 15 (adoption of contribution to peak adjustment results in "more accurate avoided cost estimates").

1 capacity factor.⁷ Staff's new approach is as infirm as the original methodology that the
2 Commission amended in Order No. 14-058.

3 Staff acknowledges that in Order No. 14-058 the Commission departed from prior
4 precedent in considering the characteristics of the QF, not just the proxy resource, when
5 setting avoided cost prices.⁸ As Staff acknowledges, prior to Order No. 14-058, the avoided
6 capacity payment was based on the on-peak capacity factor of the CCCT proxy resource.⁹
7 In Order No. 14-058, the Commission directed the utilities to also consider an additional
8 aspect of the capacity contribution—"the expected contribution to peak load of the specific
9 QF resource type."¹⁰ Therefore, the Commission departed from precedent by considering
10 the capacity contribution of intermittent QF resources relative to the proxy resource.¹¹

11 Obsidian argues that the solar capacity contribution must be based only on the
12 "probability that such energy will be available for delivery during the utility's peak load
13 hours."¹² Obsidian claims that this probability is fully captured in the QF's contribution to
14 peak. On the contrary, the capacity contribution must consider both the contribution to peak
15 and the on-peak capacity factor, as compared to the proxy resource, because both metrics
16 are relevant to determining the capacity that is "avoided" by the QF transaction.¹³ The

⁷ Staff Prehearing Memorandum at 9-10.

⁸ Staff Prehearing Memorandum at 10-11, 17.

⁹ Staff Prehearing Memorandum at 10.

¹⁰ Order No. 14-058 at 15; Staff/102-103.

¹¹ Idaho Power/600, Youngblood/7-8.

¹² Obsidian Renewables LLC's Pre-Hearing Brief at 3.

¹³ See *Re Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 06-538 at 51 (Sept. 20, 2006) ("Observing that a natural-gas-fired CCCT, the avoided proxy resource designated by Order No. 05-584, is a base load resource, Staff asserts that it is appropriate to determine the resource sufficiency period based on annual average energy usage, together with the highest monthly capacity requirements. Staff reasons that a utility would not be likely to acquire a base load resource until it forecasts both a significant annual energy deficit and a monthly capacity deficit in the same year.") (emphasis added).

1 Commission's Order No. 14-058 methodology correctly accounts for both metrics and
2 should be affirmed.

3 Staff also argues that the Commission did not actually intend to adopt Staff's
4 erroneous recommendation in Phase I.¹⁴ On its face, this claim does not withstand scrutiny.
5 Staff's Phase I recommendation consisted of a straightforward adjustment that simply
6 multiplied the capacity component of the avoided cost price by the QF's contribution to
7 peak.¹⁵ Staff's Phase I testimony included a detailed description of its adjustment, along
8 with examples showing the actual impact on avoided cost prices resulting from its
9 recommendation.¹⁶ When adopting Staff's recommendation in Phase I, the Commission
10 was fully aware of the mechanics of the proposal and the impact of the proposal on avoided
11 cost prices.¹⁷ There is nothing in Order No. 14-058 that would suggest that the Commission
12 intended to adopt the entirely different methodology Staff now recommends.¹⁸ Staff's
13 argument that its previous testimony was unreliable undermines the credibility of its current
14 recommendation.

15 The Commission's decision in Order No. 14-058 must also be read in the context of
16 subsequent events. Even with the properly calculated lower avoided costs resulting from
17 Order No. 14-058, Idaho Power was inundated with requests for solar QF contracts.¹⁹
18 Indeed, the Commission referred to the growth in QF solar development as "unprecedented"
19 and "extreme" despite what Staff and QF developers claim is an unreasonably low avoided

¹⁴ Staff/500, Andrus/14-15.

¹⁵ Order No. 14-058 at 15 ("For the Standard Method, Staff proposes multiplying the capacity component currently embedded in the method by a 'capacity contribution factor,' equal to the expected contribution to peak load of the specific QF resource type."); Staff/102-103.

¹⁶ Staff/102-103.

¹⁷ Staff/102, Bless/3-4 (showing solar QFs receiving 73 percent of the capacity payment of a baseload QF paid during only on-peak hours).

¹⁸ Order No. 14-058 at 15.

¹⁹ Order No. 15-199 at 6-7.

