

1 party thereto may apply for rehearing or reconsideration thereof within 60 days from the date of
2 service of such order” and that the Commission “may grant such a rehearing or reconsideration if
3 sufficient reason therefor is made to appear.”

4 In the context of ORS 756.561, “sufficient reason” is a delegative term.⁴ The
5 Commission has exercised its rulemaking authority to define the circumstances constituting
6 sufficient reason to grant rehearing or reconsideration. Those circumstances are described in
7 OAR 860-001-0720(3), which provides that the Commission may grant an application for
8 rehearing if the applicant “shows” that there is:

- 9 (a) New evidence that is essential to the decision and that was unavailable and not
10 reasonably discoverable before issuance of the order;
- 11 (b) A change in the law or policy since the date the order was issued relating to an issue
essential to decision;
- 12 (c) An error of law or fact in the order that is essential to the decision; or
- 13 (d) Good cause for further examination of an issue essential to the decision.⁵

14 By adopting this rule, the Commission has delineated the circumstances in which it has
15 discretion to grant a request for reconsideration.⁶ Under OAR 860-001-0720, an applicant must
16 “show” one or more of the four alternate preconditions before the Commission can exercise its
17 discretion to grant reconsideration. While the question of whether to grant a request for
18 reconsideration is discretionary, the predicate question of whether one of the four preconditions
19 has been established is not.

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22 ⁴ See e.g., *McPherson v. Employment Division*, 285 Or 541, 550, 591 P.2d 1381 (1979)
23 (“[s]tandards such as ‘fair’ or ‘unfair,’ ‘undue’ or ‘unreasonable,’ or ‘public convenience and
necessity,’ * * * call[] for completing a value judgment that the legislature has only
indicated[.]”).

24 ⁵ The Oregon Supreme Court has clarified that the determination of “good cause” is not a
25 subjective determination but a question of law: “Good cause” is a [l]egally sufficient ground or
reason’ that ‘depends upon [the] circumstances of [the] individual case.’”

26 ⁶ As noted above, Idaho Power asserts reconsideration is warranted under subsections (a) and (d).

1 **III. Background**

2 On April 24, 2015, Idaho Power filed three applications to modify certain Commission
3 policies implementing the Public Utility Regulatory Policy Act (PURPA) as applied to Idaho
4 Power. Idaho Power asked the Commission to (1) lower the standard contract eligibility cap for
5 wind and solar QFs to 100 kilowatts (kW) and reduce the term of wind and solar QF contracts to
6 two years; (2) approve a solar integration charge; and (3) postpone the start date of the
7 Company's next deficiency period from 2016 to 2021. Idaho Power also asked the Commission
8 to stay Idaho Power's obligation to enter into standard contracts under PURPA, and in the
9 alternative, provide interim relief by immediately granting the three applications pending an
10 investigation into their merits.⁷

11 In its April 24, 2015 Application for Change in Resource Sufficiency Determination,
12 Idaho Power asserts that postponing the deficiency period start date is warranted because Idaho
13 Power acquired 440 MW of additional capacity from Demand Respond in 2014 and when that
14 additional capacity "is included in the load and resource balance reflected in the 2013 IRP, the
15 first capacity deficit occurs in 2021 not 2016."⁸

16 The Commission opened an investigation into Idaho Power's three April 24, 2015
17 applications and has considered Idaho Power's request for a temporary stay. On June 23, 2015,
18 the Commission denied the request for a temporary stay but granted part of the interim relief
19 asked for by Idaho Power by reducing the eligibility cap for standard contract from 10 MW to 3
20 MW.⁹ The Commission did not grant (or address) Idaho Power's request to make an immediate
21 change to the resource deficiency date pending investigation and final resolution of the issue.

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23 ⁷ UM 1725 Idaho Power Company's Motion for Temporary Stay of Its Obligation to Enter into
24 New Power Purchase Agreements with Qualifying Facilities at 2 (April 24, 2015).

25 ⁸ UM 1725 Application for Change in Resource Sufficiency Determination at 3-4 (April 24,
2015).

26 ⁹ Order No. 15-199.

