

January 20, 2006

VIA ELECTRONIC MAIL AND US MAIL

Filing Center
Oregon Public Utility Commission
550 Capitol Street NE #215
PO Box 2148
Salem, OR 97308-2148

Re: UM 1129 – Rebuttal Testimony of John R. Gale

Dear Sir or Madam:

Enclosed for filing in the above-named docket is the original and five copies of the Rebuttal Testimony of John R. Gale on Behalf of Idaho Power Company. Please contact this office with any questions.

Very truly yours,



Jessica A. Gorham

Enclosures

cc: UM 1129 Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1129
PHASE II TRACK 1 -- COMPLIANCE**

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Staff's Investigation Relating to Electric
Utility Purchases From Qualifying
Facilities.

IDAHO POWER COMPANY
REBUTTAL TESTIMONY
OF
JOHN R. GALE

January 20, 2006

1 **Q. Please state your name and business address.**

2 A. My name is John R. Gale and my business address is 1221 West Idaho Street, Boise,
3 Idaho.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by Idaho Power Company (Idaho Power or the Company) as the Vice
6 President of Regulatory Affairs.

7 **Q. Please describe your work experience.**

8 A. In October 1983, I accepted a position as Rate Analyst with Idaho Power Company. In
9 March 1990, I was assigned to the Company's Meridian District Office for one year
10 where I held the position of Meridian Manager. In March 1991, I was promoted to
11 Manager of Rates. In July 1997, I was named General Manager of Pricing and
12 Regulatory Services. In March of 2001, I was promoted to Vice President of Regulatory
13 Affairs. As Vice President of Regulatory Affairs, I am responsible for the overall
14 coordination and direction of the Pricing & Regulatory Department, including
15 development of jurisdictional revenue requirements and class cost-of-service studies,
16 preparation of rate design analyses, and administration of tariffs and customer contracts.
17 In my current position, I am responsible for policy matters related to the economic
18 regulation of Idaho Power Company. I am also a member of the Company's Risk
19 Management Committee, which is charged with balancing the Company's loads and
20 resources on a short-term basis. Finally, in conjunction with the Company's Senior Vice
21 President for Power Supply, I am sponsoring the Company's 2004 Integrated Resource
22 Plan, which assesses the Company's loads and plans for resources on a long-term basis.

23 **Q. What is the purpose of your testimony?**

24 A. The testimony of a number of intervenors and Commission Staff advocate changes to the
25 terms and conditions of the standard contract and to the Schedule 85 Idaho Power filed in
26

1 accordance with Order No. 05-584. My testimony will address some of those proposed
2 changes.

3 **Q. Have you filed testimony previously in this case?**

4 A. Yes. I filed Idaho Power/100 in Phase I of this proceeding.

5 **Q. The testimony of Commission Staff Witness Schwartz is critical of Idaho Power's**
6 **requirement in its Oregon standard contract that QFs specify the amount of net**
7 **energy that they will deliver to the Company each month. Could you please explain**
8 **why Idaho Power included this provision in its standard contract?**

9 A. The monthly commitment is consistent with the contract provision Idaho Power includes
10 in its contracts with QFs in the state of Idaho. For the reasons I discuss below, I believe
11 Idaho Power may have a unique need for monthly commitments by the QFs and those
12 provisions should be included in the Oregon standard contract to ensure that system
13 customers are not disadvantaged by QF purchases in Oregon.

14 **Q. Please explain why you believe Idaho Power may have a unique need for monthly**
15 **commitments from QFs.**

16 A. Idaho Power has implemented a Risk Management Policy that is aimed at managing
17 customer exposure to price risk due to Idaho Power's heavy reliance on hydroelectric
18 generation. This Risk Management Policy has been reviewed and approved by the Idaho
19 Public Utilities Commission ("Idaho Commission") and is coordinated with a Customer
20 Advisory Group which includes representatives of the Idaho Commission Staff and
21 various customer groups. Consistent with this Risk Management Policy, Idaho Power
22 makes energy purchases and sales on a monthly basis to hedge its price risk arising out of
23 the potential for the convergence of low water conditions and high market prices. As a
24 result, having QFs commit to deliver a specific amount of energy each month helps Idaho
25 Power manage its resource portfolio to comply with its Risk Management Policy and to
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1 reduce customer costs. In this regard, Idaho Power may be unique when compared to
2 PacifiCorp and Portland General Electric.

