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June 9, 2015

VIA ELECTRONIC MAIL

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-captioned case is an electronic copy of Idaho Power Company's Reply in Support of Motion for Temporary Stay.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo
Office Manager

Enclosures

cc: Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1725**

4 In the Matter of
5 IDAHO POWER COMPANY
6 Application to Lower Standard Contract
7 Eligibility Cap and to Reduce the
Standard Contract Term.

**IDAHO POWER COMPANY'S REPLY IN
SUPPORT OF MOTION FOR TEMPORARY
STAY**

8 Pursuant to OAR 860-001-0420(5), Idaho Power Company ("Idaho Power" or
9 "Company") hereby submits to the Public Utility Commission of Oregon ("Commission") its
10 Reply in support of its motion requesting a temporary stay (hereinafter, the "Motion" or
11 "Motion for Stay") of Idaho Power's obligation to enter into new standard power purchase
12 agreements with Qualifying Facilities ("QFs") pursuant to the Public Utility Regulatory
13 Policies Act of 1978 ("PURPA"). Idaho Power's Motion for Stay requests that the
14 Commission temporarily suspend the Company's standard contract PURPA obligations
15 while the Commission undertakes investigation into three interrelated issues, specifically
16 as they pertain to Idaho Power: (1) whether to lower the standard contract eligibility for
17 wind and solar QFs to 100 kilowatts ("kW") and reduce the term of wind and solar QF
18 contracts to 2 years; (2) whether to approve a solar integration charge; and (3) whether to
19 modify the Company's resource sufficiency period. The Company also requests that the
20 Commission suspend its standard contract PURPA obligations until the new avoided cost
21 rates, pursuant to Idaho Power's May 1, 2015, annual update to avoided cost rates, are in
22 place. This Reply addresses the arguments made by the following parties, all of whom
23 submitted responses to Idaho Power's Motion for Stay: Commission Staff ("Staff"),
24 Gardner Capital Solar Development LLC ("Gardner Capital"), Pacific Northwest Solar LLC
25 ("PNW"), the Renewable Energy Coalition ("REC"), and the Community Renewable
26 Energy Association ("CREA"). This Reply addresses the responses of all five parties.

1 I. INTRODUCTION

2 The Commission should reject the arguments raised by Gardner Capital, PNW,
3 REC, and CREA, and either grant Idaho Power’s Motion for Stay or adopt other interim
4 relief. The pace and volume of QF development occurring in Idaho Power’s Oregon
5 service territory dictates that such interim relief is both appropriate and necessary—even
6 with regard to QF projects that have requested, but not entered into, a draft Energy Sales
7 Agreement (“ESA”). Without a stay or other interim relief, Idaho Power will be required to
8 enter into long-term contracts at prices that far exceed the Company’s actual avoided
9 costs, causing substantial and irreparable harm to Idaho Power’s customers. The
10 Commission can and should prevent this harm from occurring.

11 As explained in its Motion for Stay, Idaho Power has recently received numerous
12 requests for QF contracts in Oregon. In light of the contracts the Company has already
13 executed with QFs, the numbers tell a compelling story of too much QF energy, too fast, in
14 the Company’s Idaho *and* Oregon jurisdictions:

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1 **Table 1: Must-Buy QF Projects in Idaho Power Service Territory**

2	Project Status	Number/ Capacity	Idaho	Oregon	Total
3	Operational	# of Projects	99	6	105 projects
4		MWs	760 MW	21 MW	781 MW
5	Under Contract, but not yet Operational	# of Projects	13	11	24 projects
6		MWs	270 MW	110 MW	380 MW
7	Actively Seeking Contract	# of Projects	47	26*	73 projects
8		MWs	1,081 MW	245 MW	1,326 MW
9	Total	# (MW)	159 projects (2,111 MW)	43 projects (376 MW)	202 projects (2,487 MW)
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11					
12					
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15 * This figure includes the **16** projects that have requested but not yet executed an ESA.
 16 The other **10** projects included in this figure have inquired about a Schedule 85 ESA but
 have not formally requested a contract.

17 In addition to the projects listed in the chart above, Idaho Power received
 18 applications for Generator Interconnection in Oregon for four 10 MW QF solar projects on
 19 June 5, 2015, and for 2 more QF solar projects (4 MW and 6.5 MW) on June 8, 2015. In
 20 light of these rapidly changing circumstances, it is not only appropriate for the Commission
 21 to grant Idaho Power’s Motion for Stay or order other interim relief—it is imperative. In
 22 order to prevent harm to Idaho Power customers, the Commission must pause to
 23 recalibrate certain of its PURPA policies as they apply to Idaho Power and the present
 24 circumstances.

25 Moreover, contrary to the assertions of Gardner Capital and others, it is well within
 26 the Commission’s authority to temporarily suspend or modify Idaho Power’s obligation to

1 enter into standard contracts while it reviews the Company's requests. PURPA *requires*
2 state commissions to ensure that the avoided cost prices paid by a utility for the purchase
3 of electricity from a QF result in just and reasonable rates paid for by utility customers and
4 in the public interest.¹ Further, PURPA prohibits state commissions from setting a price
5 for purchases from a QF that is above a utility's actual avoided cost.²

6 Given the dynamic and expanding QF development that is now occurring in Idaho
7 Power's service territory, the Commission can and should adapt its implementation of
8 PURPA to Idaho Power and recent events. The Commission cannot require Idaho Power
9 to be bound by irrevocable 20-year contracts to purchase power at unjust and
10 unreasonable prices; to do so would place an unacceptable burden on the very customers
11 the Commission is tasked with protecting.³ Even if Idaho Power were not asking for a
12 time-out, it is in moments like this that public utilities, customers, and other stakeholders
13 look to the Commission to act as referee, stop play, and make a call.

