



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 13, 2015

Filing Center
Public Utility Commission of Oregon
PO Box 1088
3930 Fairview Industrial Drive SE
Salem, OR 97308-1088

Re: *In the Matter of Idaho Power Company Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination;*
Docket No. UM 1725


Filing Center:

Enclosed for filing please find a corrected cover page for the Brief filed in Docket No. UM 1725 on November 12, 2015. The cover page for the Staff Prehearing Brief filed on November 12, 2015, included the wrong case caption.

For the convenience of the parties, also attached is the Staff Prehearing Brief with the corrected cover page

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,

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

STAFF PREHEARING BRIEF

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1725

In the Matter of

IDAHO POWER COMPANY,

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

STAFF PREHEARING BRIEF

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Argument.	1
A.	Staff recommends that the Commission lower the Eligibility Cap for solar and wind QFs entering into a standard contract with Idaho Power.	1
1.	The Eligibility Cap is intended to reduce market barriers for small QFs.....	1
2.	Current circumstances support Idaho Power’s request to lower the Eligibility Cap for standard contracts for wind and solar QFs.	3
3.	Staff recommends lowering the Eligibility Cap for standard contracts for solar and wind QFs to 100 kW.	5
B.	The Commission should not reduce the term for non-standard contracts for solar and wind QFs.	7
C.	The Commission should allow Idaho Power to update the start date of its next resource deficiency period for purposes of calculating avoided cost prices.	8

1 **I. Introduction.**

2 In this docket, Idaho Power Company (Idaho Power) asks the Commission to reduce the
3 eligibility cap for standard contracts (Eligibility Cap) for solar and wind qualifying facilities
4 (QFs) from 10 MW to 100 kW, reduce the term of non-standard contracts¹ for solar and wind
5 QFs from 20 years to two years, and allow Idaho Power to file updated avoided cost prices based
6 on a new start date for its next deficiency period.² Staff recommends that the Commission
7 approve Idaho Power's request to lower the Eligibility Cap for standard contracts for solar and
8 wind resources from 10 MW to 100 kW and allow Idaho Power to update its avoided cost prices
9 to incorporate a 2021 start for its next resource deficiency period. Staff recommends that the
10 Commission reject Idaho Power's request to reduce the term of non-standard contracts for solar
11 and wind QFs.

12 **II. Argument.**

13 **A. Staff recommends that the Commission lower the Eligibility Cap for solar
14 and wind QFs entering into a standard contract with Idaho Power.**

15 **1. The Eligibility Cap is intended to reduce market barriers for small
16 QFs.**

17 Federal Energy Regulatory Commission (FERC) rules implementing the Public Utility
18 Regulatory Policy Act (PURPA) require utilities to offer "standard" avoided cost rates to QFs
19 with a nameplate capacity of 100 kW and less, and allow state commissions to establish a higher
20 Eligibility Cap for standard prices.³ FERC noted that it was "aware" that "supply characteristics

22 ¹ See Order No. 05-584 at 12 ("The term 'standard contract' has been widely used by
23 parties since passage of the federal PURPA law * * * to describe a standard set of rates, terms
and conditions that govern a utility's purchase of electrical power from QFs at avoided cost.").

24 ² Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard
25 Contract term (April 24, 2015); Application for Change in Resource Sufficiency Determination
(April 24, 2015).

26 ³ 18 C.F.R. 292.304(c)(1), (2).