3 **Q. Staff Witness Schwartz recommends that instead of monthly generation**
4 **commitments, QFs should only be required to make an annual generation**
5 **commitment to Idaho Power. What is Idaho Power's response to this proposal?**

6 A. An annual commitment simply will not help the Company to manage its resource
7 portfolio. Receiving excess energy in April does not make up for shortfalls in deliveries
8 in July. Consistent with its Risk Management Policy, Idaho Power makes monthly
9 purchases and sales in order to hedge its low water-high market price risk and to balance
10 its loads and resources. If the Company has firm contract commitments from all
11 wholesale suppliers, including QFs, specifying the resources that will be available on a
12 monthly basis, Idaho Power can make more cost-effective decisions on monthly power
13 purchases and sales. More volumetric specificity in the QF contracts, i.e., monthly
14 energy commitments, allows the Company to be more precise in its wholesale market
15 purchases and this ultimately reduces costs to customers. An annual commitment
16 significantly reduces any planning benefit to customers.

17 **Q. Staff Witness Schwartz also wants the Company to modify the requirement in the**
18 **Company's standard contract that QFs compensate the Company based on actual,**
19 **contemporary market prices if they fail to provide the agreed-upon monthly amount**
20 **of energy. What is Idaho Power's response to this proposal?**

21 A. If QFs fail to deliver the energy they agreed to supply, it is most likely that the Company
22 will be required to replace that energy in real-time. It is possible that real-time prices will
23 exceed the capped prices Staff proposes to use to measure damages. Idaho Power
24 believes that QFs should reimburse customers for additional cost based on the actual
25 damages the Company incurs. Staff's proposal to cap damages may result in real
26 increased costs for customers. Basing damages on actual market prices and

1 synchronizing this obligation to reasonable monthly delivery commitments will provide
2 correct price signals to the QF supplier.

3 **Q. Witnesses Schwartz for Staff and Keto for the Oregon Department of Energy both**
4 **express concern that some QFs, particularly QFs using weather-dependent**
5 **generating technologies, may not be able to obtain financing and develop their**
6 **projects if they are required to specify realistic minimum monthly energy amounts**
7 **they will deliver and possibly pay damages based on actual excess costs incurred if**
8 **they fail to perform as agreed. Has including these provisions in QF contracts in**
9 **Idaho proven to be a barrier to QF financing and development in Idaho?**

10 A. No. Idaho Power's template contract in Idaho places even more stringent performance
11 requirements on QFs than does the standard contract the Company has proposed to use in
12 Oregon. The Idaho template contract requires QFs to commit to deliver an amount of
13 energy each month and provides for liquidated damages based on actual market
14 conditions for both under delivery and over delivery in any month (90%/110% band).
15 The monthly amount is specified by the QF and the 90%/110% band encourages QFs to
16 commit to supply realistic amounts of energy, not worst-case amounts. There is no
17 special treatment for weather-dependent generation technologies. At the time the
18 Company's Idaho template contract was being considered by the Idaho Commission, the
19 QF industry and their lenders presented all of the same arguments to the Idaho
20 Commission that are being presented by the Oregon Staff and the Oregon Department of
21 Energy ("ODOE") in this case. QF developers and lenders warned the Commission that
22 new QF projects using weather-dependant technologies could not be developed or
23 financed if QFs were required to commit to realistic monthly generation amounts with
24 liquidated damages provisions if they failed to provide the amounts of energy they agreed
25 to provide.

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1 Those dire predictions failed to materialize in Idaho. Since the Company's
2 template contract, including monthly energy commitments by QFs and the assessment of
3 damages for failure to provide the agreed-upon energy amounts, was approved by the
4 Idaho Commission, the Company has entered into more than 20 contracts with a
5 combined nameplate capacity of approximately 219 MW. The QF projects under those
6 contracts represent almost all PURPA qualified generating technologies, including wind,
7 geothermal, industrial waste, biomass, landfill gas and hydro. These 20+ contracts range
8 in size from 0.13 MW to 21 MW.