1 On May 1, 2015, Idaho Power filed an annual update to its standard avoided cost prices.
2 Idaho Power's filing included two alternate sets of replacement pricing pages, one calculated
3 using a deficiency period start date of 2016, and a second using a resource deficiency period start
4 date of 2021, and explained its reason for doing so as follows:

5
6 Idaho Power has filed two separate sets of replacement pricing pages for Schedule
7 85. The first set of replacement pricing pages, attached to the accompanying
8 Application as Attachment 1, utilizes a first capacity deficit of 2016. The second
9 set of replacement pricing pages, attached to the accompanying Application as
10 Attachment 2, utilizes a first capacity deficit of 2021. The Company's 2013
11 Integrated Resource Plan ("IRP") contains a first capacity deficit of 2016.
12 However, as set forth in the Company's Application for Change in Resource
13 Sufficiency Determination, filed on April 24, 2015, Docket No. UM 1725, the
14 inclusion of more than 400 megawatts of demand response programs that were
15 temporarily suspended in Idaho Power's 2013 IRP's capacity sufficiency
16 determination moves the Company's first capacity deficit to July 2021. The
17 Company seeks approval of avoided cost rates that utilize the 2021 first capacity
18 deficit.¹⁰

19 In its public meeting memorandum regarding Idaho Power's avoided cost filing, Staff
20 reported the levelized cost over a fifteen-year period of the then-current avoided cost prices and
21 of the avoided costs based on a resource deficiency period start of 2016 and of 2021 as follows:

	Baseload	Change from Current Schedule 85
22 Current Schedule 85 (2016 deficiency start)	\$69.26	
23 Proposed Schedule 85 (2016 deficiency start)	\$60.19	-13.1%
24 Proposed Schedule 86 (2021 deficiency start)	\$50.91	-26.5%

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26 ¹⁰ Idaho Power Company's Application for Approval of Annual Update of Avoided Cost Rates, Schedule 85 (May 1, 2015).

1 Staff recommended that the Commission approve the avoided cost prices based on the
2 deficiency period start date of 2016.¹¹ Staff noted that changing the resource
3 sufficiency/deficiency periods is not one of the allowed changes in a May update filing. Staff
4 also noted that Idaho Power could have filed an update to its acknowledged IRP to substitute the
5 2021 deficiency period start date for 2016, but did not. Staff said that in absence of such a filing,
6 it was appropriate to use the 2016 start date for the deficiency period.¹²

7 Staff presented its public meeting memorandum at the Commission's Regular Public
8 Meeting on June 23, 2015. The minutes for this meeting reflect Idaho Power did not present
9 comments to contest the assertions made in Staff's memorandum.¹³ The Commission adopted
10 avoided cost prices based on the 2016 deficiency period start date.

11 **IV. Analysis**

12 **A. Reconsideration is not warranted because of an alleged factual error.**

13 Idaho Power asserts that the Commission's reconsideration of its order approving
14 avoided cost prices based on a resource deficiency start date of 2016 is warranted because of an
15 error of fact. Idaho Power states that "[t]he relevant capacity deficiency date for calculation of
16 Idaho Power's avoided costs is 2021 even under the 2013 IRP[,]” because the Commission's
17 order acknowledging the IRP contemplated the reintroduction of the very demand response
18 programs that cause the Company's capacity deficiency date to move out to 2021.¹⁴ Staff
19 recommends that the Commission reject Idaho Power's request to reconsider Order No. 15-204
20 because of this alleged factual error for at least two reasons.

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23 ¹¹ UM 1730 Staff Public Meeting Memorandum 4 (June 15, 2015).

24 ¹² UM 1730 Staff Public Meeting Memorandum 4 (June 15, 2015).

25 ¹³ Oregon Public Utility Commission of Oregon Public Minutes of Public Meeting, Regular
Agenda Item 4, June 23, 2015.

26 ¹⁴ Idaho Power Company's Application for Reconsideration at 4.