1 of a particular facility may vary in value from the average rate set forth in the utility's standard
2 rate required by this paragraph," but required standard rates for QFs of 100 kW and less due to
3 its concern that transaction costs associated with administration of the program would likely
4 render the program uneconomic for this size of qualifying facility.⁴

5 In its initial orders and rules implementing PURPA, the Commission did not impose an
6 Eligibility Cap that differed from the federally-required 100 kW, but did so in 1991.⁵ In 1991,
7 the Commission adopted guidelines for the use of competitive bids to acquire new resources.⁶
8 The Commission noted that QFs could secure a contract with a utility through a competitive bid,
9 or under the contracting procedures contemplated by PURPA.⁷ The Commission decided the
10 Eligibility Cap for standard rates should be increased to 1 MW, stating that "[w]ithout this
11 change, the transaction costs associated with participation in competitive bidding could
12 disadvantage QFs."⁸

13 In 2005, the Commission increased the Eligibility Cap for standard contracts to 10 MW.⁹
14 The Commission "continue[d] to adhere to the policy, as articulated in [1991], that standard
15 contract rates, terms and conditions are intended to be used as a means to remove transactions
16 costs" as well as other market barriers such as asymmetric information associated with QF
17 contract negotiation, when they impair QF development.¹⁰ The Commission noted that the need
18 to reduce market barriers must be balanced with the Commission's interest in ensuring that a
19

20 ⁴ Order No. 69; 45 Fed. Reg. 12214 (Feb. 25, 1980).

21 ⁵ See Order Nos. 81-319, 85-742.

22 ⁶ Order No. 91-1383 (1991 WL 501921).

23 ⁷ *Id.* (1991 WL 501921 at p 10).

24 ⁸ *Id.*

25 ⁹ *Id.*

26 ¹⁰ Order No. 05-584 at 15.

1 utility pays a QF no more than its avoided costs for the purchase of energy.¹¹ The Commission
2 also noted that standard contracts do not take into account individual QFs cost characteristics that
3 result in actual avoided costs that differ from the standard avoided cost rates, and that the risk
4 that future avoided costs may differ from the fixed prices in a PURPA contract is “greater” for a
5 large QF than a small one.¹²

6
7 In Order No. 14-058 the Commission again concluded a 10 MW cap is appropriate:

8 Standard contract rates, terms and conditions are intended to be used as a means
9 to remove transaction costs associated with QF contract negotiation, when such
10 costs act as a market barrier to QF development. If a QF is not eligible or a
11 standard contract, a utility is still obligated to purchase a QF’s net output at the
12 utility’s avoided cost, but the QF must negotiate the rates, terms and conditions of
13 a power purchase contract with the purchasing utility. The eligibility cap of 10
14 MW is intended to address the challenges smaller QFs face in entering our
market, including the transaction costs incurred in negotiating an agreement, and
other market barriers such as asymmetric information and an unlevel playing
field, all of which complicate the negotiation of non-standard QF contracts.
These kinds of market barriers can render certain QF project uneconomic to get
off the ground if an individual contract must be negotiated.¹³

15 **2. Current circumstances support Idaho Power’s request to lower the**
16 **Eligibility Cap for standard contracts for wind and solar QFs.**

17 Recent requests for multiple standard contracts for 10 MW wind and solar facilities by a
18 few developers indicate that the 10 MW cap is not needed, or is not being used, for its intended
19 purpose – to eliminate barriers to entry. For example, on April 7, 2015, Gardner Capital Solar
20 Development, Inc. (Gardner Solar) submitted five different requests for QF contracts for five
21 different solar projects, three of which are sized at 10 MW and the other two at 5 MW.¹⁴ On
22 April 27, 2015, another developer asked for standard contracts for five 10 MW solar facilities

23 ¹¹ *Id.*, at 16.

24 ¹² *Id.*

25 ¹³ Order No. 14-058 at 7, *quoting* Order No. 05-584 at 16.

26 ¹⁴ Staff/100, Andrus/6-7.