14 Idaho Power's believes that its customers will be harmed if the Company enters
15 into **even one** irrevocable 20-year commitment to purchase power on the standard
16 contract terms currently prescribed. Nonetheless, the Company is appreciative of the
17 thoughtful approach recommended by Staff in its Response to Idaho Power's Motion for
18 Stay, and believes that the Commission's adoption of this interim approach would provide
19 Idaho Power's customers with substantial protection from much of the harm that prompted
20 Idaho Power to file its applications and Motion for Stay. Therefore, if the Commission
21 concludes that a full stay of Idaho Power's obligation to enter into new standard contracts
22 is not warranted, notwithstanding the special circumstances that Idaho Power describes in

23
24 ¹ 16 U.S.C. § 824a-3(b)(1) & (2).

25 ² 18 CFR § 292.304(a)(2).

26 ³ ORS 756.040(1) (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 . . .").

1 its Motion for Stay and this Reply, the Company requests that the Commission adopt the
2 interim relief recommended by Staff: reduce the eligibility cap for standard contracts to 100
3 kW and reduce the maximum contract term for facilities over 100 kW to five years,
4 effective as of the day that Idaho Power filed its Motion for Stay on April 24, 2015. For
5 those developers who have asked for but not received contracts as of April 24, 2015, the
6 Company agrees that the determination of whether those requests have created a legally-
7 enforceable obligation (“LEO”) should be determined in individual complaint proceedings.⁴

8 II. FACTUAL AND PROCEDURAL BACKGROUND

9 While the parties’ discussions of the factual and procedural background are
10 generally accurate, the following chronology of recent inquiries and requests for contracts
11 by QFs in Idaho Power’s Oregon service territory provides relevant context:

- 12 • **December 2014:** Big Dog Solar requested and received a draft ESA for a
13 single proposed 10 MW solar QF from Idaho Power; the parties have not
14 executed the ESA.
- 15 • **February 2015:** Idaho Power, Staff, QF parties, and utilities signed a
16 Stipulation re: Issues List on February 19, 2015, stating that Idaho Power
17 intends “to bring as separate case filings matters related to: (1) revision of
18 the standard rate eligibility cap; (2) the appropriate maximum contract term;
19 (3) implementation of solar integration charges; and (4) revision of Idaho
20 Power’s resource sufficiency period.”
- 21 • **April 7, 2015:** Gardner Capital requested ESAs for five solar projects: Olds
22 Ferry (5 MW), Owyhee (10 MW), Malheur River (10 MW), Cooper (5 MW),
23 and Fourth Avenue (10 MW).

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25
26 ⁴ Gardner Capital and PNW have each filed formal complaints, which Idaho Power has answered.
The Commission has docketed those matters as UM 1733 and UM 1731, respectively.

- 1 • **April 16, 2015:** PNW requested an ESA for a single solar project: Arcadia
2 Solar (5 MW).
- 3 • **April 24, 2015:** Idaho Power filed three separate but related applications
4 requesting Commission investigation of QF contract issues described
5 above, as well as the Motion for Stay.
- 6 • **April 27, 2015:** Idaho Power responded by letter to both Gardner Capital
7 and PNW's requests for draft ESAs, informing both entities of the
8 Company's April 24, 2015 filings with the Commission and indicating that
9 Idaho Power would not take further action on their requests until the
10 Commission rules on the Motion for Stay.⁵
- 11 • **April 27, 2015:** PNW submitted ESA requests for eight additional solar QF
12 projects; Idaho Power responded as it did to PNW's first request.
- 13 • **May 1, 2015:** Idaho Power filed an annual update to its standard avoided
14 cost prices as required by Order No. 14-058 (hereinafter "May 2015
15 Update"). The Company also filed an alternative updated schedule
16 (incorporating a 2021 capacity sufficiency date). The avoided cost prices in
17 both filings are **significantly lower** than the current prices (between
18 \$12/MWh and \$38/MWh lower on a levelized basis).
- 19 • **May 6, 2015:** Gardner Capital submitted a request for an ESA for an
20 additional 5 MW solar project.
- 21 • **May 6, 2015:** PNW filed a complaint against Idaho Power for "failure to
22 comply with its obligations under Schedule 85," docketed as UM 1731.
- 23
- 24

25 ⁵ Gardner Capital acknowledges that this was a timely response within the 15-day window in which
26 Schedule 85 requires Idaho Power to respond in writing to a formal request for an ESA. Gardner
 Capital Response at 2.

