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November 12, 2015

VIA ELECTRONIC

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

Re: UM 1725 – In the Matter of IDAHO POWER COMPANY Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term

Attention Filing Center:

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

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo

Wendy McIndoo
Office Manager

Enclosures

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.	**IDAHO POWER COMPANY'S PREHEARING BRIEF**

I. INTRODUCTION

Pursuant to the October 5, 2015, Prehearing Conference Memorandum issued by Administrative Law Judge (ALJ) Allan J. Arlow, Idaho Power Company (Idaho Power or Company) submits this Prehearing Brief to the Public Utility Commission of Oregon (Commission)

Federal law requires that the Commission protect customers by ensuring indifference to generation supplied by Qualifying Facilities (QF) under the Public Utility Regulatory Policies Act (PURPA).[1] To that end, the Company has proposed three modifications to how it implements PURPA in Oregon. The Company's recommendations are responsive to the level and nature of QF development that Idaho Power has experienced and are designed to protect customers from the systematic—and largely undisputed—harm that has historically occurred due to the ten MW standard contract eligibility cap and 20-year contract terms applied in this state.

[1] *Indep. Energy Producers Ass'n v. California Pub. Utilities Comm'n*, 36 F.3d 848, 858 (9th Cir. 1994) (PURPA requires that customers remain indifferent as to whether the utility used more traditional sources of power or the newly-encouraged alternatives).

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Idaho Power requests that the Commission:

- Lower the eligibility cap for standard contracts to 100 kW for wind and solar QFs.
- Reduce the contract term to two years for all negotiated QF contracts (*i.e.*, contracts with all QFs that are ineligible for standard contracts).
- Update the Company's resource sufficiency period to 2021 to reflect the addition of significant demand response resources.

The Company recognizes that the Commission recently addressed several of the issues in this case in Phase I of docket UM 1610. However, Idaho Power's circumstances have changed dramatically since Order No. 14-058 was issued, and these changed circumstances require that the Commission revisit its decisions as they apply to the Company. Indeed, in adopting an interim 3 MW eligibility cap on June 23, 2015, the Commission recognized that since Order No. 14-058, Idaho Power has experienced an "unprecedented growth in the number of applications and expressions of interest by QF developers—particularly solar."[2] The fully developed record in this case confirms the Commission's initial conclusions. In fact, during the pendency of this case, the number of executed PURPA contracts in Oregon has nearly doubled. By adopting all three of Idaho Power's recommendations on a permanent basis, the Commission can ensure that Idaho Power is not required to enter into substantial long-term contracts that exceed the Company's actual avoided costs.[3]

Idaho Power's proposal would also align Oregon's and Idaho's policies, which is particularly important given that the vast majority of the Company's customers are in

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[2] *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).

[3] Order No. 15-199 at 6.

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Idaho. Consistent policies will allow efficient administration of the Company's PURPA obligations and eliminate the opportunity for regulatory arbitrage between jurisdictions.[4] Consistency between Oregon and Idaho, across Idaho Power's service territory, will limit the opportunity for developers to game the system to the detriment of Oregon customers.

Standard Contract Eligibility Cap: Idaho Power's request to lower the eligibility cap is designed to ensure that each QF project has an avoided cost price that is individually calculated based on that QF's unique characteristics and impact on Idaho Power's system. The rationale for the current 10 MW eligibility cap no longer applies to Idaho Power. The Company's experience both in Idaho and Oregon proves that today's QF developers are able to effectively negotiate contracts and that the historical barriers no longer apply. Moreover, experience has shown that the reduced 3 MW interim cap is too high because developers are still able to disaggregate large projects to obtain standard pricing. Adoption of a 100 kW cap, as recommended by Idaho Power and Staff, will ensure that QF projects are efficiently and economically developed and limit the opportunity for disaggregation. Moreover, Idaho Power's request is narrowly tailored and focuses on wind and solar QFs—which due to their modular nature are particularly easy to disaggregate.

Contract Term: Idaho Power's request to shorten the negotiated contract term will limit uncertainty and customer risk resulting from forecasted avoided cost pricing. Idaho Power has presented compelling and undisputed evidence that the avoided cost estimates built into long-term contracts have been systematically overstated, which has resulted in significant customer harm. Idaho Power's request will largely eliminate customer's exposure to forecast price risk. A shorter contract term also aligns Oregon's PURPA

[4] In addition, granting Idaho Power's requests would better align Oregon policies with those adopted in Washington, which also has lower eligibility caps and shorter contract terms.

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policies with its robust Integrated Resource Planning (IRP) process to ensure that QF development complements, rather than disrupts, utility planning.

Importantly, the Company's proposals to lower the eligibility cap ***and*** reduce the contract term are designed to work in tandem and one should not be viewed as a substitute for the other. Each recommendation addresses a different concern; negotiated contracts result in more reliable avoided cost prices based to current conditions, but the reliance on 15 year forecasts renders them inherently speculative. Thus, addressing one set of concerns, without addressing the other, is only a partial solution that will still leave customers exposed to significant risk and harm at a time when the Company has no need for new generation resources.

Capacity Sufficiency Demarcation: Idaho Power's third request to update its resource sufficiency period is a straightforward modification that makes the Company's avoided costs consistent with its 2013 IRP and the subsequent Commission-approved implementation of demand response programs. There is no dispute that the Company is resource sufficient until at least 2021 and there is no dispute that failing to account for this fact produces significantly inaccurate avoided cost prices. To protect customers until the Company's next avoided cost update in mid-2016, the Commission should approve this request.

II. ARGUMENT

A. The Pace and Volume of QF Development on Idaho Power's System Requires the Commission to Revisit its Standard Contract Cap and Contract Term Policies in Order to Prevent Customer Harm.

Order No. 14-058 was issued on February 24, 2014. Since that time, QF developers seeking PURPA contracts have flocked to Idaho Power. As of the filing of this case in April 2015, Idaho Power had fully executed PURPA contracts with 129 different QFs with a

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total nameplate capacity of 1,161.08 MW.[5] This level of QF development was nearly 50 percent greater than the level reflected in the record when the Commission issued Order No. 14-058.[6]

Development has continued even after the Commission adopted interim relief in the form of a 3 MW eligibility cap. In September 2015, Idaho Power negotiated and executed nine Oregon solar QF contracts (for a total nameplate capacity of 69 MW) and received additional requests for interconnection or pricing from 10 solar QFs in Oregon, with a total nameplate capacity of 77.4 MW.[7] In so doing, the Company nearly doubled the number of its executed QF contracts in the state.[8] It is true that several older Oregon projects withdrew from the queue.[9] As a result of these withdrawals, together with the additional contracts and requests in Oregon the Company now has an estimated PURPA liability in this state of $458 million related to QF projects currently in development.[10]

In addition, during the pendency of this case, the Idaho Public Utilities Commission (IPUC) issued a final order reducing the contract term for wind and solar QFs—and in the ensuing weeks, the Company has confirmed that the projects then in the Idaho queue no longer wish to proceed.[11] However, at the same time, Idaho Power received an additional request for interconnection from a 16 MW solar QF.[12]

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[5] Idaho Power/105, Allphin/1.

