

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1725**

In the Matter of

PORTLAND GENERAL ELECTRIC  
COMPANY and

PACIFICORP d/b/a PACIFIC POWER,

Request for a Generic Power Cost  
Adjustment Mechanism Investigation

**STAFF PREHEARING BRIEF**

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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 contracts<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> FERC noted that it was “aware” that “supply characteristics  
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22 <sup>1</sup> 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  
24 and conditions that govern a utility’s purchase of electrical power from QFs at avoided cost.”).

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

<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> In 1991,  
7 the Commission adopted guidelines for the use of competitive bids to acquire new resources.<sup>6</sup>  
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.<sup>7</sup> 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."<sup>8</sup>

13 In 2005, the Commission increased the Eligibility Cap for standard contracts to 10 MW.<sup>9</sup>  
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.<sup>10</sup> The Commission noted that the need  
18 to reduce market barriers must be balanced with the Commission's interest in ensuring that a  
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20 <sup>4</sup> Order No. 69; 45 Fed. Reg. 12214 (Feb. 25, 1980).

21 <sup>5</sup> See Order Nos. 81-319, 85-742.

22 <sup>6</sup> Order No. 91-1383 (1991 WL 501921).

23 <sup>7</sup> *Id.* (1991 WL 501921 at p 10).

24 <sup>8</sup> *Id.*

25 <sup>9</sup> *Id.*

26 <sup>10</sup> Order No. 05-584 at 15.

1 utility pays a QF no more than its avoided costs for the purchase of energy.<sup>11</sup> 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.<sup>12</sup>

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

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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.<sup>13</sup>

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.<sup>14</sup> On  
22 April 27, 2015, another developer asked for standard contracts for five 10 MW solar facilities

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23 <sup>11</sup> *Id.*, at 16.

24 <sup>12</sup> *Id.*

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

26 <sup>14</sup> Staff/100, Andrus/6-7.

1 and two five MW solar facilities.<sup>15</sup> 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.<sup>16</sup>

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.”<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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.

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22 <sup>15</sup> Idaho Power/106, Idaho Power/501.

23 <sup>16</sup> Idaho Power/501, Alphin/2.

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

25 <sup>18</sup> Staff/100, Andrus/7, citing UM 1610/Gardner Solar/100, Benga/1.

26 <sup>19</sup> 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.<sup>20</sup>  
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.<sup>21</sup> 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."<sup>22</sup> 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

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24 <sup>20</sup> Order No. 05-584 at 15.

25 <sup>21</sup> 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[.]").

<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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

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

24 <sup>24</sup> Idaho Power/501, Alphin/2.

25 <sup>25</sup> Idaho Power/501, Alphin/2.

26 <sup>26</sup> 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.<sup>27</sup> 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  
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26 <sup>27</sup> Order No. 07-360 at 11-12.

1 actual avoided costs.”<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup> 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**  
19 **prices.**

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

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24 <sup>28</sup> Order No. 05-584 at 17.

25 <sup>29</sup> Order No. 05-584 at 17.

26 <sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup> 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

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22 <sup>31</sup> Order No. 14-058 at 26.

23 <sup>32</sup> Staff/100, Andrus/3.

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

26 <sup>34</sup> 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.<sup>35</sup>

3 DATED this 12<sup>th</sup> of November, 2015.

4 Respectfully submitted,

5 ELLEN F. ROSENBLUM  
6 Attorney General

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Stephanie S. Andrus, #925123  
9 Senior Assistant Attorney General  
10 Of Attorneys for Staff of the Public Utility  
11 Commission of Oregon

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<sup>35</sup> Staff/400, Andrus/8.