1 **1. Staff is Correct that Idaho Power’s Changed Circumstances Warrant**
2 **Interim Relief.**

3 Staff correctly states the issue before the Commission as “whether the
4 circumstances as they exist now warrant an immediate change of [PURPA] policies for
5 Idaho Power to avoid harm to ratepayers”—and Staff correctly concludes that they do.⁶ At
6 the outset, Staff recognizes that the Commission addressed the eligibility cap for standard
7 contracts in Phase I of UM 1610 and concluded at that time that the eligibility cap should
8 remain at 10 MW to eliminate the barrier to entry posed by costs to negotiate non-
9 standard contracts.⁷ However, Staff finds that the QF developer contracts reported by
10 Idaho Power in its response to Staff’s Data Request suggest an entirely different set of
11 facts. To illustrate this dynamic, Staff notes that of the 22 requests for PURPA contracts
12 that Idaho Power has received since August 2013, “the bulk of these 17 requests has
13 been made by only a few QF developers seeking ESAs for multiple 10 MW facilities.”⁸
14 Given the clear evidence that the majority of requests for ESAs are by developers with
15 multiple proposed projects, each at the 10 MW standard contract eligibility cap, Staff
16 concludes that the 10 MW eligibility cap is “not used as a tool to eliminate barriers to entry,
17 but as a tool to obtain advantageous standard contract prices for the largest amount of
18 MWs possible.”⁹

19 Staff’s assessment is exactly right. Idaho Power is experiencing an unprecedented
20 surge in proposed QF projects from a limited number of strategic developers. PURPA’s
21 must-buy requirements are not intended to help sophisticated developers to, as Staff puts

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23 ⁶ Staff’s Response at 3.

24 ⁷ *Investigation Into Qualifying Facility Contracting and Pricing*, Docket UM 1610, Order No. 14-058
at 2, 7 (February 24, 2014) (“Order No. 14-058”).

25 ⁸ Staff’s Response at 7.

26 ⁹ *Id.*

1 it, “lock in favorable avoided costs prices for an extended period.”¹⁰ Staff correctly
2 concludes that the Commission should take immediate action to prevent “potential harm
3 from allowing PURPA contracts based on rates that the Commission may determine
4 exceed Idaho Power’s actual avoided costs.”¹¹

5 **2. Staff’s Recommended Interim Relief is Narrowly Tailored and**
6 **Effective.**

7 In light of the potential harm to Idaho Power customers, Staff recommends that the
8 Commission adopt narrowly tailored interim relief. As noted above, Idaho Power’s April
9 24, 2015, filing asks the Commission to modify certain aspects of its PURPA policies (i.e.
10 cap, term, solar integration charge, and capacity sufficiency determination) for wind and
11 solar projects *as they apply to Idaho Power*,¹² and temporarily stay its obligation to enter
12 into standard contracts for wind and solar resources until the Commission has addressed
13 these critical issues. In the alternative to a temporary stay, Idaho Power requests that the
14 Commission order interim relief by modifying its PURPA requirements for Idaho Power
15 effective immediately on an interim basis (pending the Commission’s final decisions on
16 these requests). Staff’s recommendation that the Commission simply grant the
17 Company’s request to lower the eligibility cap and reduce the contract term length for to
18 five years (for wind and solar contracts) yields very similar results to the Company’s
19 alternative approach.

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22 ¹⁰ Staff’s Response at 8.

23 ¹¹ *Id.*

24 ¹² Specifically, the Company requests that the Commission (1) lower the eligibility cap for standard
25 contracts and prices from 10 MW to 100 kW, (2) shorten the maximum term for standard QF
26 contracts from 20 years to two years, (3) authorize a solar integration charge into calculation of
avoided costs; and (4) postpone the starting year of Idaho Power’s next resource sufficiency period
from 2016 to 2021.

1 It is true that Staff has not explicitly proposed that the Commission temporarily
2 adopt the Company's request for a solar integration charge, or change Idaho Power's
3 capacity sufficiency date, pending the outcome of this docket. However, if the
4 Commission adopts Staff's recommended approach, QFs over 100 kW would negotiate
5 the prices, terms and conditions of the power purchase contract in a manner consistent
6 with the Commission's guidelines. Pursuant to those guidelines, Idaho Power must offer
7 QFs the avoided cost prices calculated under the methodology approved by the Idaho
8 Public Utilities Commission.¹³ The IPUC has adopted solar integration charges and has
9 updated the capacity sufficiency determination to 2021 for Idaho Power. Thus, the only
10 substantive difference between the Company's alternative proposal and Staff's
11 recommendation is that Staff would reduce the contract length to five years instead of the
12 Company's requested two years.

13 Idaho Power has reviewed Staff's recommended relief against the current
14 circumstances and believes that, in the absence of a stay, this interim measure would offer
15 Idaho Power's customers significant protection. As Idaho Power understands Staff's
16 recommendation, only those QF projects (greater than 100 kW) that requested an ESA
17 before April 24, 2015 (the date of Idaho Power's application and Motion for Stay) would be
18 eligible for a standard contract under the terms of Schedule 85. Idaho Power has
19 identified seven projects that requested ESAs prior to April 24th, for a total of 55 MW.¹⁴
20 However, the interim relief would enable Idaho Power to *negotiate* the terms of its power

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22 ¹³ Idaho Power's current Schedule 85 specifies that the "starting point for negotiations are the
23 avoided costs calculated under the modeling methodology approved by the Idaho Public Utilities
24 Commission for QFs over 10 MW, as refined by the Oregon Commission to incorporate stochastic
25 analyses of electric and natural gas prices, loads, hydro, and unplanned outages." Idaho Power
26 Schedule 85, p. 10; *Staff's Investigation Relating to Electric Utility Purchases from Qualifying
Facilities*, Order No. 07-360 (August 20, 2007) at Appendix A.

26 ¹⁴ Big Dog Solar (10 MW), Gardner Capital (5 MW, 10 MW, 10 MW, 10 MW, and 5 MW), and PNW
(5 MW).

1 purchases from the nine projects totaling 80 MWs that have requested ESAs since April
2 24, 2015, as well as for any new QFs over 100 kW that request an ESA while Staff is
3 evaluating these PURPA issues. This relief would go a long way towards minimizing the
4 extent of the harm suffered by Idaho Power's customers as a result of long-term
5 agreements to purchase power at inflated prices.