1 cost price.²⁰ Subsequent events provide a strong indication that the avoided cost price
2 methodology adopted in Order No. 14-058 was accurate (if not excessive) and resulted in
3 just and reasonable prices.²¹

4 **2. Staff's Recommendation Violates PURPA's Customer Indifferent**
5 **Mandate.**

6 When a utility purchases electricity from a QF, the price paid by the utility must be no
7 more or less than the utility's avoided cost, *i.e.*, the amount that the utility would otherwise
8 have incurred to either generate the electricity itself or purchase it on the market.²² In this
9 way, the transaction with the QF is intended to ensure customers are not affected and
10 remain indifferent to the QF transaction.²³

11 In defense of its recommendation, Staff claims that its proposal will not result in over-
12 payments to the QF.²⁴ Staff is incorrect on this point. There is no dispute in this case that
13 the price for a megawatt-hour of solar QF electricity under Staff's proposal is higher than
14 the price for a megawatt-hour of electricity from the proxy resource that is presumed to be

²⁰ *Id.*

²¹ *Id.* at 6 (QF pricing must be "just and reasonable to the utility's customers"); *Re Competitive Bidding by Investor-Owned Electric Utility Companies*, Docket No. UM 316, Order No. 91-1383, 127 P.U.R.4th 306, 1991 WL 501921 at *13 (Oct. 18, 1991) (contract solicitations provide reasonable estimate of avoided cost prices).

The fact that solar QFs were seeking contracts at the avoided cost prices established by Order No. 14-058 provides real-world, market evidence that Idaho Power's actual avoided costs were no greater than the prices established by Order No. 14-058.

²² 16 U.S.C. §§ 824a-3(b), (d); 18 C.F.R. § 292.101(b)(6); ORS 785.525(1); ORS 758.505(1).

²³ *Indep. Energy Producers*, 36 F.3d at 858 (customers should remain indifferent as to whether the utility used more traditional sources of power or the newly-encouraged alternatives); *So. Cal. Ed. Co.*, 71 F.E.R.C. ¶¶ 61,269, 62,079 (F.E.R.C. 1995) (customers should remain "indifferent as to whether the utility used more traditional sources of power or the newly-encouraged alternatives."); *Re Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-584 at 11 and 19 (May 13, 2005) (one of the fundamental objectives under PURPA is to accurately price QF power to ensure that customers remain indifferent to QF generation); Order No. 14-058 at 3 (Commission must "provide maximum economic incentives for development of QFs while insuring that the costs of such development do not adversely impact utility ratepayers who ultimately pay these costs.").

²⁴ Staff Prehearing Memorandum at 19.

1 avoided.²⁵ The premise underlying the avoided cost price is that it should be no greater
2 than the cost the utility would otherwise incur.²⁶ If it is assumed that every megawatt-hour
3 generated by the solar QF offsets one megawatt-hour that would have been generated by
4 the proxy resource, then, under Staff's proposal, customers will pay more for the megawatt-
5 hour generated by the solar QF. Therefore, Staff's proposal harms customers and violates
6 PURPA's explicit mandate to hold customers indifferent to QF generation.²⁷

7 **3. The Commission should Reject Obsidian's Proposal to Modify the**
8 **Method by which Idaho Power Calculates a Resource's Contribution to**
9 **Peak.**

10 Obsidian also recommends that the utilities calculate the capacity contribution for solar
11 resources using the effective load carrying capacity (ELCC) methodology.²⁸ However, other
12 than Obsidian's conclusory statements that the ELCC method is an "industry-standard
13 method,"²⁹ there is no basis to require the utilities to use this methodology to determine a
14 QF's contribution to peak. And contrary to Obsidian's unsubstantiated claims, Idaho Power
15 has never relied on the ELCC in its IRP or for calculating avoided costs.³⁰

16 Moreover, a change in the methodology used to determine a resource's contribution
17 to peak would have significant consequences for the Company's resource planning. Thus,

²⁵ See e.g. Idaho Power/800, Youngblood/12; Staff/600, Andrus/13 ("Staff believes the parties are in agreement as to the amount of capacity payments QFs could receive under the Current Method and Staff's Proposed Method.").