1 and two five MW solar facilities.¹⁵ In sum, developers with resources to build 40 MW and 70
2 MW facilities are instead choosing to build many separate projects in order to be eligible for
3 standard contracts. The Eligibility Cap is not intended to reduce market barriers for developers
4 with sufficient resources to develop multiple QF facilities with total nameplate capacity
5 equivalent to one 40 or 70 MW project.¹⁶

6 Evidence presented in Docket No. UM 1610 confirms that Gardner Solar does not need
7 the protection of a 10 MW Eligibility Cap. In testimony submitted in Docket No. UM 1610 in
8 May 2015, a Gardner Solar witness described Gardner Solar as “a leading developer of utility-
9 scale solar projects.”¹⁷ The witness explained that he is responsible for all national solar
10 development for Gardner Solar and that he has directed the installation of over 250 MW of solar
11 installations and has worked on projects for Chevron, Google, Disney Studios, California
12 Institute of Technology, the North Face, and Sony Studios.¹⁸ A QF developer with a program for
13 national development such as that described by the Gardner Solar witness does not require the
14 Commission to eliminate barriers in order to enter the QF market in Oregon.

15 Currently, wind QF development in Idaho Power territory is similar to the solar QF
16 development described above. Idaho Power states that it recently executed standard
17 contracts for five different 10 MW wind QFs by the same developer.¹⁹ Staff is unaware of any
18 developer contacting Idaho Power about a PURPA contract for a single wind facility at or below
19 10 MW since the Commission issued Order No. 14-058.

20 ///

21
22

¹⁵ Idaho Power/106, Idaho Power/501.

23 ¹⁶ Idaho Power/501, Alphin/2.

24 ¹⁷ Staff/100, Andrus/6-7 quoting UM 1610/Gardner Solar/100, Benga/1.

25 ¹⁸ Staff/100, Andrus/7, citing UM 1610/Garnder Solar/100, Benga/1.

26 ¹⁹ Idaho Power/400, Alphin/20.

1 **3. Staff recommends lowering the Eligibility Cap for standard contracts**
2 **for solar and wind QFs to 100 kW.**

3 Given the circumstances described above, Staff recommends lowering the Eligibility Cap
4 for solar and wind QFs to re-balance the Commission's interest in reducing market barriers for
5 QFs with limited resources and its interest in ensuring that avoided costs prices accurately reflect
6 Idaho Power's actual avoided costs. As discussed above, standard avoided cost prices are not
7 tailored for individual QFs, and therefore, may not reflect the characteristics of individual QFs.²⁰
8 The Commission has been willing to accept this risk for QFs as large as 10 MW in order to
9 eliminate market barriers for these "smaller" QFs.²¹ Given that the Eligibility Cap is currently
10 not being used for its intended purpose, Staff recommends that the Commission limit the risk
11 associated with the Eligibility Cap by lowering the cap.

12 The potential harm associated with the risk that avoided cost prices will differ from actual
13 avoided costs over the term of a contract is correlated to the amount of QF energy and capacity
14 purchased under the contract: "[T]he risk customers face because avoided costs in the future
15 may be different from the prices paid under the standard contract * * * is greater for a large QF
16 than a small one."²² At this time, the 10 MW Eligibility Cap does not appear to be used to
17 eliminate market barriers for solar and wind QFs. Thus, there is no balance between the risk
18 associated with a 10 MW Eligibility Cap for standard avoided cost prices and any benefit
19 obtained for QFs.

20 Staff supports a 100 kW Eligibility Cap for solar and wind QFs seeking a standard
21 contract with Idaho Power in Oregon. Importantly, no information presented in this docket

22 ///

23 _____
24 ²⁰ Order No. 05-584 at 15.

25 ²¹ See Order No. 14-058 at 15 ("The eligibility cap of 10 MW is intended to address the
26 challenges smaller QFs face in entering our market[.]").

²² Order No. 05-584 at 16.

1 suggests an Eligibility Cap above the required 100 kW would provide material benefit that
2 balances the risk discussed above.