6 For the reasons described below in support of its request for a stay, Idaho Power
7 maintains that binding its customers to purchase of *any amount* of power at prices above
8 its actual avoided cost is contrary to PURPA and should be avoided. However, should the
9 Commission decline to grant the full relief offered by Idaho Power's requested stay, the
10 Company requests that the Commission adopt Staff's recommended interim relief, which
11 would clearly minimize harm to Idaho Power customers.

12 **B. Special Circumstances Warrant a Temporary Stay of Idaho Power's**
13 **Obligation to Enter into New QF Contracts.**

14 If the Company is required to offer the current standard contract and prices to the
15 16 QF projects that have requested a draft ESA since December 2014, those contracts
16 would lock in prices that far exceed the Company's actual avoided cost for the next 15 to
17 20 years, to the detriment of Idaho Power customers. Therefore, it is imperative that the
18 Commission temporarily suspend or modify Idaho Power's obligation to enter into these
19 contracts until the Commission has resolved the applications filed on April 24, 2015 and
20 the May 2015 Update.

21 **1. Idaho Power is Requesting a Stay of its Obligation to Offer Current**
22 **Standard Contract Terms under PURPA, not a Stay of a Commission**
23 **Order.**

24 Gardner Capital incorrectly characterizes Idaho Power's Motion for a Stay as a
25 request for a stay of a Commission Order No. 14-058.¹⁵ As a result of this error, Gardner

26 ¹⁵ Order No. 14-058.

1 Capital cites the wrong legal standard by which the Motion for Stay should be evaluated.
2 Specifically, Gardner Capital mistakenly argues that the Commission can grant Idaho
3 Power's request only if the Company demonstrates that (1) it will be irreparably harmed
4 without a stay; and (2) that Order No. 14-058 includes a colorable claim of error.¹⁶
5 Gardner Capital further argues that, even if Idaho Power makes these showings, the
6 Commission will not grant a stay if it determines that doing so will result in "substantial
7 public harm." However, Gardner Capital's proposed legal standard is based on a
8 provision of the Oregon Administrative Procedures Act ("APA") that applies to stays of
9 agency orders pending judicial review and is inapplicable to the Company's requested
10 relief.¹⁷ Indeed, when the Commission previously suspended Idaho Power's obligation to
11 enter into standard contracts for approximately 60 days in 2012, it did so without invoking
12 the APA's standard for stays pending judicial review.¹⁸ Moreover, when granting similar
13 relief in the past, the Commission has correctly viewed a temporary stay as more akin to
14 interim rate relief than a stay of a Commission order pending judicial review.¹⁹ Here, Idaho

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16 ¹⁶ Gardner Capital Response at 4.

17 ¹⁷ Gardner Capital relies on the standard set forth in ORS 183.482(3), but this statute does not
18 apply to the Commission. See ORS 183.315(6) (providing that certain provisions of the APA,
19 including ORS 183.482, "do not apply to the Public Utility Commission"). Although the Commission
20 has looked to the standard in ORS 183.482 when staying the enforcement of a Commission order,
21 the Commission has never applied this legal standard to a temporary stay of a utility's PURPA
22 standard contract obligation pending an investigation into the avoided cost prices and terms and
23 conditions of the PURPA transaction. *Re Investigation into Rules for Cogeneration and Small
24 Power Prod. Facilities*, Docket AR 174, Order No. 87-1154 at 1-2 (Nov. 3, 1987) ("Order No. 87-
25 1154") (Commission suspended its own PURPA rules to prevent "adverse impacts").

26 ¹⁸ *Re Idaho Power Company*, Docket UE 244, Order No. 12-042 (Feb. 14, 2012) ("Order No. 12-
042") (suspending Idaho Power's obligation to enter into standard contracts to prevent excessive
avoided cost prices).

¹⁹ The Commission has previously granted similar "stays" based on facts less compelling than
those presented by Idaho Power here. See *Re Portland Gen. Elec. Co.*, Docket UM 1443, Order
No. 09-507 (Dec. 28, 2009) (allowing immediate avoided cost price reduction pending investigation
into accuracy of avoided cost prices); *Re Staff's Investigation Relating to Elec. Util. Purchases from
Qualified Facilities*, Docket UM 1129, Order No. 05-1061 (Oct. 4, 2005) ("Order No. 05-1061")

1 Power is asserting that the facts and circumstances have changed substantially since the
2 Commission issued Order No. 14-058, requiring a temporary stay while the Commission
3 recalibrates Idaho Power's PURPA obligations.

4 **2. A Stay is a Proper Exercise of the Commission's Authority and**
5 **Consistent with Precedent.**

6 The Commission's authority to grant this stay arises from its fundamental
7 regulatory duty to "represent the customers of any public utility or telecommunications
8 utility and the public generally in all controversies . . . [and] make use of the jurisdiction
9 and powers of the office to protect such customers, and the public generally, from unjust
10 and unreasonable exactions and practices and to obtain for them adequate service at fair
11 and reasonable rates."²⁰ The legislature has expressly empowered the Commission "to do
12 all things necessary and convenient" in the exercise of its power and jurisdiction to
13 regulate the public utilities of Oregon.²¹ Thus, the Commission may issue the requested
14 stay if it determines that such action is necessary to carry out its statutory duty to protect
15 utility customers.

