

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1725

In the Matter of

IDAHO POWER COMPANY,

Applications to Lower Standard Contract
Eligibility Cap and to Reduce the Standard
Contract Term, for Approval of Solar
Integration Change, and for Change in
Resource Sufficiency Determination.

ORDER

DISPOSITION: STAY DENIED; INTERIM MEASURES ADOPTED

Idaho Power Company seeks changes to certain terms and conditions governing its obligations under the Public Utility Regulatory Policies Act (PURPA), and requests either a temporary stay or interim relief of its obligations related to PURPA pending our review of the three applications filed by the company. We deny the motion for a stay, but adopt interim measures pending our investigation to address the issues raised in Idaho Power's applications.

I. PROCEDURAL HISTORY

Idaho Power filed three applications to modify the terms and conditions under which the company enters into power purchase agreements (PPAs) with qualifying facilities (QFs). In those applications, Idaho Power requests that we (1) lower Idaho Power's standard contract eligibility cap and reduce the standard contract term of wind and solar QFs; (2) approve a solar integration charge; and (3) modify the company's resource sufficiency determination. Idaho Power concurrently filed a motion for a stay or temporary relief pending our consideration of the three applications.

Commission Staff; the Community Renewable Energy Association (CREA); Gardner Capital Solar Development, LLC; Pacific Northwest Solar, LLC (PNW); and the Renewable Energy Coalition (REC) filed responses, and Idaho Power filed a reply to the parties' responses.

II. BACKGROUND

Idaho Power requests we revisit and modify decisions we have made related to our implementation of PURPA. The company's requests primarily focus on three Commission orders. First, in Order No. 05-584, docket UM 1129, we provided QFs with nameplate capacity of 10 MW and below the opportunity to enter into standard contracts for 20 years, with 15-year fixed prices.

Second, in Order No. 10-488, docket UM 1396, we addressed the issue of when a utility should be considered resource deficient for purposes of setting avoided cost prices. In that order, we determined that the demarcation of resource sufficiency and deficiency would be based on the start date of the first major resource acquisition in a utility's most recently acknowledged Integrated Resource Plan (IRP) Action Plan. Idaho Power's current standard avoided cost prices are based on a resource deficiency period beginning in 2016.

Third, in Order No. 14-058, docket UM 1610, we reviewed our prior decisions and maintained the 10 MW eligibility cap and 20-year term for standard contracts, reasoning that standard contract terms are intended to reduce transaction costs associated with QF contract negotiation. In addition, we decided not to include solar resource integration costs in the calculation of standard avoided cost rates, but committed to revisit that issue in the future after more solar development occurs. Finally, we held that concerns about offering prices in excess of actual avoided costs would be best addressed through our decision to require annual updates to avoided costs.

III. PARTIES' POSITIONS

Idaho Power seeks either a temporary stay or interim relief. Idaho Power requests a stay on the company's obligation under PURPA and Commission orders to enter into fixed-price, standard PURPA contracts with QFs pending the outcome of our investigation into the three applications filed by the company. Alternatively, Idaho Power asks that we grant the relief requested in its three applications on an interim basis, pending final resolution of the applications. We summarize the parties' positions below.¹

A. Idaho Power

Idaho Power contends that an extreme increase in QF activity and potential harm to ratepayers warrant a temporary stay of its PURPA obligations. Idaho Power states that, in addition to the 11 projects under contract that are not yet operational (110 MW – 50 MW of wind and 60 MW of solar), it has 16 solar projects that have requested but not yet executed an energy service agreement (ESA) and 10 solar projects that have inquired about a Schedule 85 ESA (for a combined 245 MW). Because the company's current

¹ PacifiCorp, dba Pacific Power, has made similar requests in docket UM 1734, requesting that we reduce the contract term for all QFs to three years, and to reduce the eligibility for standard contracts for wind and solar QFs to 100 kW.

standard avoided costs are overstated by an average of \$12 to \$38/MWh² and do not properly reflect the actual costs the company incurs, such as solar integration costs, Idaho Power emphasizes that just the 16 solar QF projects that have requested ESAs (135 MW) could cost customers \$178 million more than purchase of that same power using updated avoided cost prices and capacity deficit year.³

Idaho Power requests that the stay be made effective on April 24, 2015, the date it filed the applications. The company notes that it provided notice of possible changes to QF contract terms back in February, when it filed a stipulation in docket UM 1610 that stated the company intended to bring case filings related to the issues it raises here.