[6] Idaho Power/101, Allphin/1. *See also Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Idaho Power Company's Post-Hearing Brief at 4 (June 17, 2013) ("As of December 31, 2012, Idaho Power had 108 PURPA QF projects under contract with an estimated nameplate rating of 829 MW. Of those projects, 103 (779 MW) are currently on-line and an additional 5 projects (50 MW) are scheduled to come on-line between now and 2014.").

[7] Idaho Power/400, Allphin/8-9; Idaho Power/501, Allphin/3.

[8] Idaho Power/400, Allphin/8-9; Idaho Power/501, Allphin/1-3.

[9] Idaho Power/501, Allphin/1-3.

[10] Idaho Power/501, Allphin/2-3.

[11] Idaho Power/501, Allphin/1-3.

[12] Idaho Power/501, Allphin/3.

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The following table summarizes Idaho Power's QF development as of the date of this brief:

TABLE 1: QF Development on Idaho Power's System

Project Status	Number/ Capacity	Idaho	Oregon	Total
Operational	# of Projects	102	7	109 projects
	MWs	763 MW	21 MW	784 MW
Under Contract, but not yet Operational	# of Projects	11	20	31 projects
	MWs	269 MW	179 MW	447 MW
Actively Seeking Contract	# of Projects	3	11	14 projects
	MWs	56 MW	87 MW	143 MW
Total	# of Projects	116	38	154
	MWs	1,088 MW	287 MW	1,375 MW

The Company's level of Oregon PURPA development is particularly significant when compared to Idaho Power's Oregon load.[13] As Staff pointed out, the nameplate capacity of all of Idaho Power's currently operational Oregon QFs equals 17 percent of the Company's peak Oregon load.[14] Based on Idaho Power's updated analysis, if every project with an executed contract is completed, Idaho Power's Oregon QF capacity will equal 164 percent of its Oregon peak load.[15] On an energy basis, Idaho Power's currently operating QFs provide 3.6 percent of the Company's Oregon energy load and if all of the

[13] Staff/100, Andrus/9; Staff/200, Andrus/3.

[14] Staff/100, Andrus/9.

[15] Idaho Power/400, Allphin/10.

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projects under contract are completed, Oregon QFs will provide nearly 47 percent of the Company's Oregon energy load.[16] By any reasonable measure, Idaho Power's QF development in Oregon has been robust and shows no sign of slowing.

B. Idaho Power's Proposed 100 kW Eligibility Cap for Wind and Solar QFs Results in More Accurate Avoided Costs without Unreasonably Compromising QF Development.

1. Negotiated Contracts Produce More Accurate Avoided Cost Prices and Therefore Protect Customers.

The Company recommends a 100 kW eligibility cap for wind and solar QFs. Staff supports the Company's request and the Renewable Energy Coalition (Coalition) agrees that if the cap is lowered, it should apply to only solar and wind facilities.[17]

There is no dispute that negotiated contracts result in more accurate QF prices. Both FERC and the Commission have recognized that standard rates are an approximation of a utility's actual avoided costs because the standard rate does not take into account the QF's specific project characteristics.[18] For example, standard prices do not account for the timing of the QF generation. Idaho Power must take all energy the QF project delivers at any time of the year or day at a pre-determined price. As a result, it is not unusual for Idaho Power to be required to back down less expensive generation resources to accommodate the QF deliveries or sell the QF generation into the market, which can occur at a loss if the standard price is greater than market prices at the time of the sale.[19] Both of these options result in additional costs that are passed on to utility customers.

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[16] Staff/200, Andrus/3; Idaho Power/400, Allphin/10.

[17] Staff/100, Andrus/1; Coalition/100, Lowe/6.

[18] *See Re Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 05-584 at 16 (May 13, 2005); *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, 12,223 (Feb. 19, 1980).

[19] *See* Idaho Power/100, Allphin/6-8.

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Standard rates also fail to account for the dispatchability (or lack thereof) of a QF resource. This is particularly problematic when the proxy resource used to determine standard prices is a fully dispatchable natural gas-fired combined cycle combustion turbine ("CCCT") that Idaho Power would operate only when economic to do so, *i.e.*, the proxy CCCT would generate only if its cost was less than market.[20] This fact is not captured in the methodology used to calculate standard prices, which assumes that Idaho Power would operate the CCCT whenever the QF is generating, regardless of contemporaneous market prices or existing load.

Finally, the aggregate impact of QFs on the utility's system is also not accounted for in the standard rates, which is contrary to FERC regulations. FERC's rules require the Commission to consider in their calculation of the avoided cost prices, to the extent practicable, the aggregate value of the energy and capacity from all QFs on the utility's system.[21] This failure to account for aggregate impact is significant given the amount of QF energy the Company is facing. Indeed, the level of PURPA generation facing Idaho Power poses a potentially significant reliability concern because the Company's must-run resources, including PURPA projects, is expected to regularly exceed minimum loads.[22]

Moreover, according to the Company's 2015 IRP, Idaho Power is capacity sufficient through 2025—meaning that the additional QF projects that are seeking contracts are not needed to serve load and will not be needed for much of a 20-year contract term.[23]

By negotiating each wind and solar QF contract, the Company can protect customers by ensuring that the avoided cost price properly considers the numerous factors that are ignored in standard pricing.[24]

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[20] *See Re Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 8 (Feb. 24, 2014).

[21] 18 C.F.R. § 292.304(e)(2)(vi).

[22] Idaho Power/100, Allphin/7-8.

[23] Idaho Power/400, Allphin/17.

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The Company's recommended 100 kW eligibility cap will also prevent QFs from gaming the system to gain access to inflated standard avoided cost prices. Idaho Power's experience following Order No. 15-199 demonstrates the infirmity of a higher eligibility cap. In Order No. 15-199 the Commission adopted an interim cap of 3 MW. Immediately following that order, Gardner Capital Solar Development LLC (Gardner Capital) and Pacific Northwest Solar LLC (Pacific Northwest Solar), the QF developers that had previously submitted requests for standard contracts for 5 MW and 10 MW projects, initially proposed to disaggregate those projects into smaller 3 MW projects in an attempt to gain access to standard contracts.[25] The developers' ability to easily disaggregate larger projects demonstrates that the cap must be 100 kW to be effective and prevent disaggregation.