9 Recently, the Idaho Commission ordered a temporary reduction in the capacity
10 size for entitlement to the standard rates for intermittent resources such as wind because
11 so many intermittent wind resources were seeking to sign contracts containing the very
12 same or more stringent provisions than those Staff and ODOE are concerned about.

13 In short, the actual experience in Idaho demonstrates that you can have a very
14 robust QF industry while at the same time expecting QFs, including QFs whose
15 generation is dependent on weather and market conditions, to commit to provide energy
16 on a monthly basis with a degree of firmness that is more consistent with purchases and
17 sales the Company routinely makes in the wholesale market.

18 **Q. In its testimony, Staff draws a distinction between placing delivery requirements on**
19 **QFs relying on intermittent renewable resources and cogeneration facilities and**
20 **placing delivery requirements on other QF generating technologies such as biomass**
21 **or geothermal. Does the Company's experience in the State of Idaho indicate that**
22 **such a distinction is necessary?**

23 **A.** No. Expecting QFs of all types to contractually commit to provide a realistic amount of
24 energy each month, regardless of whether their motive force is wind, hydro, geothermal,
25 or combined heat and power has not inhibited the development of QF resources in Idaho.
26

1 In fact, the greatest demand for contracts has been coming from QFs seeking to develop
2 intermittent wind resources.

3 **Q. In its testimony, ODOE Witness Keto states that the ODOE’s Small Energy Loan**
4 **Program (“SELP”) generally would not loan to a QF if there were more than an**
5 **incidental risk of default due to under-delivery related to minimum delivery**
6 **requirements. ODOE also states that for QFs relying on natural motive force, i.e.,**
7 **wind, solar, the minimum delivery requirements would need to be very low in order**
8 **for ODOE to make a loan. Even considering the more stringent Idaho contract**
9 **requirements, has it been Idaho Power’s experience that weather-dependent QFs**
10 **are unable to obtain financing for their projects when they are required to commit**
11 **to realistic monthly delivery amounts with liquidated damages in the event they fail**
12 **to provide the agreed-upon amounts?**

13 A. No. As I stated earlier, in Idaho numerous weather-dependent QF projects are moving
14 forward with financing and construction based on contracts containing the provisions that
15 ODOE says will significantly restrict financing. In fact, the most active contracting
16 sector is wind generation.

17 **Q. Both Staff Witness Schwartz and ODOE Witness Keto recommend that a cap be**
18 **placed on the amount of damages, which the utility can collect if the QF fails to**
19 **provide the agreed-upon monthly amounts of energy. What is the Company’s**
20 **position on such caps?**

21 A. Idaho Power believes that such caps are unnecessary and simply shift the risk of
22 nonperformance away from QFs to the Company’s customers. Rather than limit the
23 Company’s ability to recover its losses based on actual, contemporary market conditions,
24 Idaho Power believes the Commission correctly addressed this issue in Order No. 05-584
25 by requiring the standard contract to include provisions to allow QF developers to repay
26 the utility’s damages over time. This allows the QF to continue to operate and maintain

1 its project, pay its debt service, and repay the losses Idaho Power has incurred as a result
2 of the QF's failure to perform in accordance with the terms of the agreement. In its
3 standard contract, Idaho Power included a default 36-month payment period. In the past,
4 the Company has entered into repayment arrangements with QFs for both shorter and
5 longer time periods keyed to the QF's economics. Idaho Power would make similar
6 arrangements in Oregon.

7 **Q. Both Staff and ODOE express concern about the impact on QF development if**
8 **standard contracts include the potential for contract termination if the QF fails to**
9 **come on line when it said it would or if it fails to perform in accordance with the**
10 **terms of its agreement. What is Idaho Power's position on contract termination?**

11 A. Since 1981, out of 86 QF contracts, Idaho Power has involuntarily terminated only three
12 QF contracts. All of those involuntary terminations have come as a result of the QFs
13 curtailing their generation to very low levels while making no reasonable efforts to cure
14 the problem. Even though Idaho Power has invoked the remedy of contract termination
15 very sparingly, the interest of Idaho Power's customers require that the Company have
16 the ability, in appropriate circumstances, to terminate QF contracts for non-performance.