If we do not grant the request for a stay, Idaho Power makes two alternative requests. First, Idaho Power asks that we grant the relief requested in the three applications on an interim basis, pending final resolution of the applications. In those applications Idaho Power seeks:

- *A Lower Contract Eligibility Cap and Reduced Contract Term*

Idaho Power requests that we reduce the eligibility cap applicable to standard contracts from 10 MW to 100 kW for wind and solar QFs, and reduce the contract term from 20 years to 2 years for all QF projects above 100 kW.

- *Approval of a Solar Integration Charge*

Idaho Power requests it be authorized to account for the costs of solar integration in both standard and negotiated QF contracts, in accordance with the company's completed 2014 solar integration study and pending 2015 solar integration study.

- *Change in Resource Sufficiency Determination*

Idaho Power seeks to modify the company's current sufficiency period used to calculate avoided cost contract prices to 2021 to properly reflect the inclusion of up to 440 MW of demand response acknowledged in its IRP.

As a second alternative request, Idaho Power supports the adoption of Staff's recommended interim relief. As more fully described below, Staff proposed lowering the eligibility cap to 100 kW and shortening the term for certain standard contracts to 5 years.

² On May 8, 2015, Idaho Power filed a supplement to its motion for temporary stay, noting that on May 1, the company filed its annual updates to its standard avoided cost rates, updating natural gas prices and on and off-peak forward looking electricity market prices. The avoided cost prices in its filings are significantly lower than current prices.

³ Idaho Power Reply in Support of Motion for Temporary Stay at 15-16.

B. Staff

Staff opposes Idaho Power's request for a stay, but recommends that interim relief be provided to help mitigate the extreme increase in QF activity. Staff recommends that, on an interim basis and effective April 24, 2015, we (1) reduce the eligibility cap for standard avoided cost prices and standard contracts for solar and wind QFs from 10 MW to 100 kW, and (2) shorten the maximum contract term for solar and wind QFs over 100 kW to five years. Staff recommends that QFs that submitted a request for an ESA prior to April 24, 2015 that satisfy the criteria of Idaho Power's Schedule 85 should be allowed the opportunity to establish a legally enforceable obligation to sell under the terms and conditions in effect before April 24, 2015.

Staff explains this action is consistent with action already taken in Idaho and will not impair QF development. Staff notes that, in 2011, the Idaho Commission reduced the eligibility cap for standard contracts for wind and solar QFs to 100 kW, and recently reduced the contract term to five years on an interim basis. Staff adds that the bulk of PURPA contract requests that Idaho Power has received since August 2013 have been made by only a few QF developers seeking ESAs for multiple 10 MW facilities, indicating that the 10 MW eligibility cap is not used as a tool to eliminate barriers to entry, but instead as a tool to obtain advantageous standard contract prices for the largest amount of MW possible.

Staff states there is authority and precedent for these interim measures. Staff explains that, under ORS 756.568, this Commission has the authority, upon notice to the utility and after opportunity to be heard, to rescind, suspend, or amend any order. Staff also notes that we have previously suspended the application of certain rules and policies regarding PURPA.⁴

C. Community Renewable Energy Coalition

CREA contends Idaho Power's filings constitute collateral attacks on Order No. 14-058, and should be denied. CREA also casts doubt on Idaho Power's claims of a potential "flood" of future solar contracts due to potential barriers to new development. CREA notes that Idaho Power has confirmed that there is no further network transmission available to accept the power from solar QFs other than the six solar projects that already have executed contracts. Because QFs pay for additional transmission upgrades under our implementation of PURPA, those upgrades present an additional barrier to any new solar QFs.

CREA argues that if a problem exists with our implementation of PURPA, the correct course of action is to expedite the updates to Idaho Power's avoided cost rates and take other action consistent with the framework of Order No. 14-058, such as updating the company's sufficiency period to 2021 and implementing a solar integration charge. CREA opposes, however, any request to lower the eligibility cap or to shorten contract terms.

⁴ Staff Response to Motion for Stay at 3, citing Order Nos. 87-1154 and 12-042.