2. QF Development can Thrive Under a 100 kW Eligibility Cap.

In Order No. 14-058, the Commission decided to maintain the current 10 MW cap for access to standard contracts based on its concern that a lower eligibility cap would "deter QF development in Oregon, largely because of the increased transaction costs incurred when negotiating a contract."[26] The Company's experience both here and in Idaho, however, demonstrates that QF development can flourish even with a lower eligibility cap. In 2011, the IPUC lowered the eligibility cap for standard contracts for wind and solar QFs from 10 aMW to 100 kW.[27] Since the eligibility cap was lowered, Idaho Power has successfully negotiated 19 separate contracts in Idaho for a total of 401 MW of QF generation. More recently, following the Commission's adoption of an interim 3 MW cap

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[24] 18 C.F.R. § 292.304(c)(3)(ii) and (e).

[25] *See* Idaho Power's Motion for Clarification (July 8, 2015).

[26] Order No. 14-058 at 7.

[27] IPUC Order No. 32262, Case No. GNR-E-11-01.

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here, Idaho Power successfully negotiated nine solar QF contracts.[28] The Company's robust solar QF development both here and in Idaho demonstrates clearly that QF development is not impeded by the need to negotiate contracts, and can actually thrive with a 100 kW cap in place.

Moreover, as Staff argues, today's QF developers are large and sophisticated business entities with the broad experience and expertise, and access to sufficient financial resources, required to effectively negotiate a contract.[29] For example, Gardner Capital, which sought to develop six solar QFs with Idaho Power, has described itself as "a leading developer of utility scale solar projects"[30] and has developed over 250 MW of solar generation throughout the country.[31] Similarly, Cypress Creek describes itself as a "highly qualified solar developer and investor managing a development pipeline of more than 1 gigawatt to be deployed over the next 24-36 months."[32] Cypress Creek has developed over 100 utility-scale projects throughout the United States and currently has 45 MW of solar projects under construction.[33] Obsidian describes itself as having a "multi-disciplinary approach" to project development.[34] Obsidian's "senior principals and professional team have expertise in energy, law, real estate, public accounting, investment banking, finance, tax, and insolvency."[35]

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[28] Idaho Power/400, Allphin/8-9. The nine contracts include the projects proposed by Gardner Capital and Pacific Northwest Solar referred to above.

[29] Staff/100, Andrus/6-7.

[30] Gardner Capital Solar Development, LLC - Petition to Intervene at 2.

[31] Staff/100, Andrus/7.

[32] http://64.73.214.62/~cypresscreekrene/wp-content/uploads/2015/02/CCR_Overview_toword.pdf

[33] http://cypresscreekrenewables.com/what-we-do/

[34] *Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Obsidian Renewables LLC's Pre-Hearing Memorandum at Exhibit A (May 20, 2013).

[35] *Id.*

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The Coalition counters that small developers do not have the resources to negotiate a QF contract because they do not generally have in-house legal counsel and are required to hire outside experts to work on their behalf.[36] But as evidenced by the QF developers in this case, the Coalition's characterization of the small-scale QF developer does not fit with Idaho Power' reality.

3. A Lower Eligibility Cap Results in Efficient QF Development.

In Order No. 14-058, the Commission reiterated its prior policy to implement PURPA "in a manner that encourages the *economically efficient* development of [QFs] in Oregon."[37] Idaho Power's experience in Oregon, however, demonstrates that the 10 MW eligibility cap—as well as the 3 MW interim cap—results in economically *inefficient* development by encouraging developers to disaggregate large QFs into smaller projects. With the exception of Idaho Power's one previously-existing 3 MW wind QF, it appears that all of Idaho Power's Oregon wind and solar QFs are disaggregated projects that are designed and constructed to allow access to the higher standard avoided cost prices.[38] Requiring wind and solar QFs to negotiate individual agreements based on each project's true size and characteristics will result in efficiently-sited, constructed, and priced QF development.

4. A 100 kW Eligibility Cap will Create Consistency across Idaho Power's Jurisdictions and Prevent Regulatory Arbitrage.

The Commission has previously recognized that Idaho Power is uniquely situated among Oregon's three investor-owned electric utilities because the vast majority—95 percent—of its load is in Idaho.[39] Therefore, the Commission has allowed Idaho Power to

[36] Coalition/100, Lowe/7.

[37] Order No. 14-058 at 3 (emphasis added).

[38] *See* Idaho Power/105-106.

[39] Idaho Power/400, Allphin/3.

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use consistent practices in both Oregon and Idaho.[40] Consistency across jurisdictions serves two important functions. First, as the Commission has recognized, consistency creates administrative efficiencies for the Company.[41] Second, consistency eliminates the opportunity for QF developers to engage in improper regulatory arbitrage by siting their projects to take advantage of higher avoided cost prices or more advantageous terms in Oregon.[42] Adoption of a 100 kW eligibility cap advances both functions and serves to protect customers from increased administrative costs and manipulation by QF developers.

C. A Reduced Contract Term Reasonably Protects Customers from Price Risk.

1. Long-Term Contracts Pose Serious Price Risks to Customers.

Long-term contracts require the Company to forecast its avoided costs for the next 15 years, a task that is inherently uncertain and that shifts all of the significant price risk onto customers. When FERC first authorized QFs to obtain avoided cost prices calculated at the time of their contract, FERC assumed that over time overestimates and underestimates of avoided cost would tend to cancel out.[43] Thus, FERC concluded that long-term, fixed price contracts were consistent with PURPA's "customer indifference requirement." FERC's assumption, however, has proved to be incorrect.[44] Indeed, the

[40] *See e.g.* Order No. 05-584 at 26.

[41] *Id.*

[42] Idaho Power/400, Allphin/3; *see also Re Portland General Electric Co.*, Docket UE 102, Order No. 99-033, 191 P.U.R.4th 87, 115-116 (Jan. 27, 1999) (Commission rejected allowing industrial and commercial customers to switch back and forth between cost-of-service rates and direct access because it constituted "tariff arbitrage based on gaming rather than efficiencies" and would hurt both customers and the utility).

[43] Order No. 69 at 12,224.