17 **Q. Staff Witness Schwartz recommends that Idaho Power be required to place a**
18 **provision in its Standard Contract capping the amount of damages the Company**
19 **could collect from a QF developer if the QF contract is terminated for non-**
20 **performance by the QF. Does Idaho Power have any concern with that proposal?**

21 A. Yes. Depending on market conditions at the time of the QF's default, the cap on damage
22 collection recommended by Ms. Schwartz could result in Idaho Power's being unable to
23 collect all of its actual damages. I can see no benefit to customers created by limiting the
24 Company's ability to collect whatever damages are appropriate when a QF contract is
25 terminated due to a QF default.

1 **Q. Staff Witness Schwartz testifies that a cap on the amount of default losses that can**
2 **be recouped in the event of a contract termination is necessary for QFs to obtain**
3 **financing. Do Idaho Power's Idaho QF contracts place a cap on the amount of**
4 **damages the Company can collect from QFs that default on their contracts?**

5 A. No. A prior vintage of contracts under which QFs were paid *levelized* rates did contain a
6 cap on damages if the contract was terminated prior to its expiration. However, for at
7 least the last ten years, no Idaho QF contracts, levelized or otherwise, have included a cap
8 on damages arising out of contract termination.

9 **Q. Has this lack of a cap on damages in the newer QF contracts had an adverse effect**
10 **on QF's ability to obtain financing or the development of the QF industry in Idaho?**

11 A. It does not appear to have adversely affected the development of a robust QF industry in
12 Idaho. Since the mid-1990s Idaho Power has signed approximately 30 QF contracts with
13 a combined capacity of approximately 259 MW, none of which include a cap on damages
14 the utility can collect if the contract is terminated due to a QF default. It certainly does
15 not appear that a lack of a damage cap is precluding QF financing and development in
16 Idaho.

17 **Q. Are there any other concerns you have with placing a cap on QF damages in the**
18 **event of a contract termination?**

19 A. Idaho Power is concerned that when market prices exceed avoided costs, the presence of
20 a cap on damages may encourage QF developers to terminate their contracts with the
21 utility and simply convert their projects to merchant power plants. This is not just a
22 hypothetical situation. During the 2000 energy crisis, when market prices temporarily
23 went above avoided cost rates, a large QF project terminated its contract with Idaho
24 Power, paid the liquidated damages, and immediately began searching for opportunities
25 to sell power on the wholesale market. In that particular case, the QF developer
26 eventually shut down the generation facility, but under the right conditions, this scenario

1 could play out again. Under those conditions it is entirely possible that the liquidated
2 damages clause as proposed by Witness Schwartz would not be sufficient to compensate
3 customers for the cost of replacing the energy lost when the QF developer decided to
4 default on the contract.

5 **Q. Staff Witness Schwartz recommends that Idaho Power include provisions in its**
6 **standard contract similar to the language in Section 10.4 of PGE's standard**
7 **contract which addresses the situation when a QF is seeking to reinstate sales to**
8 **PGE after the QF's contract has been terminated by PGE due to the QF's default.**
9 **What is Idaho Power's position on Staff's recommendation?**

10 A. Idaho Power is willing to modify its contract to include a provision like Section 10.4 of
11 PGE's standard contract. However, it is important to note that such a provision would
12 *not* eliminate the problem of QFs performing the cost-benefit analysis I discussed
13 previously in my testimony.

14 **Q. Staff Witness Dougherty recommends that Idaho Power delete the requirement in**
15 **its standard contract that insurance companies providing liability insurance to QFs**
16 **have an A.M. Best "Excellent" rating. Could you please address Mr. Dougherty's**
17 **recommendation?**

18 A. As Mr. Dougherty noted in his testimony, A.M. Best provides a rating service to
19 insurance purchasers in a manner similar to the services Moody's and Standard & Poors
20 provide for bond purchasers. A.M. Best, like Standard & Poors and Moody's, undertakes
21 an independent review of the financial strength of insurance companies and rates the
22 quality of the insurance companies so that entities purchasing insurance from those
23 insurance companies can be confident that if they have a claim, their insurance carrier
24 will be able to pay the claim. Idaho Power requires all entities doing business with Idaho
25 Power that are required to provide liability insurance do so utilizing insurance carriers
26

1 that maintain an “Excellent” A.M. Best rating. As such, QF developers are not subjected
2 to more stringent requirements than are other entities doing business with Idaho Power.