²⁶ See e.g. ORS 758.505(1) ("'Avoided cost' means the incremental cost to an electric utility of electric energy or energy and capacity that the utility would generate itself or purchase from another source but for the purchase from the qualifying facility.").

²⁷ *Indep. Energy Producers*, 36 F.3d at 858.

²⁸ Obsidian Renewables LLC's Pre-Hearing Brief at 3-4.

²⁹ Obsidian/400, Brown/14 (noting that a single state commission has directed a single utility to use the ELCC method).

³⁰ Idaho Power/1200, Youngblood/9.

1 the proper forum to address this issue is the Company's IRP dockets, where, in fact, this
2 exact issue has been raised and addressed by the Company.³¹

3 **B. Issue 5: The Forum to Challenge Avoided Costs should not Disrupt IRPs or**
4 **Harm Customers through Unreasonable Delay.**

5 Idaho Power agrees that the Commission must provide parties with an opportunity to
6 challenge a utility's calculation of avoided costs. However, such challenges should not be
7 allowed to unreasonably burden or delay each utility's IRP process or post-IRP avoided cost
8 compliance updates.³² These proceedings are time sensitive and are not designed to allow
9 parties to fully litigate, in a contested case proceeding, a utility's avoided costs.³³ For this
10 reason, the Company recommends that parties be required to bring challenges to avoided
11 cost calculations in a separate complaint—or other specifically-designated—proceedings.
12 Adoption of Idaho Power's proposal will: (a) result in the administratively efficient adoption
13 of updated avoided cost prices; (b) preserve parties' ability to challenge aspects of the
14 avoided cost prices in a contested case; and (c) prevent gamesmanship intended to
15 unreasonably delay avoided cost updates.

16 If the Commission were to allow parties to litigate avoided cost issues in either the IRP
17 or avoided cost update proceedings, then it must take measures to protect customers from
18 the delays in adoption of avoided cost prices that are likely to occur.³⁴ Specifically, Idaho
19 Power recommends that QFs requesting standard contracts during the pendency of these

³¹ *Re Idaho Power Company's 2013 Integrated Resource Plan*, Docket No. LC 58, Order No. 14-253 at 14 (July 8, 2014); *Re Idaho Power Company's 2015 Integrated Resource Plan*, Docket No. LC 63, 2015 Integrated Resource Plan at 50-51 (June 30, 2015).

³² Idaho Power/1100, Allphin/4-5; Idaho Power/1300, Allphin/5-9.

³³ Idaho Power/1300, Allphin/9.

³⁴ Idaho Power/1300, Allphin/9.

1 proceedings be restricted to only the new avoided costs under review, subject to true-up.
2 The Commission has taken such an approach in the past and should do so here as well.³⁵

3 ODOE challenges Idaho Power's proposal, claiming that it is "indistinguishable from a
4 contested case avoided cost docket after the IRP order."³⁶ To be clear, Idaho Power's
5 recommendation is that the current avoided cost update that follows IRP acknowledgement
6 remains unchanged, *i.e.*, the Company will file updated prices based on inputs from the
7 acknowledged IRP and the Commission will approve those updates on an expedited basis.
8 Under Idaho Power's proposal, if a party wanted to challenge one of the inputs from the
9 acknowledged IRP, the party could do so through a complaint or other process that would
10 provide a contested case. Thus, the post-IRP avoided cost prices would be approved on
11 the same expedited basis that occurs today.

12 REC and ODOE recommend that the Commission institute a new and complicated
13 process whereby the Commission conducts a simultaneous avoided cost proceeding
14 concurrent with each utility's IRP.³⁷ REC argues that this process will "reduce the possibility
15 of a Commission acknowledged integrated resource plan having inputs or assumptions that
16 depart from those used to set avoided cost rates."³⁸ This claim makes no sense. Currently,
17 the avoided cost inputs are taken directly from the utility's acknowledged IRP so there is no
18 likelihood that the avoided cost inputs will differ from the acknowledged IRP. On the
19 contrary, REC's recommendation for a separate avoided cost docket that will simultaneously

³⁵ See *Re Portland Gen. Elec. Co.*, Docket No. UM 1443, Order No. 09-507 (Dec. 28, 2009) (allowing immediate avoided cost price reduction pending investigation into accuracy of avoided cost prices); *Re Staff's Investigation Relating to Elec. Util. Purchases from Qualified Facilities*, Docket No. UM 1129, Order No. 05-1061 (Oct. 4, 2005) ("Order No. 05-1061") (allowing revised contracts and prices to become immediately effective pending investigation subject to contract amendment to conform to outcome of investigation).