16 As fully briefed in Idaho Power's Motion for Stay, both this Commission and other
17 state commissions have previously exercised their discretion and authority to temporarily
18 suspend utility PURPA obligations in order to protect customers.²² Attempts by Gardner
19 Capital, PNW, REC, and CREA to distinguish these orders and paint a picture of
20 "mischaracterized precedent" are neither correct nor compelling. While the precise fact
21 patterns vary, every order cited for this proposition in Idaho Power's Motion for Stay

22
23 (allowing revised contracts and prices to become immediately effective pending investigation
subject to contract amendment to conform to outcome of investigation).

24 ²⁰ ORS 756.040(1).

25 ²¹ ORS 756.040(2).

26 ²² See Order No. 87-1154 at 1-2; Order No. 12-042; see also Motion for Stay at 4-6.

1 represents a situation in which either this Commission, or another commission, concluded
2 that circumstances warranted *some form*²³ of suspension of a utility's PURPA obligations
3 for long enough to ensure just and reasonable prices and contract terms.²⁴ Idaho Power
4 cited these orders as precedent for the basic proposition that a temporary stay of a utility's
5 obligation to contract under PURPA—undertaken to give the Commission time to complete
6 its investigation of avoided cost prices—is a proper exercise of the Commission's authority
7 to protect customers from harm. Efforts by Gardner Capital, PNW, REC and CREA to
8 minimize the precedential value of these orders are not persuasive.

9 **3. Idaho Power's Customers will Suffer Irreparable, Substantial, and**
10 **Quantifiable Harm if the Commission does not Stay Idaho Power's QF**
11 **Contracting Obligation.**

12 Regardless of the applicable standard, Idaho Power has demonstrated that its
13 customers will in fact be exposed to irreparable, substantial, and quantifiable harm if its
14 Motion for Stay is not granted. As detailed in Idaho Power's Motion for Stay and
15 accompanying applications, as well as the May 2015 Update, not only are Idaho Power's
16 current standard avoided costs overstated by an average of \$12-\$38/MWh, but they also
17 do not properly reflect the actual costs incurred by the Company such as the costs
18 incurred to integrate solar. Idaho Power currently has a penetration level of 320 MW of
19 solar QFs under contract. Solar integration costs are \$3.12/MWh for penetration levels at
20 400 MW, and escalate to over \$18/MWh for penetration levels over 1,400 MW.²⁵

21 ²³ REC's response alleges that Idaho Power "overstates" the significance of FERC's holding in
22 *Southern California Edison*, 70 FERC 61,215 (1995), cited in Idaho Power's Motion for Stay. REC
23 accurately describes the facts and procedural posture of that order, but misses the point. Idaho
24 Power cited that case as authority for the general proposition that just and reasonable avoided cost
25 pricing is critical, and state commissions should take steps to insure that utilities do not enter into
26 contracts with erroneous or unreasonable avoided cost prices.

25 ²⁴ See Motion for Stay at 4-6.

26 ²⁵ Idaho Power currently has approximately 1,326 MW of proposed QF solar penetration across its
Idaho and Oregon jurisdiction. Idaho Power/106, Allphin/1-2.

1 The stakes are particularly high for Idaho Power, given the volume and rate of
 2 recent QF development on Idaho Power’s system. As the table below illustrates, without a
 3 stay or other interim relief, Idaho Power’s customers will bear the costs of long-term
 4 contracts far in excess of Idaho Power’s actual avoided costs:²⁶

5 **Table 2:**
 6 **Cost Scenarios for Purchase of Power from 16 Solar QFs (135 MW Nameplate Capacity)**

STANDARD QF CONTRACT SCENARIOS	Scenario #1 Current Schedule 85 Terms and Pricing	Scenario #2 5/1/15 Avoided Cost Prices with 2021 Capacity Deficit Year <i>(2016 Deficit Year in parentheses)</i>	Scenario #3* Idaho Power’s Requested Relief (except two-year contract term)*
Total Committed Costs	\$429,501,150	\$251,683,505 <i>(\$278,317,717)</i>	\$263,841,067

15 *This calculation assumes that the eligibility cap is lowered and each project negotiates a
 16 contract. The negotiated price is based on Idaho Power’s most recently negotiated solar
 17 QF contract prices and includes a solar integration charge. To allow for a direct comparison, the Company’s calculation did not account for its request to reduce the contract term to two years.

18 Gardner Capital, PNW, REC, and CREA respond to these numbers with
 19 accusations of “hyperbole”²⁷ and attempts to identify (or create) inconsistencies in Idaho
 20 Power’s data. REC asserts that Idaho Power’s “unsupported and broad allegations”

23 ²⁶ This table shows only the 16 proposed Oregon solar QFs that have made initial requests for
 24 contracts, and only shows the rate differential that results from the May 2015 Update. Inclusion of
 25 the further potential rate impact to customers of Idaho Power’s other requests is quantified in the
 Motion for Stay at 7-8; Exhibits Idaho Power/106, Idaho Power/108, Idaho Power/109; and Idaho
 Power/200, Youngblood/9.

26 ²⁷ REC Response at 2.

1 customers from this irreparable and substantial harm by temporarily staying Idaho Power's
2 QF contracting obligation.