[44] *See PURPA: Making the Sequel Better than the Original* at 17 (prepared by Frank Graves, Philip Hanser, Greg Basheda of the Brattle Group for the Edison Electric Institute Dec. 2006) (available at http://www.eei.org/issuesandpolicy/stateregulation/Documents/purpa.pdf) ("Long-term estimates of avoided or marginal costs are inherently subject to error. In the preamble to its PURPA regulations, FERC argued, in supporting the provision that allowed avoided costs to be established at the time the purchase obligation was incurred, that over time, Experience with PURPA suggested that this

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undisputed evidence is that Idaho Power's purchase prices under the Company's PURPA contracts far exceed any other resource cost and are nearly three times the price that the Company is able to sell surplus power on the market.[45] This fact demonstrates that the Company's PURPA contract prices have systematically exceeded its actual avoided cost, causing direct customer harm.

Long-term, fixed price contracts are particularly problematic today because the Company has no need for the additional generation but is still required to contract for additional PURPA generation, which unnecessarily increases customer cost and risk. The Company's 2015 IRP shows that it is capacity sufficient through 2025.[46] Nevertheless, the Company is required to enter into long-term, fixed price contracts with QFs. This requirement is inconsistent with the requirements for acquisition of non-PURPA generation resources. The Commission has repeatedly noted the risk of customer harm related to long-term fixed price contracts.[47] This risk is amplified when the volume of PURPA contracts is as great as Idaho Power's.

The Company appreciates the Commission's decision to reduce the standard contract eligibility cap to 3 MW on an interim basis. However, even if the Commission permanently drops the cap to the requested 100 kW—thus ensuring more accurate

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was not likely to be the case. As noted above, mid-1980s vintage oil and natural gas price forecasts, almost without exception, significantly overstated actual oil and natural gas prices during the 1990s. Hence, mid-1980s vintage long-term PURPA contracts with fixed payments were likely to overstate a utility's actual avoided costs. Long-term contracts based on the estimated cost of a baseload coal plant also were likely to overstate a utility's avoided cost during the 1990s because, during that decade, most of the new generating capacity built was gas-fired generation, given the (then) low natural gas prices and efficiency (heat rate) improvements in gas-fired generating technologies.").

[45] Idaho Power/100, Allphin/4-5.

[46] Idaho Power/400, Allphin/17.

[47] Order No. 05-584 at 20; *Re Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket UM 1129, Order No. 07-360 at 11 (Aug. 20, 2007); *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 *14 (Oct. 18, 1991).

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avoided cost prices for all large QF projects—such action will not sufficiently mitigate the risk posed by long-term, fixed-price contracts. This is true because regardless of the methodology that is used to estimate Idaho Power's avoided cost, the resulting rate will vary from actual costs.[48] Indeed, at a time of unprecedented changes in the technological, economic, and regulatory landscapes faced by the electric industry today, accurately forecasting future power costs is more difficult than ever. This fact, in and of itself, demonstrates why the risk and potential harm increases the longer the price estimates are locked in. The risk is compounded by federal constraints that prevent any update, change, or modification to the contractual rates, once locked in for the full term of the contract.[49] While the price risk can *theoretically* benefit customers (*e.g.*, when the PURPA contract price is less than market) such a scenario has not occurred historically, and is not expected to occur for the foreseeable future.[50] The rates in all of Idaho Power's numerous PURPA contracts all exceed historical market prices—and all exceed projected market prices for every year into the future.[51]

No party has challenged Idaho Power's evidence that long-term forecasts used to develop avoided cost rates have systematically harmed customers. Staff argues that any customer harm resulting from long-term contracts will be mitigated to some extent by the fact that not all QFs that sign contracts will actually be developed.[52] But Staff's own analysis establishes that even a conservative estimate of QF development will be

[48] Order No. 05-584 at 20.

[49] *See e.g. Freehold Cogen. Assoc., L.P. v. Bd. of Reg. Comm'rs of New Jersey*, 44 F.3d 1178, 1192 (3d Cir. 1995).

[50] Idaho Power/104, Allphin/1.

[51] Idaho Power/104, Allphin/1.

[52] Staff/200, Andrus/6.

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substantial.[53] Therefore, it is unreasonable to simply hope that the long-term customer harm will be mitigated by QF failures.

2. Shorter Contract Terms Will Not Unreasonably Limit QF Development.

In February 2015 the IPUC shortened Idaho Power's PURPA contract term to five-years on an interim basis pending the investigation into whether the contract term should be permanently shortened to two-years.[54] Since that time, Idaho Power continued to receive requests for solar QF contracts even with a five-year term. In fact, between February and April 2015, Idaho Power received requests for five-year contracts for over 300 MW of solar QF capacity.[55] Although the IPUC's decision to permanently reduce the contract term to two years resulted in the withdrawal of most pending QFs in Idaho, the Company has received a new proposal for a 16 MW solar QF that would be subject to a two-year contract.[56] While the inquiry is preliminary, it does indicate that a two-year contract term will not, by itself, end QF development.

Moreover, even if shorter contract terms slow QF development, such a reduction is not unreasonable. First, as established in the record here and noted by the IPUC, Idaho Power has robust renewable QF development on its system and has even more in the process of development.[57]

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[53] Staff/100, Andrus/9; Staff/200, Andrus/3.

[54] IPUC Order No. 33222, Case No. IPC-E-15-01 (Feb. 6, 2015).

[55] Idaho Power/400, Allphin/7. In addition, QF development in Washington is not unreasonably limited by less than 15-year fixed price contracts. In fact, Puget Sound Energy has executed numerous QF contracts even though its standard contract has a 10-year term. *WUTC v. PacifiCorp*, Docket UE-130043, Order 05 ¶ 106 (WUTC Dec. 4, 2013) (describing that Puget Sound Energy has 10-year standard contracts); *Report on the Potential for Cost-Effective Distributed Generation in Areas Served by Investor-Owned Utilities in Washington State*, Docket UE-110667 (Oct. 7, 2011) (indicating that Puget Sound Energy's Schedule 91, which governs standard PURPA contracts, has a 10-year contract term); *Puget Sound Energy's 2013 Integrated Resource Plan*, Appendix D at D-10 to D-11 (identifying 17 executed Schedule 91 contracts).

[56] Idaho Power/501, Allphin/1.

[57] Idaho Power/400, Allphin/5, 6-7.

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Second, shorter contract terms produce more accurate avoided cost prices by eliminating much of the forecasting uncertainty inherent in 15-year, fixed price contracts. The Commission has regularly found that its primary responsibility under PURPA is establishing accurate avoided costs, even if accurate pricing results in fewer QFs.[58] In a 1984 PURPA docket, the Commission observed that avoided cost prices at that time were so low that "many types of facilities are no longer economically feasible."[59] Nevertheless, the Commission rejected requests from QF developers and the Oregon Department of Energy asking it to exercise its authority under state law to adopt QF contract prices "in excess of avoided costs to ensure that the legislature's goal of renewable resource development is attained."[60] The Commission acknowledged that higher prices "would make more projects feasible," but rejected this request because it conflicted with the obligation to "obtain service for ratepayers at reasonable rates."[61] The Commission did not waiver in setting accurate avoided cost prices even if those prices limited QF development.