³⁶ Oregon Department of Energy's Pre-Hearing Memorandum, Phase II at 5.

³⁷ Oregon Department of Energy's Pre-Hearing Memorandum, Phase II at 5-8; Renewable Energy Coalition Pre-Hearing Brief at 10.

³⁸ Renewable Energy Coalition Pre-Hearing Brief at 10.

1 litigate the same issues as the IRP creates a very real possibility that avoided cost inputs
2 may differ from an acknowledged IRP. If consistency between avoided costs and the IRP
3 is the goal, as REC appears to concede,³⁹ then the concept of separate avoided cost docket
4 must be rejected.

5 REC further claims that this separate and concurrent process will not result in a
6 significant change to the IRP process because the avoided cost docket will examine only
7 those limited number of IRP issues that impact avoided costs.⁴⁰ However, simultaneously
8 litigating the same issues in two parallel dockets will undoubtedly disrupt the IRP process,
9 just as the IRP process will undoubtedly disrupt the avoided cost process.

10 **C. Issue 6: The Commission should Affirm that QFs are not Entitled to Capacity**
11 **Payments when the Utility is Resource Sufficient.**

12 Idaho Power recommends that the Commission affirm its current methodology for
13 calculating avoided costs during the period of resource sufficiency.⁴¹ The Commission has
14 a “long history of differentiating the calculation of avoided costs for a utility in a resource
15 deficit position from a utility in a surplus position.”⁴² When a utility is resource deficient, the
16 avoided cost includes a capacity component, which compensates the QF for the capacity
17 resource that the utility theoretically avoids or defers due to the QF purchase.⁴³ Conversely,
18 when a utility is resource sufficient, avoided costs include only an energy component,
19 “reflecting the inability of a resource sufficient utility to defer or avoid a resource when QF
20 generation is committed.”⁴⁴ The Commission has found that the “IRP process is the
21 appropriate venue for addressing resource sufficiency/deficiency issues because the IRP

³⁹ Renewable Energy Coalition Pre-Hearing Brief at 10.

⁴⁰ Renewable Energy Coalition Pre-Hearing Brief at 10.

⁴¹ Idaho Power/800, Youngblood/12-14.

⁴² Order No. 05-584 at 26.

⁴³ *Id.*

⁴⁴ *Id.*

1 processes are conducted with extensive public review regarding the timing of the utility's
2 loads and its consequent resource needs."⁴⁵

3 The Joint QFs request that the Commission depart from this long-standing practice
4 and require utilities to pay QFs for avoided capacity even when the utility's IRP indicates
5 that it is resource sufficient. The Joint QFs offer several justifications for their sweeping
6 departure from Commission precedent, but none are persuasive.

7 **1. QFs have no Right to a Capacity Payment if Capacity is not Avoided.**

8 The Joint QFs argue that the Commission should add a capacity component to the
9 avoided cost price during the sufficiency period because current resource sufficiency
10 periods are too long.⁴⁶ The Joint QFs claim that if the Commission does not artificially
11 shorten the sufficiency period, QFs will be denied their "right to sell capacity."⁴⁷ But QFs
12 have no "right to sell capacity" if the purchasing utility is not avoiding capacity as a result of
13 the purchase. The Commission has been clear that a QF receives a "capacity payment to
14 the extent the QF can reasonably demonstrate that it is sufficiently reliable and dispatchable
15 to permit a reduction in the utility's capacity costs."⁴⁸ FERC has likewise been clear that
16 QFs are not entitled to capacity payments if they do not allow a utility to avoid capacity.⁴⁹
17 As FERC explained, a QF is "entitled to receive rates based on the capacity costs that a

⁴⁵ *Re Investigation into Determination of Resource Sufficiency, Pursuant to Order No. 06-538*, Docket No. UM 1396, Order No. 10-488 at 8 (Dec. 22, 2010).

⁴⁶ REC, CREA, Obsidian and OneEnergy Pre-Hearing Brief at 9.