3 Gardner Capital and PNW, as well as REC and CREA, seem to suggest that Idaho
4 Power should simultaneously treat projects actively seeking contracts as too speculative to
5 consider in quantifying likely harm, yet so definite that their first contact with Idaho Power
6 triggers a right to a contract and/or a LEO.³² The parties cannot have it both ways. Idaho
7 Power's position is that the volume of active inquiries is the only reasonable metric for
8 evaluating prospective harm to its customers, even though the projects are not yet
9 obligated by either a contract or LEO. The Commission cannot wait until a flood of
10 projects are under contract to address this issue—at that point, it would be too late.
11 Moreover, even assuming that **only half** of the almost 400 MW currently proposed in
12 Oregon comes online, it would represent nearly a 10-fold increase in the Company's must-
13 buy obligation in the Oregon jurisdiction.

14 **C. The Motion for Stay is not a Collateral Attack on Order No. 14-058**

15 CREA's Response asserts that "the portions of Idaho Power's filings that seek to
16 lower the eligibility cap for wind and solar QFs are impermissible collateral attacks on the
17 Commission's final Order No. 14-058."³³ CREA's general authorities cited regarding the
18 basic principle of "collateral estoppel" are correct, but CREA is mistaken that it somehow
19 bars Idaho Power's requests to the Commission.

20

21 of calculating avoided costs will accord to renewable energy projects, especially solar projects with
22 a strong generation profile, which should be reassuring to prospective solar developers.

23 ³² Compare PNW's Response at 2 (stating with regard to projects that Idaho Power characterizes
24 as proposed, "there is no indication that these projects are even real projects, other than a
25 developer expressing a passing interest in pursuing such projects") with PNW's Response at 6
26 ("development of utility-scale projects is not done on a whim [and] careful consideration is taken at
all stages of development by each of the parties involved, including developers, utilities, and the
PUC").

³³ CREA's Response at 3.

1 The Oregon courts have held that “issue preclusion arises in a subsequent
2 proceeding when an issue of ultimate fact has been determined by a valid and final
3 determination in a prior proceeding.”³⁴ According to the Oregon courts, and this
4 Commission, an earlier decision on an issue precludes relitigation of the issue in another
5 proceeding if the following five requirements are met: (1) the issue in the two proceedings
6 is identical; (2) the issue was actually litigated and was essential to a final decision on the
7 merits in the prior proceeding; (3) the party sought to be precluded has had a full and fair
8 opportunity to be heard on that issue; (4) the party sought to be precluded was a party or
9 was in privity with a party to the prior proceeding; and (5) the prior proceeding was the
10 type of proceeding to which this court will give preclusive effect.”³⁵

11 CREA argues that Order No. 14-058 should be given preclusive effect here
12 because the issues raised by Idaho Power—especially the QF eligibility cap and contract
13 term—were litigated and decided by the Commission. It is true that, as Staff notes in its
14 Response, the Commission “addressed the eligibility cap for standard contracts in Phase I
15 of UM 1610 only 16 months ago.”³⁶ However, the Commission’s decision in Order No. 14-
16 058 was based on the level of QF development at that time, and those facts have changed
17 substantially. The issue before the Commission now is simply not the same issue decided
18 by the Commission in Order No. 14-058; the very first of the *Nelson* factors is not met and
19 issue preclusion does not apply.

20

21

22 ³⁴ *Nelson v. Emerald People’s Utility District*, 318 Or 99, 103-104 (1993).

23 ³⁵ See *Nelson*, 308 Or at 103 (“This court has abandoned the use of the terms “res judicata” and
24 “collateral estoppel” in favor of, respectively, “claim preclusion” and “issue preclusion.”); *PUC v.*
25 *Crooked River Ranch Water Company*, Docket No. UM 1381, Order No. 08-409 at 6 (August 7,
2008) (giving preclusive effect to an earlier order where all five requirements in *Nelson* were met,
and doing so would “facilitate prompt, orderly, and fair problem resolution”).

26 ³⁶ Staff’s Response at 7.

1 The Commission precedent that CREA relies on to argue that Order No. 14-058
2 should preclude Idaho Power’s applications is not to the contrary; in fact, it serves to
3 illustrate why issue preclusion is not warranted here. *In re Unbundled Network Elements*,
4 cited by CREA, was the Commission’s final order in the third and compliance phase of
5 Dockets UT 138 and 139. In the first two phases of Dockets UT 138 and 139, the
6 Commission decided substantive issues regarding unbundled network elements (UNEs)
7 and issued final orders that were subject to rehearing and reconsideration, which Verizon
8 requested on certain issues.³⁷ Later, in conjunction with its compliance filings in Phase III
9 of the same dockets, Verizon requested an evidentiary hearing in support of using the
10 “same time and probabilities submitted in its original cost study filed in Phase I of this
11 proceeding.”³⁸ Importantly, Verizon apparently did not argue that that any of the
12 circumstances or underlying facts had changed. The Commission rejected Verizon’s
13 request, ruling that “it is inappropriate for Verizon to attempt to relitigate this issue during
14 the compliance filing phase of this docket.”³⁹ Here, Idaho Power is not asking the
15 Commission to reconsider issues decided in Order No. 14-058 without any change in
16 circumstance. Idaho Power, the Commission, and all other interested parties are in the
17 same boat as far as dedicating additional resources to addressing issues considered in
18 Phase I of UM 1610, but the circumstances require that the issue be reviewed.

19 CREA asserts that the Commission would set “dangerous precedent” by revisiting
20 the issues decided in Order No. 14-058.⁴⁰ Under the circumstances, the Commission
21 would create even more dangerous precedent by not doing so. The very nature of the

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23 ³⁷ *In re Unbundled Network Elements*, Dockets No. UT 138 and UT 139 Phase III, Order No. 03-
085 at 7, 9-10 (February 5, 2003).