1 First, Idaho Power could have alerted the Commission to this “error” prior to the
2 Commission’s approval of Idaho Power’s avoided cost rates, but did not. Instead, Idaho Power’s
3 avoided cost filing states “[t]he Company's 2013 Integrated Resource Plan ("IRP") contains a
4 first capacity deficit of 2016.”¹⁵ And, while Idaho Power makes clear in its April 24 and May 1
5 applications that the acquisition of 440 MW of capacity in 2014 pushes out the start date of its
6 resource sufficiency period to 2021, Idaho Power does not assert, as it does now, that 2021 is the
7 deficiency period start date that is indicated in the 2013 IRP. The Commission should not
8 reconsider a “factual” error in the Order that is based on representations made by the Company.

9 Furthermore, Staff disagrees with Idaho Power’s assertion that basing avoided cost prices
10 on a resource deficiency period that starts 2016 rather than 2021 is a factual error. Instead,
11 whether 2016 or 2021 is correct is the issue presented by Idaho Power Company’s Application to
12 Determine Resource Sufficiency Period. The Commission has established a multi-month
13 procedural schedule to allow parties to conduct discovery and file testimony and briefs on the
14 question of whether Idaho Power’s deficiency period start date should be postponed to 2021.
15 The Commission should not substitute the 15-day response period allowed for responses to
16 requests for reconsideration for the investigation already opened in Docket No. UM 1725.

17 **B. Idaho Power has not established good cause to reconsider Order No. 15-204.**

18 Idaho Power also argues that reconsideration is warranted under the “good cause”
19 precondition in OAR 860-001-0720(3)(d) because basing avoided cost prices on a resource
20 deficiency period that starts 2016 will harm customers because Idaho Power will pay QFs prices
21 that exceed Idaho Power’s avoided costs.¹⁶ Staff does not think Idaho Power has established
22 good cause for reconsideration.

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25 ¹⁵ Idaho Power Company’s Application for Approval of Annual Update of Avoided Cost Rates,
Schedule 85 (May 1, 2015).

26 ¹⁶ Idaho Power Company’s Application for Reconsideration 8-9.

1 As already noted in the background section of this response, the Commission has twice
2 rejected Idaho Power's request to immediately change the deficiency period to 2021, which
3 Idaho Power alleged in its April 24 application is necessary to avoid harming ratepayers.
4 Specifically, the Commission declined to grant Idaho Power's request for the change as interim
5 relief pending final resolution and also, declined to adopt avoided cost prices based on the 2021
6 resource sufficiency start date at the public meeting on June 15, 2015.¹⁷ Staff sees no reason
7 why Idaho Power's third request for this immediate relief should fare differently.

8 Staff recognizes the public interest in matching avoided cost prices to actual avoided
9 costs. However, this interest must be balanced by predictability and fairness in the Commission's
10 process to establish avoided cost prices. The Commission's policies allow utilities to request
11 changes to avoided cost prices in between IRP acknowledgment and IRP updates and Idaho
12 Power has done so. The Commission has established a procedural schedule with opportunity for
13 discovery, testimony, and briefs to consider Idaho Power's application to change the start date of
14 the next deficiency period, and this investigation is ongoing.

15 The interests of Idaho Power's ratepayers are adequately protected by the processes to
16 change avoided cost prices that the Commission has in place. And, the Commission has already
17 limited the potential harm to customers by reducing the eligibility cap for standard contracts
18 from 10 MW to 3 MW. Accordingly, there is not good cause to reconsider the Commission's
19 order approving avoided cost prices so that the Commission can immediately implement Idaho
20 Power's requested change to the resource deficiency period start date.

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26 ¹⁷ Order Nos. 15-199 and 15-204.

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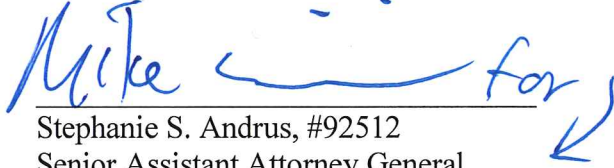
V. Conclusion

Staff recommends that the Commission deny Idaho Power’s Application for
Reconsideration of Order No. 15-204.

Dated this 23rd day of July 2015.

Respectfully submitted,

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