As noted by the IPUC, reducing the contract length to two years does not prevent a QF from selling energy to a utility the course of 20 years, or longer. PURPA's must purchase provision requires the utility to continue to purchase the QF's power. As long as projects continue to offer power to utilities, utilities must continue to purchase such power

[58] *See e.g.* Order No. 05-584 at 19 ("A primary goal in this proceeding is to accurately price QF power.")

[59] *Proposed Amendments to Rules Relating to Cogeneration and Small Power Production Facilities*, Docket No. AR 102, Order No. 84-742 at 3 (Sept. 24, 1984).

[60] *Id.* at 3. At that time, FERC had indicated that states could adopt QF contract prices that exceeded a utility's avoided costs if the excess price was based on state law. FERC has since clarified that states are strictly limited to avoided cost prices. *Connecticut Light & Power Co.*, 70 F.E.R.C. ¶ 61,012 (1995).

[61] *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.").

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under PURPA. A shorter contract length merely function as a reset for calculation of the avoided costs in order to maintain a more accurate reflection of the actual costs avoided by the utility over the long term. By adjusting avoided cost rate more frequently, avoided costs become a truer reflection of the actual costs avoided by the utility and allow QFs and ratepayers to benefit from normal fluctuations in the market, which cannot be done in long-term, fixed rate contracts.[62]

A shorter contract term is also consistent with the policies of the other state commissions in the region. In addition to Idaho's two year contracts, Washington has PURPA standard contract terms that vary from five to 10-years.[63] If Oregon remains an outlier with long-term, fixed price contracts, QF developers will take advantage of that fact to the detriment of customers. QF developers have already shown their willingness to game the system to the detriment of customers and the Commission should discontinue policies that encourage future abuse.[64]

Staff's primary evidence supporting the continued use of a 20-year contract is testimony in docket UM 1610 from ODOE indicating that its Small Scale Energy Loan Program requires that the loan repayment period be no longer than the term of the borrower's PURPA contract.[65] But Staff also correctly concludes elsewhere in its testimony that the developers that are seeking PURPA contracts with Idaho Power are not relying on the ODOE program because they are large and sophisticated, like Gardner Capital.[66]

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[62] IPUC Order No. 33419 at 8, Case No. IPC-E-15-01 (November 5, 2015).

[63] *See WUTC v. PacifiCorp*, Docket UE-130043, Order 05 ¶ 106 (WUTC Dec. 4, 2013).

[64] *See e.g. Kootenai Elec. Coop., Inc. v. Idaho Power Company*, Docket No. UM 1572, Order No. 14-013 (Jan. 9, 2014) (authorizing Idaho QF to receive Oregon's more favorable pricing even though QF's energy served Idaho load and only briefly passed into Oregon).

[65] Staff/100, Andrus/12.

[66] Staff/100, Andrus/6-7.

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Additionally, Idaho Power's request here applies to only negotiated contracts.[67] Thus, under Idaho Power's proposal, all non-wind and non-solar QFs that are less than 10 MW would still be eligible to receive a standard contract with a 20-year term. Idaho Power's request is narrowly focused on only those QF resources that have proven to expose customers to the greatest risk and that continue to develop unabated by current market conditions.

3. Shorter Contract Terms Better Align PURPA Development with Idaho Power's Integrated Resource Planning.

Long-term resource acquisition is appropriately subject to extensive Commission and public scrutiny through the Company's IRP process. The Commission has taken great care to develop comprehensive resource planning guidelines that are designed to "assure an adequate and reliable supply of energy at the least cost to the utility and its customers consistent with the long-run public interest."[68] To achieve this goal, the IRP includes both substantive and procedural safeguards, including standards for resource and risk evaluation, significant public involvement, an extensive Commission investigation, and annual updates.[69] Utilities are required to undertake a broad analysis of all available resource options, both supply and demand-side, and develop a portfolio of least cost/least risk actions that will be undertaken to meet projected load. When adopting integrated resource planning in 1989, the Commission specifically noted that it differed from traditional planning because the stakeholders are included "prior to making resource decisions rather than after the fact."[70]

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[67] Idaho Power/400, Allphin/1.

[68] *Re Least-Cost Planning for Resource Acquisitions*, Docket No. UM 180, Order No. 89-507, 102 P.U.R.4th 301, 1989 WL 418453 at *5 (Apr. 20, 1989).

[69] *See generally Re Investigation into Integrated Resource Planning*, Docket UM 1056, Order No. 07-002 at 2 (Jan. 8, 2007).

[70] Order No. 89-507 at *5.

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Although the Commission has concluded that prudent management requires the "least-cost planning process and the timely acquisition of the least-cost resources," by design, PURPA resources are not subject to least-cost planning nor any of the procedure, safeguards, and scrutiny of the IRP process.[71] The Company must buy from any QF seeking a contract regardless of the need for the additional resource, and often at a cost that is greater than available alternatives.[72] Obsidian/Cypress Creek's testimony here exemplifies the resource planning problems inherent in QF development. Once the Company signs a QF contract, it must reasonably assume that the project will actually be developed for purposes of resource planning and include the contractual obligations as required by financial reporting standards. But, as Obsidian/Cypress Creek's testimony makes clear, QF developers like Obsidian/Cypress Creek do not view executed contracts in the same way as the utility and frequently disregard their commitments.[73] Idaho Power has no way of knowing which QFs will be completed and which will not and must assume that all projects that have executed contracts will comply with the legal requirements of the contract they signed.

When there is relatively little QF development, the uncertainty of QF development is manageable. But at today's levels, QF development significantly impacts how Idaho Power plans for future loads and introduces a substantial level of uncertainty into utility planning.

The exclusion of PURPA projects from the procedural and substantive safeguards provided by the IRP process is particularly problematic when the Company is required to enter into 20-year contracts, with 15-years of fixed prices that cannot be changed or updated based upon changed and updated conditions such as those considered in the

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[71] *Id.*

[72] *See* Idaho Power/100, Allphin/4-5; Idaho Power/014, Allphin/1.

[73] Obsidian-Cypress Creek/100, Brown/9.