24 ³⁸ *Id.* at 7.

25 ³⁹ *Id.*

26 ⁴⁰ CREA Response at 5.

1 Commission's role in implementing PURPA requires it to be nimble and ensure that the
2 state's policies and methodologies evolve to meet changing conditions. The Commission
3 can ensure that its policies are consistent with PURPA only by adapting those policies
4 when changed circumstances require it. It should therefore come as no surprise that the
5 Commission has revisited its implementation of PURPA, adapting the very policies at
6 issue here, several times since 1980.⁴¹ In fact, the Commission expressly contemplated
7 that it would likely reopen its conclusions in Order No. 14-058, stating, with regard to solar
8 integration, that "we will revisit this issue in the future after more solar development
9 occurs."⁴² The fact that only 16 months have passed is irrelevant given the significant
10 change in circumstances that has occurred over that time period.

11 **D. A Stay Would Not Cause Irreparable Harm, Public or Otherwise.**

12 Gardner Capital and PNW argue that the Commission should reject Idaho Power's
13 request for a stay or other interim relief on the basis that "it could cause significant
14 substantial harm to both the public and the individual QF developers by denying
15 ratepayers the benefits of clean solar power that will likely be built only if the projects are
16 able to benefit from the federal investment tax credit (ITC)."⁴³ According to the parties,
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18 ⁴¹ See *Rulemaking to Establish QF Policies*, Docket No. R. 58, Order No. 81-319 (1981) (setting
19 standard contract eligibility cap at 100 kW); *In the Matter of Proposed Amendments to Rules*
20 *Relating to Cogeneration and Small Power Production Authorities*, Docket AR 102, Order No. 84-
21 742 (establishing both long-term and short-term standard contract options (20 versus 5 years) with
22 different avoided cost pricing); *In the Matter of the Investigation of Competitive Bidding For*
23 *Investor-Owned Electric Utilities*, Docket No. UM 316, Order No. 91-1383 (1991) (raising eligibility
24 cap from 100 kW to 1 MW and providing criteria for approval of 20-year contracts); *Commission*
25 *Ruling on Portland General Electric's Advice No. 96-21* (December 17, 1996) (adopting PGE's
26 request to limit term of standard contracts to 5 years); and *Staff's Investigation Relating to Electric*
Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 05-584 (May 13, 2005)
(raising the standard contract eligibility cap from 1 MW to 10 MW and extending the standard
contract term to 20 years).

⁴² Order No. 14-058 at 15.

⁴³ *Id.* at 8; PNW Response at 5 ("A stay would be the functional equivalent of ending solar
development in Idaho Power's Oregon service territory.")

1 projects need to be placed into service by December 31, 2016, in order to be eligible for
2 the 30 percent ITC, and therefore need to be in late stages of development by this
3 summer.⁴⁴ For this reason, the parties argue that the requested stay “could well kill them
4 altogether,” thereby depriving “Oregon ratepayers and the environment of the benefits of
5 clean energy.”⁴⁵ Moreover, Gardner Capital also asserts that granting the stay would
6 cause irreparable harm to developers like itself, who have “invested substantial amounts
7 of money” to develop proposed QF projects in Idaho Power’s Oregon service territory.⁴⁶

8 The parties seem to be suggesting that the Commission should neglect its primary
9 purpose—protection of Oregon customers—in order to promote the goal of furthering
10 renewable generation, at almost any cost. This position is without merit. FERC has been
11 clear, that states have “numerous ways outside of PURPA to encourage renewable
12 resources”; requiring QF contracts with inflated avoided cost prices is not one of them.⁴⁷

13 While the parties raise some legitimate concerns about how a stay might result in
14 loss of investment dollars to QF developers, there are at least three reasons why such
15 potential harm does not preclude a stay or other interim relief. First, it is highly unlikely
16 that projects that have not yet executed a QF standard contract could be “in service” by
17 the end of 2016 in any event. Second, investment tax credits available to QF projects

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20 ⁴⁴ Gardner Capital Response at 13.

21 ⁴⁵ *Id.*

22 ⁴⁶ *Id.*

23 ⁴⁷ *Re So. Calif. Edison Co.*, 70 F.E.R.C. ¶¶ 61,215, 61,676 (1995) (“Our decision here simply makes
24 clear that the State can pursue its policy choices concerning particular generation technologies
25 consistent with the requirements of PURPA and our regulations, so long as such action does not
26 result in rates above avoided cost.”); *So. Calif. Edison Co., San Diego Gas & Elec. Co.*, 71 F.E.R.C.
¶¶ 61,269, 62,080 (1995) (“A state, however, may not set avoided cost rates or otherwise adjust the
bids of potential suppliers by imposing environmental adders or subtractors that are not based on
real costs that would be incurred by utilities. Such practices would result in rates which exceed the
incremental cost to the electric utility and are prohibited by PURPA.”).

1 have been consistently extended by Congress as the deadline approaches,⁴⁸ so
2 predictions of harm that might result because projects cannot achieve a December 2016
3 in-service date are speculative. Finally, and most importantly, allowing QF projects to
4 proceed with long-term contracts at fixed prices that exceed actual avoided costs does not
5 protect anyone *but* the QF developer. To obligate customers to pay billions of dollars for
6 PURPA generation at a time when load forecasts do not justify such an investment is
7 clearly *not* in the public interest. PURPA was never intended to shift the risky and
8 speculative business of renewable energy project development to utility customers; on the
9 contrary, PURPA's must-buy requirement was intended to level the playing field for QF
10 developers, while the avoided cost mandate was intended to ensure that customers
11 remain indifferent to QF generation.⁴⁹ Requiring Idaho Power to enter into new QF
12 contracts on the current terms and in the current circumstances goes too far and will result
13 in substantial customer harm, which is directly contrary to PURPA.