3 Idaho Power's Exhibit 501 includes a list of developers that have contacted Idaho Power
4 between late summer in 2013 and April 2015 indicating an interest in developing a solar QF in
5 Oregon.²³ Of the 28 contacts regarding QF development that are listed, 22 are for QFs with
6 nameplate capacity of 10 MW, one is for a 20 MW facility, three are for a 5 MW facility, and
7 one is four a 4 MW facility.²⁴ The contacts regarding a 5 MW QF and a 4 MW QF were made
8 by two different developers at the same time they asked for standard contracts for multiple 10
9 MW facilities.²⁵ Idaho Power's recently-filed testimony reflects that in September 2015, Idaho
10 Power received "new Oregon proposals from 10 QFs, with a total nameplate capacity of 77.4
11 MW" and that only two of these QFs are eligible for a standard contract under the current 3 MW
12 Eligibility Cap.²⁶

13 The requests for contracts submitted in September 2015 suggest that there may be some
14 small QFs that would benefit, in the manner intended by the Commission, from an Eligibility
15 Cap that is larger than 100 kW but smaller than 10 MW. However, on balance, the requests for
16 contracts and other contacts that Idaho Power has received over the last several months reflect
17 that developers with sufficient resources to build large QFs will disaggregate into multiple
18 projects to obtain standard prices and terms. This means that on balance, the risk associated with
19 an Eligibility Cap that is large enough to facilitate developers' disaggregation into multiple

20 ///

21 ///

22 _____
23 ²³ Idaho Power/501, Alphin/2 (The contacts are not necessarily requests for contracts, but
could be requests for indicative prices or interconnection agreements).

24 ²⁴ Idaho Power/501, Alphin/2.

25 ²⁵ Idaho Power/501, Alphin/2.

26 ²⁶ Idaho Power/500, Alphin/3.

1 facilities is not worth the potential benefit to the developers that actually need the elimination of
2 market barriers.

3 Given the lack of information supporting a different size Eligibility Cap, Staff believes
4 the interests of administrative efficiency and consistency between jurisdictions warrants the
5 Commission’s imposition of the same Eligibility Cap currently in effect in Idaho, which is 100
6 kW. Staff acknowledges that a higher Eligibility Cap may eliminate barriers for QFs that have
7 limited resources to negotiate a non-standard contract. However, a larger Eligibility Cap would
8 likely capture QFs that are able to enter the Oregon QF market without the elimination of any
9 barrier posed by negating a non-standard contract and may lead to developers disaggregating into
10 more and smaller QFs. Staff believes the potential benefit of eliminating market barriers for QFs
11 larger than 100 kW no longer outweighs the risk associated with standard avoided cost prices for
12 these QFs.

13 **B. The Commission should not reduce the term for non-standard contracts for**
14 **solar and wind QFs.**

15 Idaho Power asks the Commission to limit the term of non-standard contracts for wind
16 and solar QFs to two years. Currently, all QFs negotiating a non-standard contract have the
17 option to unilaterally select a 20-year contract term, and may obtain a longer term through
18 negotiation.²⁷ The Commission did not discuss its rationale underlying this requirement when it
19 adopted this and other policies for non-standard contracts in Order No. 07-360. However, the
20 Commission discussed the balance of interests that underlies its decision to provide eligible QFs
21 with the option of a 20-year standard contract in Order No. 05-584.

22 In Order No. 05-584, the Commission noted that the “fundamental objective” when
23 establishing the maximum term of a standard contract is to find a “term that enables eligible QFs
24 to obtain adequate financing, but limits the possible divergence of standard contract rates from

25 ///

26 _____
²⁷ Order No. 07-360 at 11-12.

1 actual avoided costs.”²⁸ The Commission concluded that a 20-year contract with fixed costs for
2 the first 15 years balanced the interests of QFs in obtaining adequate financing and the risk to
3 ratepayers associated with actual avoided costs diverging from forecasted avoided costs.²⁹

4 Although not expressly stated by the Commission, Staff assumes that the objective when
5 establishing the appropriate term of non-standard contracts is the same as it is for standard
6 contracts – a balance between the QFs’ need to obtain financing and a contract term that limits
7 the potential for actual avoided costs to diverge from forecasted avoided costs.