⁴⁷ REC, CREA, Obsidian and OneEnergy Pre-Hearing Brief at 11.

⁴⁸ *Re Investigation of Avoided Costs and Cost-Effective Fuel Use and Resource Development*, Docket No. UM 21, Order No. 84-720, 62 P.U.R.4th 397, 1984 WL 1022595 at *7 (Sept. 12, 1984).

⁴⁹ *Small Power Production and Cogeneration Facilities: Regulations Implementing Section 210 of the Public Utility Regulatory Policy Act of 1978*, Order No. 69, 45 Fed.Reg. 12,214, 12,225 (Feb. 19, 1980) (if there are no avoided capacity costs rates for purchase should be "based on the utility system's avoided incremental cost of energy") (hereinafter "Order No. 69").

1 utility can avoid as a result of its obtaining capacity from the [QF]" only if the QF allows the
2 utility to defer or avoid the acquisition of new capacity resources.⁵⁰

3 Moreover, the Joint QFs argument ignores the fact that both the Commission and
4 FERC have recognized that the firm market price paid to QFs when a utility is resource
5 sufficient includes an embedded capacity cost.⁵¹ Thus, even if the Joint QFs were correct
6 that they had a "right" to a capacity payment, they are already receiving it.

7 **2. Uncertainty in Resource Planning is No Basis to Artificially Impute an**
8 **Avoided Capacity Cost.**

9 The Joint QFs also contend that long sufficiency periods are problematic because
10 utilities cannot reliably predict their actual resource needs so far into the future, particularly
11 given uncertainty related to recent environmental regulations.⁵² Thus, the Joint QFs ask the
12 Commission to impute a capacity payment even during periods of resource sufficiency. The
13 Joint QFs' argument should be rejected.

14 *First*, there is no evidence that uncertainty in the resource sufficiency/deficiency
15 demarcation is systematically biased in a way that understates avoided costs. The Joint
16 QFs provide one example where a utility added a resource sooner than was reflected in
17 their IRP.⁵³ This single example is entirely insufficient to support their claim that utility's
18 IRPs systematically overstate the resource sufficiency period. The Joint QFs
19 recommendation rests on little more than speculation and must be rejected.

20 *Second*, regulatory uncertainty applies to all aspects of the avoided cost
21 determination, not just the resource sufficiency/deficiency demarcation, and this uncertainty

⁵⁰ Order No. 69 at 12,225.

⁵¹ Order No. 05-584 at 28 (using market prices during sufficiency period "embeds the value of incremental QF capacity in the total market-based avoided cost price"); Order No. 69 at 12,225 (purchases of firm power include a capacity component reflecting the seller's fixed generation costs).

⁵² REC, CREA, Obsidian and OneEnergy Pre-Hearing Brief at 10-11.

⁵³ REC, CREA, Obsidian and OneEnergy Pre-Hearing Brief at 10.

1 does not support inflated avoided cost prices. By design, any avoided cost price established
2 today for the next 15 years will be inherently speculative—not only because of the inability
3 to accurately forecast future resource acquisitions, but also because of the inability to
4 accurately forecast market prices and many other factors that impact avoided cost prices.
5 In fact, Idaho Power’s evidence demonstrates that its actual avoided costs have been
6 systematically *less* than its prior estimates—meaning that customers are paying more for
7 QF generation than the available alternatives.⁵⁴ There is no reason for the Commission to
8 artificially inflate avoided cost prices based simply on the unproven assumption that a utility’s
9 IRP will be wrong. The most effective means to mitigate uncertainty in avoided cost prices
10 is to shorten the contract term so that the forecast is more definite and less speculative, as
11 Idaho Power has proposed in docket UM 1725.

12 *Third*, to the extent that new environmental regulations affect a utility’s resource
13 planning, those impacts will be fully accounted for in the utility’s IRP when the utility identifies
14 the least cost/least risk resource portfolio.⁵⁵ There is no justification to conclude that for
15 purposes of avoided costs a utility will acquire a resource earlier than reflected in the IRP.
16 Simply inflating the avoided cost price based on the fact that the QF is emission free, as the
17 Joint Utilities recommend, is impermissible.⁵⁶ The avoided capacity price must tie directly
18 to actual costs that will be avoided, and those costs are established in each utility’s IRP.