3 **Q. Mr. Dougherty argues that QFs should be allowed to utilize any liability insurance**
4 **carrier authorized to sell insurance in the state of Oregon. Is Idaho Power**
5 **comfortable with this recommendation?**

6 A. No. While Idaho Power has no reason to believe that the Oregon Department of
7 Insurance is not diligent in carrying out its statutory obligations, there is no question that
8 the independent review of an insurance carrier’s financial strength and stability as
9 performed by the A.M. Best Company provides an additional layer of protection for
10 Idaho Power and ultimately its customers. While liability insurance is not often used,
11 when it is needed, the financial strength of the insurer is critical.

12 **Q. Mr. Dougherty notes that if an insurance carrier authorized to sell insurance in**
13 **Oregon becomes insolvent or fails to pay claims, the Oregon Insurance Guaranty**
14 **Association provides back-up protection in the amount of \$300,000 for each liability.**
15 **Does that back-up protection eliminate Idaho Power’s concerns?**

16 A. Not entirely. In Order No. 05-584, the Commission authorized Idaho Power to include
17 provisions in the standard contract requiring QFs to provide prudent levels of liability
18 insurance. Idaho Power considers \$1,000,000 as a prudent level of coverage and has
19 signed 86 QF contracts including the \$1,000,000 amount of coverage. Industry
20 experience indicates that liability claims associated with electrical generation and
21 transmission can very easily exceed even \$1,000,000. Three hundred thousand dollars is
22 considerably less than \$1,000,000.

23 **Q. In Idaho Power’s experience, do small QFs have difficulty obtaining liability**
24 **insurance from A.M. Best “Excellent” rated companies?**

25 A. While Mr. Dougherty never explains in his testimony why he believes customers are
26 better off if QFs are permitted to purchase insurance from insurance carriers that do not

1 carry an A.M. Best “Excellent” rating, I can only assume that his recommendation is
2 based on a belief that some QFs may be unable to procure liability insurance from A.M.
3 Best rated companies or that the cost of buying insurance from these higher-quality
4 companies will be higher. If that is his concern, it is not consistent with Idaho Power’s
5 experience with QF insurance in Idaho. Idaho Power currently has 86 QF contracts in
6 force that include the A.M. Best insurance rating requirement. In the last 3 years Idaho
7 Power has signed 22 new contracts containing the “Excellent” rating requirement and the
8 Company has not been advised by QFs that this requirement was unreasonable or
9 presented any difficulty for them.

10 **Q. Sherman County/J.R. Simplot Witness Woodin objects to Sections 13.2 through 13.4**
11 **of Idaho Power’s standard contract. These sections deal with joint use of right-of-**
12 **way by Idaho Power and QFs. Could you please address Mr. Woodin’s concerns?**

13 **A.** Mr. Woodin appears to misunderstand the purpose and impact of Sections 13.2 through
14 13.4. The only right-of-way that is addressed in Sections 13.2 through 13.4 is public
15 right-of-way. Private easements are not affected. In most instances, the right-of-way at
16 issue is the right-of-way adjacent to public roads. The intent of the provision is to avoid
17 conflicts over access to limited amounts of public right-of-way. In particular, to avoid a
18 problem that surfaced in Idaho where a QF developer decided it wanted to use the
19 available public road right-of-way to build a line from its project to interconnect to Idaho
20 Power in a location where retail customers of Idaho Power had requested retail service in
21 the same vicinity. Idaho Power was faced with the choice of building a second line on
22 the other side of the road in the public road right-of-way across from the QF developer’s
23 line to serve the retail customers (not favored by the local planning entity for aesthetic
24 and safety reasons) or advising the retail customer(s) that they would have to pay the
25 excess cost demanded by the QF developer for Idaho Power to purchase the line from the
26 QF developer in order to provide services. Idaho Power has approximately 75 QF

1 contracts containing this provision and it has eliminated the problem of duplicate
2 facilities without any impact on QF development.

3 **Q. Does that complete your rebuttal testimony?**

4 **A.** Yes, it does.

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CERTIFICATE OF SERVICE
UM 1129

I hereby certify that a true and correct copy of **REBUTTAL TESTIMONY OF JOHN R. GALE ON BEHALF OF IDAHO POWER COMPANY** was served via U.S. Mail on the following parties on January 20, 2006:

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