8 Idaho Power presents information regarding the potential harm of non-standard contracts
9 with terms of 20 years. However, Idaho Power does not present evidence to show that a
10 term less than 20 years would be sufficient to allow solar and wind QFs to obtain
11 adequate financing.

12 In other words, the Commission concluded in 2005 that guaranteeing QFs the
13 option of a 20-year contract term should allow QFs to obtain financing.³⁰ Idaho Power
14 has not presented evidence to show that the option for a 20-year contract term is no
15 longer needed for this purpose. In absence of this showing, Idaho Power’s request to
16 limit the term of non-standard contracts for solar and wind QFs should be rejected.

17 **C. The Commission should allow Idaho Power to update the start date of its**
18 **next resource deficiency period for purposes of calculating avoided cost**
prices.

19 OAR 860-029-0080(7) provides “[a] public utility may propose or the Commission may
20 require a public utility to file the data described in OAR 860-029-0080(3) during the two-year
21 period between filing the last-cost plans pursuant to Order No. 89-507 to reflect significant
22 changes in circumstances, such as the acquisition of a major block of resources or the completion

23 ///

24 ²⁸ Order No. 05-584 at 17.

25 ²⁹ Order No. 05-584 at 17.

26 ³⁰ Order No. 05-584 at 17.

1 of a competitive bid. Such a revision will become effective 90 days after filing.” The
2 Commission elaborated on the standard for mid-cycle updates in Order No. 14-058:

3 [I]n light of our adoption of a yearly update, we will continue to allow requests for mid-
4 cycle updates for significant changes to avoided cost prices. However, in light of our
5 decision here to require annual updates in addition to updates following IRP
6 acknowledgment, we caution stakeholders that the “significant change” required to
warrant an out-of-cycle update will be very high.³¹

7 Staff believes Idaho Power’s acquisition of an additional 400 MW is a significant change that
8 meets the high standard discussed in Order No. 14-058.

9 In 2013 Idaho Power received permission from the Commission to temporarily suspend
10 two of its demand response (DR) programs and modify a third program because it did not have a
11 need for capacity until 2016.³² Idaho Power subsequently entered into a stipulation with Staff
12 and stakeholders to maintain its DR programs even in years when the Company does not
13 anticipate peak-hour deficits so that the program infrastructure is ready when capacity deficits
14 return.³³

15 Staff agrees with Idaho Power’s analysis of its updated loads and resources and Idaho
16 Power’s conclusion that the acquisition of 400 MW of capacity postpones Idaho Power’s need
17 for an additional “major resource” until 2021.³⁴ OAR 860-029-0080(7) specifies that acquisition
18 of a new resource can be a change in circumstance that warrants a mid-cycle update. Given that
19 the additional capacity was acquired pursuant to a stipulation that Staff supported and the
20 Commission approved, and given the magnitude of the impact of the acquisition on Idaho

21 ///

22 _____
23 ³¹ Order No. 14-058 at 26.

24 ³² Staff/100, Andrus/3.

25 ³³ Staff/100, Andrus/3; Order no. 13-482 at 2-3, Appendix A, Demand Response
Programs Settlement Agreement.


26 ³⁴ Staff/100, Andrus/3-4.

1 Power's resource and load balance, Staff thinks it is appropriate to allow Idaho Power to update
2 its avoided cost prices to reflect the impact of the acquisition.³⁵

3 DATED this 12th of November, 2015.

4 Respectfully submitted,

5
6 ELLEN F. ROSENBLUM
7 Attorney General

8 
9 _____
10 Stephanie S. Andrus, #925123
11 Senior Assistant Attorney General
12 Of Attorneys for Staff of the Public Utility
13 Commission of Oregon
14
15
16
17
18
19
20
21
22
23
24
25

26 _____
³⁵ Staff/400, Andrus/8.