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IRP. Given the volume of PURPA transactions facing Idaho Power it is no longer reasonable to require long-term, fixed price contracts. Therefore, the authorized maximum term for PURPA energy sales agreements with Idaho Power should be limited to two years, to better align with the exposure of customers to risk that has been deemed prudent for the IRP process and the Company's risk management policy.[74]

4. Shorter Contracts will Not Result in the Systematic Loss of Capacity Payments.

The Coalition argues that a shorter contract term effectively precludes capacity payments because Idaho Power will likely be resource sufficient for every two-year term.[75] This argument, however, misunderstands Idaho Power's request in two important ways.

First, Idaho Power's recommendation is to reduce the contract term for only negotiated contracts.[76] So any QF that remains eligible for a standard contract will receive a 20-year contract with capacity payments based on Idaho Power's resource position.

Second, Idaho Power's request here is intended to align Oregon with the policies in effect in Idaho. Therefore, under Idaho Power's proposal, a QF with a two-year negotiated contract that continues to contract with Idaho Power will receive capacity payments based on the Company's resource deficiency determination made at the time of the QF's first contract.[77] For example, if a QF were to negotiate a two-year contract today, that first two year contract would include no capacity payment. But assuming that the QF continues to contract with Idaho Power, it will receive capacity payments beginning in 2021 or 2025, which is the year that Idaho Power forecasts a first capacity deficit in its 2015 IRP.

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[74] Idaho Power/400, Allphin/6.

[75] Coalition/100, Lowe/9-10. The Coalition argues that renegotiating contracts every two years harms customers by incurring costs that should be avoided with longer term contracts. Coalition/100, Lowe/9. The Coalition presented no evidence that these costs will in any way exceed the benefits resulting from more accurate avoided cost prices.

[76] Idaho Power/400, Allphin/1.

[77] Idaho Power/400, Allphin/15.

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Effectively, this means that capacity is treated the same under Idaho Power's proposal for negotiated contracts as for standard contracts.

D. Extending Idaho Power's Resource Sufficiency Period Will Result in More Accurate Avoided Costs.

The Commission will allow mid-cycle updates for "significant changes to avoided cost prices."[78] Here, Idaho Power has requested that the Commission update its resource sufficiency period and extend it from 2016 to 2021.[79] The Company's current sufficiency period is based on its acknowledged 2013 IRP, which identified 2016 as the year with the first capacity deficit.[80] When the 2013 IRP's load and resource balance is adjusted to account for the approximately 400 MW of demand response capacity required by a Commission-approved stipulation[81] and incorporated into the acknowledged 2013 IRP,[82] Idaho Power's first capacity deficit year changed to 2021.[83] Absent this update, Idaho Power's avoided costs will ignore the actual capacity contribution of over 400 MW of demand response resources, lock in capacity payments for 2016 through 2021 even though the Company does not need additional capacity, and guarantee that customers will overpay for QF resources.[84]

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[78] Order No. 14-058 at 26.

[79] Idaho Power/400, Allphin/2.

[80] Staff/100, Andrus/2.

[81] *In Re Staff Evaluation of Demand Response Programs*, Docket No. UM 1653, Order No. 13-482 at Appendix A, page 3 (December 19, 2013) ("The Company must * * * use existing demand response resources when possible. This includes using, to the extent possible, current demand response equipment owned or available to Idaho Power and participating demand response customers, which currently represents **approximately 400 MW** of potential demand response capacity") (emphasis added).

[82] *Re Idaho Power Company 2013 Integrated Resource Plan*, Docket LC 58, Order No. 14-253 at 11 (July 8, 2014) (acknowledging revised action items including Staff's recommended changes to demand response programs to achieve consistency with the "recently issued orders approving stipulations regarding the redesign of Idaho Power's demand response programs for 2014 and beyond.").

[83] Staff/100, Andrus/2-3.

[84] Idaho Power/100, Allphin/17.

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No party disputes any of the facts underlying the Company's proposed update. Staff agrees that the Company's analysis updating its loads and resources results in its first peak deficiency in 2021.[85] Staff further agrees that the addition of 400 MW of demand response programs constitutes a "significant change" that justifies an out-of-period avoided cost update.[86]

The Coalition does not dispute that Idaho Power's sufficiency period now extends to 2021 and agrees that the avoided cost change resulting from the update is "major."[87] Nevertheless, the Coalition opposes Idaho Power's request because the Company's 2015 IRP is scheduled for acknowledgement in early 2016 and therefore the Coalition argues that the Commission should not make a "major avoided cost rate change only a month or two before the utility's IRP is acknowledged."[88] However, the Coalition's call for the Commission to deliberately delay updating the Company's avoided costs to reflect its current supply situation is unpersuasive.[89] The Company's 2015 IRP is currently scheduled for public hearing on March 24, 2016, which, according to Staff, means that the Company's avoided costs would be updated in April or May 2016, as compared with December 31, 2015, in this case.[90] In the interim between resolution of this case and acknowledgement of the 2015 IRP, customers must be protected, particularly given that the Coalition admits that the avoided cost change will be "major" and therefore appears to satisfy the Commission's standards for mid-cycle updates.

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[85] Staff/100, Andrus/4.

[86] Staff/100, Andrus/4.

[87] Coalition/100, Lowe/16.

[88] Coalition/100, Lowe/15-16.

[89] *See* Order No. 91-1383 at *13 (Oct. 18, 1991) (rejecting requests to delay avoided cost updates because "[a]voided cost estimates that reflect current market information and a utility's supply situation will give more appropriate signals than if information is deliberately delayed until the information is more precise.").

[90] Staff/200, Andrus/8.

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The Coalition also argues that utilities "often" acquire capacity resources during the sufficiency period, suggesting that the resource sufficiency period is "often overstated."[91] The Coalition has presented no evidence to support this statement. Moreover, the Commission has already found that the market prices paid during the sufficiency period included an embedded capacity payment and therefore QFs are arguably already overcompensated during the sufficiency period.[92]

E. Obsidian/Cypress Creek's Opposition to the Company's Recommendation is Based on Misleading Comparisons and Disregard for the Potential Customer Harm Resulting from Executed QF Contracts.

1. Obsidian/Cypress Creek's Analysis Verifies the Rapid Growth in QF Development since Order No. 14-058.

Obsidian/Cypress Creek disputes the Commission's finding that QF development has increased since the issuance of Order No. 14-058.[93] Relying on interconnection requests rather than requested and executed QF contracts, Obsidian/Cypress Creek claims that the "uncontroverted evidence shows that the volume and pace of renewable QF development actually *decreased* in the months following Order No. 14-058."[94] To support this conclusion, however, Obsidian/Cypress Creek misleadingly compares pre-Phase I QF and non-QF development to post-Phase I QF development. By mixing QF and non-QF data, Obsidian/Cypress Creek makes an apples-to-oranges comparison that is heavily skewed by the historical non-QF data.[95] Obsidian/Cypress Creek's conclusion

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[91] Coalition/100, Lowe/12.