D. Gardner Capital Solar

Gardner Solar argues that Idaho Power's motion for stay is not supported under state and federal precedent. It notes that we previously rejected Idaho Power's request for a similar stay, because we found that QFs would have no standard contract available for the duration of the company's requested investigation, and thus effectively freezing all QF activity for up to a year.

If the Commission grants a stay or other relief, Gardner Solar contends it should be effective May 7, 2015 at the earliest—the day we issued the notice of prehearing conference regarding Idaho Power's filings.

E. Pacific Northwest Solar

PNW contends Idaho Power's motion for a stay or interim relief should be denied because the company has failed to demonstrate sufficient harm. PNW argues that, even if all allegations are true, no harm would befall the company or its ratepayers, because the 245 MW of solar capacity in the queue for Oregon represents just 6.8 percent of the nameplate capacity of existing power generation facilities in the Idaho Power service area. PNW also notes that Idaho Power overstates the amount of potential development, claiming that up to 50 percent of developers that request information ultimately decide not to move forward.

PNW argues that, if we grant a stay, the cut-off date for ESA requests should be, at the earliest, April 27, 2015. PNW notes that starting last March, it paid for feasibility studies and undertook Small Generator Interconnection Agreement applications for each of its nine projects, without Idaho Power providing any notice that it intended to apply for a stay or change in contract terms. PNW states it had eight ESA requests ready to send on April 24, 2015, but did not send them that day because it was not aware of the impending stay motion, and because it was waiting for confirmation from Idaho Power that an earlier ESA was submitted properly.

F. Renewable Energy Coalition

REC opposes Idaho Power's request for a stay, and argues that we lack the authority to suspend a utility's PURPA obligations. REC also argues that Idaho Power has failed to provide clear evidence demonstrating extraordinary harm would occur absent interim relief. REC notes there should be a particularly high standard in this case because we have already rejected similar requests to lower the standard contract eligibility threshold and contract length in Order No. 14-058.

Like PNW, REC states that Idaho Power has exaggerated the level of expected new QF development. REC notes that, while Idaho Power states it has 245 MW of solar capacity actively seeking PURPA contracts in Oregon, far more projects request initial information than eventually enter into PPAs, and Idaho Power has not established the likelihood of any new projects coming on line or whether they have started construction.

If we find evidence to warrant interim relief, REC argues we should adopt the least restrictive measures to minimize the disruption of our PURPA policies as possible. REC contends, for example, that any reduction in the contract term may effectively stop new QF development. REC adds that any relief should also address QFs that have complied with and relied upon the timelines in the Commission's rules and the company's tariffs.

IV. RESOLUTION

Our role implementing PURPA is to promote QF development while also ensuring that ratepayers pay no more than a utility's avoided costs. To that end, we must balance our duty to "create a settled and uniform institutional climate for qualifying facilities in Oregon,"⁵ while ensuring that electric utilities "purchase power from QFs at rates that are just and reasonable to the utility's customers, in the public interest, and that do not discriminate against QFs, but that are not more than avoided costs."⁶ Accordingly, we consider both the impact on PURPA development and the impact on Idaho Power's Oregon customers in our decision.

We reject Idaho Power's request for a temporary stay of its obligation to enter into standard, fixed-priced contracts with all QFs. Federal law explicitly requires that standard avoided cost prices be available to QFs that are 100 kW and less,⁷ We lack the authority to suspend that requirement.⁸

We find sufficient cause, however, to grant temporary relief. Since we confirmed many of our PURPA policies in Order No. 14-058, there has been an unprecedented growth in the number of applications and expressions of interests by QF developers—particularly solar. The numbers presented in Idaho Power's motion document the extreme expansion of QF growth. Currently, the company has just six operating QF projects in Oregon with a combined output of 21 MW. Yet almost twice the number (11) of wind and solar QF projects with more than five times the output (110 MW) are under contract but not yet operational—and 26 solar QF projects with a combined output of 245 MW are seeking or inquiring about ESAs. Moreover, in addition to these projects, Idaho Power has received, just this month, applications to interconnect from four 10 MW QF solar projects and two others QF projects with a combined output of 10.5 MW. We acknowledge that some of these solar QF projects may not be built. Nonetheless, even using conservative estimates, we are convinced that a sufficient number of projects will proceed and eventually require Idaho Power, without some form of interim relief, to enter into substantial long-term contracts that exceed the company's actual avoided costs.