⁵⁴ Idaho Power/200, Stokes/15.

⁵⁵ *Re Investigation Into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-047, App. A at 6 (Feb. 9, 2007) (IRP Guideline 8: “Utilities should include, in their base-case analyses, the regulatory compliance costs they expect for carbon dioxide (CO₂), nitrogen oxides, sulfur oxides, and mercury emissions. Utilities should analyze the range of potential CO₂ regulatory costs in Order No. 93-695, from zero to \$40 (1990\$). In addition, utilities should perform sensitivity analysis on a range of reasonably possible cost adders for nitrogen oxides, sulfur oxides, and mercury, if applicable.”).

⁵⁶ *So. Calif. Edison Co. San Diego Gas & Elec. Co.*, 71 F.E.R.C. ¶ 61,269, 62,080 (1995); *Am. Ref-Fuel Co., Covanta Energy Grp., Montenay Power Corp., & Wheelabrator Technologies Inc.*, 105 F.E.R.C. ¶ 61,004, 61,007 (2003) (a QF’s environmental attributes cannot be considered when determining avoided costs).

1 *Fourth*, inflating avoided cost prices to incent QF development during extended
2 periods of resource sufficiency is contrary to Commission policy. In Order No. 84-742, the
3 Commission rejected proposals from QF developers to inflate QF contract prices due to
4 decreasing avoided cost prices resulting from a surplus of resources.⁵⁷ The Commission
5 recognized that “[h]igher rates would make more projects feasible,” but the Commission’s
6 other “goal is to obtain service for ratepayers at reasonable rates.”⁵⁸ In times, such as now,
7 when avoided cost prices are falling and resource sufficiency periods are long, there will be
8 fewer QF projects.⁵⁹ But this result is expected and the Commission has steadfastly
9 maintained that “adherence to avoided costs [is] the best pricing method.”⁶⁰

10 **D. Issue 8: A Legally Enforceable Obligation should Bind the QF to Provide its**
11 **Output within One Year and Cannot Exist at First Contact.**

12 Idaho Power recommends that a legally enforceable (“LEO”) obligation exist only if:
13 (1) “but for” the refusal of the utility to enter into a contract, there would be a contract at a
14 particular price and terms; (2) the utility’s refusal or conduct was purposeful and intended to
15 prevent or delay the utility’s commitment to purchase power from the QF, in violation of
16 PURPA; (3) the QF can deliver its electrical output within 365 days of the Commission’s
17 determination; and (4) the QF will be subject to the penalties specified in the Standard
18 Contract for failure to deliver its energy within that 365-day timeframe. Idaho Power’s
19 recommendation is based directly on FERC’s articulation of when a LEO exists and will

⁵⁷ Order No. 84-742 at *3.

⁵⁸ *Id.*

⁵⁹ *Id.* (“The Commission believes that the best balance between the two goals [QF development and reasonable rates] is to set rates equal to avoided costs. In periods of surplus, such as now, fewer projects are needed. When deficits are projected, avoided costs will rise and opportunities for profitable facility development will expand. Therefore, as a general policy, the Commissioner endorses adherence to avoided costs as the best pricing method.”)

⁶⁰ *Id.*

1 protect customers from paying inflated avoided cost prices when a QF seeks a contract with
2 higher, outdated pricing.⁶¹

3 **1. Idaho Power's One-year On-line Requirement is Reasonable.**

4 Several parties are critical of the proposed requirement that the QF deliver its output
5 within 365 days of establishing a LEO.⁶² Parties argue that a QF developer will not be able
6 to meet this deadline because they will be unable to obtain financing until they have a
7 contract or LEO.⁶³ The Company's proposed time limit appropriately recognizes that a LEO
8 binds both the utility and the QF.⁶⁴ Therefore, if a QF is going to commit itself to sell its
9 output and create a LEO, it must be bound to follow through on its commitment. Idaho
10 Power's proposed time limit reasonably balances the interests of customers and QF
11 developers by imposing consequences on the developer for failing to meet the commitment
12 that entitled the QF to outdated avoided cost prices.