[92] 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).

[93] Obsidian-Cypress Creek/100, Brown/7-8.

[94] Obsidian-Cypress Creek/100, Brown/7 (emphasis in original).

[95] Obsidian-Cypress Creek/100, Brown/6-8; Obsidian-Cypress Creek/101, Brown/16-17. Obsidian/Cypress Creek's analysis compares total renewable capacity, including both QFs and non-QFs, before Phase I to only QF development after Phase I (because Idaho Power has not received interconnection requests from any non-QFs since Phase I). But the historical period

ultimately provides no meaningful insight into QF development and obscures the actual changes in QF development since Phase I.

Using Obsidian/Cypress Creek's own testimony and examining only **QF requests** for interconnection since 2001 demonstrates unequivocally that the Company has received an unprecedented level of requests since the close of the record in Phase I of docket UM 1610.[96] According to Obsidian/Cypress Creek's exhibits, from 2001 through 2012 the Company received a total of 26 QF interconnection requests, which totaled approximately 250 MW of capacity.[97] Since the close of the record in Phase I, the Company received 36 interconnection requests, which total 342 MW of capacity.[98] **Accordingly, in the last two-and-a-half years, the Company received nearly 40 percent more QF interconnection requests than in the preceding 12 years combined.** And this analysis does not include the 10 QF proposals received by Idaho Power in September.[99] Even by Obsidian/Cypress Creek's chosen metric, QF development has increased dramatically.

Moreover, Obsidian/Cypress Creek's data proves that the Commission was correct when it found "rapid growth in solar QF activity."[100] In the 12 years prior to Phase I, Idaho

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before Phase I is heavily skewed by large, non-QF projects, like three wind projects from 2002 with capacities of 300 MW, 202.5 MW, and 400.5 MW. So when Obsidian/Cypress Creek claims that QF development is less on a capacity basis post-Phase I, their conclusion compares post-Phase I QF projects to pre-Phase I non-QF projects with individual capacities that far exceed individual QF capacities.

[96] The evidentiary hearing in Phase I of docket UM 1610 was held in May 2013, meaning that any QF development occurring after that date was not included in the record in Phase I and was not considered by the Commission when it adopted its Phase I policies.

[97] Obsidian-Cypress Creek/101, Brown/16-17. This figure includes all requests, even those that were withdrawn and never developed.

[98] Obsidian-Cypress Creek/101, Brown/16-17. Obsidian-Cypress Creek's data indicates that 28 of the 36 requests are still active. Several of those 28 requests have since been withdrawn or deemed inactive by the Company. *See* Idaho Power/501. Nonetheless, the data relied on by Obsidian-Cypress Creek clearly contradicts their conclusions.

[99] Idaho Power/501, Allphin/3.

[100] Order No. 15-199 at 7.

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Power received three interconnection requests from solar QF contracts.[101] Since the Phase I hearing, the Company has received 46 requests.[102] So, in the last two-and-a-half years the number of solar QFs increased by more than 1,500 percent over the number of solar QF requests in the preceding 12 years. Before Phase I, Idaho Power had executed zero Oregon solar QF contracts and, since Phase I was concluded, the Company has nine solar QF contracts, while 11 more projects are still actively being developed.[103] Again, Obsidian/Cypress Creek's own data undermines their argument that post-Phase I QF development has not materially increased.

2. Idaho Power's QF Development is Substantial Even if Not Every QF is Completed.

Obsidian/Cypress Creek claims that even if Idaho Power is flooded with requests for QF contracts, it is unlikely that all of the QFs will actually be developed and therefore the Commission should delay taking any action.[104] This argument has been twice rejected by the Commission—both in Order No 15-049, and in the Commission's order granting PacifiCorp similar interim relief—and there is no basis to reconsider those prior rejections.[105]

Staff's analysis confirms the Commission's initial conclusions. As pointed out by Staff, the addition of even one more 10 MW QF will increase Idaho Power's Oregon QF

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[101] Obsidian-Cypress Creek/101, Brown/16-17.

[102] Obsidian-Cypress Creek/101, Brown/16-17. The 46 requests include the 10 proposals received in September 2015, after Obsidian/Cypress Creek filed its testimony.

[103] Idaho Power/400, Allphin/8-9; Idaho Power/501, Allphin/2-3.

[104] Obsidian-Cypress Creek/100, Brown/13.

[105] Order No. 15-199 at 6 ("the Commission "acknowledge[d] that some of these solar QFs may not be built," but found that "even using conservative estimates, we are convinced that a sufficient number of projects will proceed and eventually required Idaho Power, without some form of interim relief, to enter into substantial long-term contracts that exceed the company's actual avoided costs."); *Re PacifiCorp's 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).

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capacity to 25 percent of its peak load and six percent of its load on an energy basis—amounts that Staff correctly found significant.[106] Moreover, Obsidian/Cypress Creek expects that "five or so" projects will likely be completed this year.[107] These projects represent 50 MW of additional intermittent QF capacity in Oregon, which would result in QF capacity being nearly 60 percent of peak load and nearly 16 percent of the Company's energy load.[108]

Obsidian/Cypress Creek's conclusions are also undermined by its reliance on historical data. Market conditions today are decidedly different and far more advantageous to solar QFs than when previous projects were proposed but not completed.[109] Obsidian/Cypress Creek has presented no evidence demonstrating that historical solar QF completion rates under less advantageous market conditions are indicative of today's completion rates. In fact, looking at Obsidian/Cypress Creek's own analysis demonstrates that of the eight requests for interconnection from solar QFs in 2013, four are under construction.[110] This data suggests that completion rates in today's market are markedly higher than they have been historically.

Further, according to QF developer Pacific Northwest Solar, "executed standard contract projects will fail at a higher rate than negotiated contracts due to the effort required to achieve an executed negotiated contract."[111] Thus, the completion rate for the nine solar QF contracts negotiated while this case was pending will likely be greater than

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[106] Staff/200, Andrus/3.

[107] Obsidian-Cypress Creek/100, Brown/13.

[108] Obsidian-Cypress Creek/101, Brown/16-17; Staff/200, Andrus/3.

[109] *See e.g. Utility-Scale Solar 2014: An Empirical Analysis of Cost, Performance, and Pricing Trends*, Mark Bolinger and Joachim Seel (Lawrence Berkeley National Laboratory Sept. 2015) (available online at https://emp.lbl.gov/sites/all/files/lbnl-1000917.pdf). Idaho Power's only previous solar QF requests for interconnection occurred in 2009.