⁵ ORS 758.515(3)(b).

⁶ Order No. 14-058 at 3, citing Order No. 05-584 at 6; U.S.C. § 824a-3(a)-(b), 18 C.F.R. § 292.101 *et seq.*

⁷ 18 C.F.R. §292.304(c)(1).

⁸ We acknowledge that we previously stayed Idaho Power's obligation to enter into all standard contracts during a two-month period in 2012. *In re Idaho Power*, Docket Nos. UE 244, UM 1575, Order No. 12-042 (Feb 14, 2012). That decision was in error to the extent it precluded QFs that are 100 kW and less from obtaining standard, fixed-cost prices during that period.

We conclude that this unprecedented pace and volume of QF development justifies interim relief in order to prevent harm to Idaho Power’s ratepayers. We further conclude that such relief should be narrow, targeted, and proportionate. To that end, we adopt REC’s suggestion and reduce the eligibility cap for Idaho Power’s standard contracts to 3 MW for solar QF projects.⁹ The effect of this relief is that projects greater than 3 MW in size will fall under our large QF policies, where contracts are negotiated between the developer and the utility pursuant to Commission-approved guidelines set forth in Idaho Power’s Schedule 85.¹⁰

We decline to adopt any other requests for interim relief, including proposals to limit the contract term for ESAs. We adopt Staff’s recommendation that the interim measure we adopt here be effective April 24, 2015—the date that Idaho Power filed its applications and motion for stay. Developers that requested but did not receive ESAs prior to that date may seek a determination of whether those requests created a legally enforceable obligation in individual complaint proceedings.¹¹

Further, given the rapid growth in solar QF activity, we believe it is time to address solar integration charges. We direct parties to address in docket UM 1610 the level of solar integration charges to incorporate into avoided cost rates.

Finally, we adopt the following schedule, previously agreed to by the parties in the event we deny Idaho Power’s motion for a stay, to address the substance of the company’s applications:

EVENT	DATE
Staff and Intervenor Testimony	July 27, 2015
Staff and Intervenor Cross Response Testimony	August 31, 2015
Idaho Power Reply Testimony	September 18, 2015
Pre-hearing Briefs	October 9, 2015
Hearing	October 21, 22, or 23, 2015
Opening Briefs	November 13, 2015
Reply Briefs	November 20, 2015
Order (target Date)	December 31, 2015

⁹ REC Response to Motion for Stay at 13.

¹⁰ *In re Qualifying Facilities*, Docket No. 1129, Order No. 07-360 at Appendix A (Aug 20, 2007).

¹¹ Idaho Power has identified seven projects that requested ESAs prior to April 24, 2015, for a total of 55 MW. Gardner Solar has filed a complaint against Idaho Power Company, docketed as UM 1733 and PNW has filed a complaint as well, docketed as UM 1731.

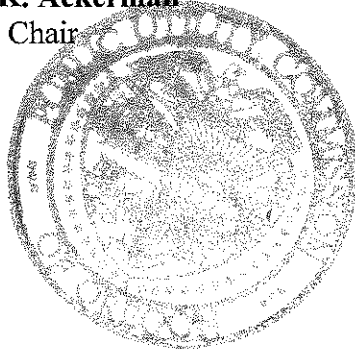
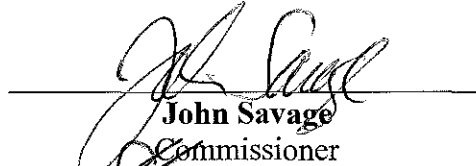
V. ORDER

IT IS ORDERED that:

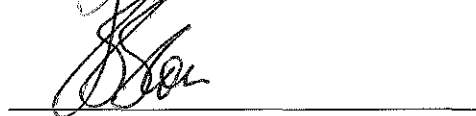
1. The motion for a temporary stay filed by Idaho Power Company is denied.
2. The motion for interim relief filed by Idaho Power Company is granted in part, as specified in this order.
3. Order Nos. 05-584 and 14-058 are amended to reduce, on an interim basis and effective April 24, 2015, the eligibility cap to 3 MW for standard contracts offered by Idaho Power Company to solar QF projects.
4. Idaho Power Company shall make compliance filings as necessary consistent with this order.

Made, entered, and effective JUN 23 2015


Susan K. Ackerman
Chair

John Savage
Commissioner



Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.