13 In addition, there is no requirement in PURPA or FERC's regulations mandating that
14 a QF can create a LEO prior to construction of its facility.⁶⁵ On the contrary, several states
15 have imposed a time limit similar to, or even shorter than, Idaho Power's proposal here.⁶⁶

16 **2. A LEO Cannot Occur upon First Contact.**

17 Gardner Capital recommends that a LEO is created once the QF submits a complete
18 application identifying all relevant parameters for the project, *i.e.* as soon as the QF requests

⁶¹ See *Cedar Creek Wind LLC*, 137 F.E.R.C. ¶ 61,006 at 8 (2011); Idaho Power/900, Allphin/8-13; Staff/500, Andrus/36-39.

⁶² Gardner Solar Prehearing Legal Brief at 12-13; Renewable Energy Coalition Pre-Hearing Brief at 22.

⁶³ See *e.g.* Gardner Solar Prehearing Legal Brief at 12-13.

⁶⁴ *Snow Mountain Pine v. Maudlin*, 84 Or. App. 590, 599 (1987) ("a qualifying facility's self-imposed obligation to *deliver* energy triggers a utility's obligation to *purchase energy*." (emphasis in original).

⁶⁵ *Power Res. Group, Inc. v Pub. Util. Comm'n of Tex.*, 422 F.3d 231, 238-39 (5th Cir. 2005).

⁶⁶ Idaho Power/900, Allphin/10 (Idaho Public Utilities Commission approved the same one-year limit); *Power Res. Group, Inc.*, 422 F.3d at 238-39 (approving a 90 day limit in Texas).

1 a draft contract.⁶⁷ Establishing a LEO upon first contact is entirely unreasonable and
2 unprecedented.

3 First contact cannot establish a LEO because the QF has not, at that time, made any
4 commitment or bound itself to any obligation to the utility and its customers.⁶⁸ The mere
5 request for a draft contract is nothing more than a possibility of entering into contract some
6 time into future and is patently insufficient to establish a legally enforceable obligation.

7 Moreover, LEOs are intended to protect QFs when a utility refuses to sign a contract.⁶⁹
8 Under Gardner Capital's recommendation, however, the utility does not even have an
9 opportunity to refuse to sign a contract because the LEO can be created the first time the
10 QF contacts the utility. Gardner Capital's recommendation is therefore inconsistent with
11 one of the fundamental purposes behind the creation of LEOs.

12 Finally, adopting Gardner Capital's recommendation would result in customer harm.
13 The invocation of a LEO occurs when a QF seeks a contract based on out-of-date avoided
14 cost prices that either have been updated or are in the process of being updated. Allowing
15 a QF to lock in long-term, fixed prices at an inflated rate that is an inaccurate estimate of a
16 utility's avoided costs will cause substantial harm to Idaho Power customers.⁷⁰

⁶⁷ Gardner Solar Prehearing Legal Brief at 9. Gardner Capital proposes three triggers for the creation of a legally enforceable obligation. The other two triggers are: (1) that the utility have approved avoided costs and (2) that the utility has an approved standard contract. Both these conditions will be generally satisfied, leaving only the third condition to define when an LEO exists. See *also* Gardner Solar/100, Benga/7-8 (the information sufficient to establish an LEO is the information Idaho Power requires in order to provide a draft contract).

⁶⁸ *Cedar Creek Wind, LLC*, 137 F.E.R.C. ¶ 61006 at 8 ("Accordingly, a QF, by committing itself to sell to an electric utility, also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations."); Idaho Power/1100, Allphin/9.

⁶⁹ *Id.* ("Thus under our regulation, a QF has the option to commit itself to sell all or part of its electric output to an electric utility. While this may be done through a contract, if the utility refuses to sign a contract, the QF may seek state regulatory authority assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a non-contractual, but still legally enforceable, obligation will be created pursuant to the state's implementation of PURPA.") (emphasis added).

⁷⁰ Idaho Power/1100, Allphin/9.

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III. CONCLUSION

The Commission should adopt Idaho Power's recommendations and affirm the decision in Order No. 14-058 to account for the capacity contribution of different QF resources and also adopt Idaho Power's recommendations on the remaining Phase II issues. The Company's proposals strike a reasonable and fair balance between customers and QF developers and, as compared to the recommendations of other parties, better ensure that customers are protected.

Respectfully submitted this 13th day of October, 2015.

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