[110] Obsidian-Cypress Creek/101, Brown/16-17

[111] *PNW's Opposition to Idaho Power's Motion for Temporary Stay* at 3.

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historical trends, which accounted for only standard contracts.[112] And Pacific Northwest Solar, which negotiated six of the nine new QF contracts, has already entered into agreements to sell its interests to another developer, who is apparently confident that the projects will be completed.[113]

Obsidian/Cypress Creek also claims that the reduction of the 30 percent investment tax credit (ITC) will put an end to solar QF development in Oregon.[114] However, there is no evidence to support this claim. On the contrary, the Company recently received QF proposals for 10 solar projects that are all scheduled to become operational after the reduction in the ITC.[115]

3. Obsidian/Cypress Creek Rely on the Wrong Metric to Conclude there is No Risk of Customer Harm.

Obsidian/Cypress Creek claims that Idaho Power cannot demonstrate customer harm simply because it is contractually bound to purchase a QF's output.[116] Rather, according to Obsidian/Cypress Creek, the Company can establish customer harm sufficient to warrant Commission action only after the QF is operational.[117] This argument should be disregarded as it suggests only after the harm has occurred can the Commission stop future harm. This is absolutely wrong. The Commission has a statutory

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[112] Idaho Power/400, Allphin/8-9.

[113] According to press releases, Pacific Northwest Solar is in the process of selling all six of its projects to Blue Earth Solar. At least one sale has already closed. *See* http://ir.stockpr.com/blueearthinc/press-releases/detail/842/blue-earth-announces-acquisition-of-13mwp-solar-project-in-malheur-county-oregon; http://ir.stockpr.com/blueearthinc/press-releases/detail/838/blue-earth-announces-loi-to-purchase-interests-in-the-57-1mwp-oregon-solar-portfolio.

[114] Obsidian-Cypress Creek/100, Brown/13-14.

[115] Idaho Power/501, Allphin/3.

[116] Obsidian-Cypress Creek/100, Brown/12-13.

[117] Obsidian-Cypress Creek/100, Brown/13.

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duty to protect customers from excessive QF rates. [118] Because the Commission cannot legally modify the terms of a QF contract once it is executed, it must act preemptively to prevent the execution of harmful contracts.[119]

Obsidian/Cypress Creek also attempts to minimize the importance of PURPA contracts, claiming that the Company's interconnection queue is the relevant metric by which to measure potential customer harm.[120] Contrary to Obsidian/Cypress Creek's claims, PURPA contracts have important, real world consequences immediately upon execution. First, the contract binds Idaho Power's customers to the avoided cost prices in the contract. There can be no revisiting of the prices or future adjustment if it turns out that the prices were excessive.[121] Second, once the contract is executed, the QF is included in the Company's resource planning.[122] Third, the executed contract is considered a liability like all other long-term power purchase contracts and is included in the Company's financial reporting.[123] The Company does not take its obligations under its PURPA contracts lightly or as casually as Obsidian/Cypress Creek apparently does and neither should the Commission. While interconnection requests are an important step in the development process, the Commission must focus on the contract because that binds the Company and determines the customer impact.[124]

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[118] ORS 756.040 (". . . the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.").

[119] *Freehold Cogen. Assoc.*, 44 F.3d at 1192.

[120] Obsidian-Cypress Creek/100, Brown/4.

[121] *Freehold Cogen. Assoc.*, 44 F.3d at 1192.

[122] Idaho Power/400, Allphin/18.

[123] Idaho Power/400, Allphin/18.

[124] Idaho Power/400, Allphin/18.

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F. Idaho Power has Accurately Described the Potential Harm of QF Development.

The Coalition implies that Idaho Power's claims of potential customer harm are overblown because utilities often allege that QFs harm customers even when QFs are lower cost and more reliable than the market or alternatives.[125] On the contrary, Idaho Power's evidence has demonstrated that the prices it pays under its QF contracts are consistently and systematically greater than its other resource costs and contemporaneous market prices.[126]

The Coalition also claims that the Company has a history of exaggerating the amount of QF development on its system, arguing, for instance, that in 2012 the Company "claimed it was facing a 'deluge' of over 70 MWs of new Oregon wind QFs," and yet the Company ultimately entered into "far fewer contracts."[127] The Coalition fails to tell the whole story—the reason that the Company ultimately executed fewer contracts was because the Commission took action on customer's behalf to allow the Company to update and lower its avoided cost prices.[128] Thus, the execution of fewer contracts was due to Commission action to protect customers, not because Idaho Power exaggerated the potential number of QF contracts.

Obsidian/Cypress Creek accuses Idaho Power of misrepresenting the facts and deliberately withholding information from the Commission.[129] This accusation is as offensive as it is baseless. Indeed, the very information that Obsidian/Cypress Creek claims Idaho Power withheld is publicly available information that was provided to the parties during discovery.[130] Obsidian/Cypress Creek's real complaint is that Idaho Power

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[125] Coalition/100, Lowe/4.

[126] Idaho Power/100, Allphin/4-5; Idaho Power/104, Allphin/1.

[127] Coalition/100, Lowe/4.

[128] *See Re Idaho Power Company*, Docket UE 244, Order No. 12-042 (Feb. 14, 2012).

[129] Obsidian-Cypress Creek/100, Brown/4.

[130] Obsidian-Cypress Creek/100, Brown/4; Idaho Power/400, Allphin/18.

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has never framed its argument as Obsidian/Cypress Creek does here by focusing exclusively on the interconnection queue and dismissing concerns over executed contracts. But that is because Obsidian/Cypress Creek's argument so widely misses the mark that it is practically irrelevant.

III. CONCLUSION

The Commission should approve Idaho Power's three requested modifications to its implementation of PURPA in Oregon. Each of these requests would align the implementation of PURPA across Idaho Power's Idaho and Oregon service territory, preventing jurisdictional arbitrage and harm to customers. First, the Commission should lower the eligibility cap for wind and solar standard contracts to 100 kW. Like the Commission's interim relief in this case, lowering the cap is a narrowly tailored adjustment that will result in more accurate avoided cost prices and prevent manipulation by developers. Second, the Commission should reduce the contract term for wind and solar QFs to two years. This relief will align Oregon and Idaho and limit uncertainty in forecasting avoided cost prices. The undisputed evidence shows that customers have been systematically and substantially harmed by long-term contracts. PURPA requires customer indifference and reducing the contract term aligns Oregon's implementation with the statute's requirements. Third, the Commission should update the Company's resource sufficiency period to 2021. There is no dispute that the Company is now resource

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sufficient until 2021 and there is no reason to delay reflecting this fact in avoided cost prices.

Respectfully submitted this 12th day of November, 2015.

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