14 **E. Schedule 85 is Not a Tariff and the Filed Rate Doctrine Does Not Apply.**

15 While Gardner Capital's description of the filed-rate doctrine is generally correct, it
16 is mistaken in asserting that the filed-rate doctrine applies to Idaho Power's Schedule 85.
17 The purpose of the filed-rate doctrine is to protect ratepayers and ensure that rates
18 charged by utilities are those that have been approved by the Commission as "just and
19 reasonable."⁵⁰ The filed-rate doctrine does not apply to prices paid by utilities to QFs, and

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21 ⁴⁸ The Energy Policy Act of 2005 (P.L. 109-58) created the 30 percent Investment Tax Credit
22 ("ITC") for residential and commercial solar energy systems, applicable from January 1, 2006
23 through December 31, 2007. In 2008, Congress passed legislation on a bipartisan basis that
provided an eight-year extension of the commercial and residential solar ITC. See I.R.C. §
48(a)(2)(A)(i)(II), (ii) and § 25D(g). This history suggests that Congress may well act to extend the
solar ITC beyond December 31, 2016.

24 ⁴⁹ *Indep. Energy Producers Ass'n v. Calif. Pub. Utils. Comm'n*, 36 F.3d 848, 858 (9th Cir. 1994)
25 (customers should remain indifferent as to whether the utility used more traditional sources of
power or the newly-encouraged alternatives).

26 ⁵⁰ See ORS 757.210.

1 the Commission has noted this distinction explicitly in previous orders.⁵¹ With regard to a
2 utility's QF standard contract schedule (such as Idaho Power's Schedule 85), the
3 Commission has confirmed that such filings are not tariff filings, stating that statutory
4 protections relating to customer rates do "not apply to the review and approval of rates
5 paid by utilities to qualifying facilities under the [PURPA]."⁵²

6 Idaho Power understands the importance of regulatory certainty to energy project
7 developers, and recognizes that the Commission has made every effort to provide
8 developers with that certainty over the past decade, so long as doing so would not harm
9 utility customers.⁵³ However, Gardner Capital's assertion that it "had no notice that Idaho
10 Power would unilaterally seek to stay its obligations under Schedule 85, or that it would be
11 opening an entirely new docket to change the terms and conditions under which it enters
12 into power purchase agreements with QFs"⁵⁴ is not accurate. Both the Commission and
13 QF developers in Idaho Power's Oregon service territory were unequivocally put on notice
14 in February 2015 that Idaho Power intended to "bring as separate case filings matters
15 related to: (1) revision of the standard rate eligibility cap; (2) the appropriate maximum
16 contract term; (3) implementation of solar integration charges; and (4) revision of Idaho
17 Power's resource sufficiency period."⁵⁵ Thus, Gardner Capital and similarly situated QF

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19 ⁵¹ *In re Investigation to Determine if Pac. Power's Rate Revision is Consistent with the*
20 *Methodologies and Calculations Required by Order No. 05-584, Docket UM 1442, Order No. 09-*
21 *427 (Oct. 28, 2009) ("Order No. 09-427").*

22 ⁵² *In re PacifiCorp, dba Pac. Power, Revises Schedule 37, Avoided Cost Purchases from Qualifying*
23 *Facilities (QF) of 10,000 kW of Less, Docket UE 235, Order No. 12-032 (Feb. 1, 2012).*

24 ⁵³ See, e.g., Order No. 09-427 at 3 ("as part of our responsibility to provide incentives for QF
25 development, we have adopted a process to provide predictability in avoided cost pricing in order to
26 allow a potential developer or investor to easily evaluate the economic feasibility of a project").

27 ⁵⁴ Gardner Response at 16.

28 ⁵⁵ *Re Investigation into Qualifying Facility Contracting and Pricing, Docket UM 1610, Stipulation re:*
29 *Issues List (Feb. 19, 2015).*

1 developers have had adequate notice that Idaho Power’s QF avoided cost prices and
2 contract terms would be up for review in the near future, and should have planned
3 accordingly.

4 **F. A Request for an ESA Does Not Create a Legally Enforceable Obligation**
5 **(“LEO”) under PURPA.**

6 Finally, while Gardner Capital hedges on this issue, it also suggests that its
7 requests for ESAs for six Oregon solar projects “already have created a LEO” and that the
8 Commission’s granting of the requested stay “might be considered an impermissible
9 termination” of a LEO under PURPA. Gardner Capital also asserts that each project is
10 “entitled to [a] Schedule 85 contract[.]”⁵⁶ PNW has made similar assertions with regard to
11 its requests for ESAs.

12 Contrary to these suggestions, Gardner Capital and PNW have *not* obtained a
13 standard contract, a right to a contract, or a LEO for any of the solar projects in question.
14 The Commission’s grant of a stay would not interfere with any vested legal right,
15 contractual or otherwise, because the parties do not possess any such right at this time.
16 As described in detail in the timeline set forth in Section II above, Gardner Capital and
17 PNW have merely made “first contact” with Idaho Power to request a draft contract for
18 review, amounting to nothing more than a possibility of entering into an ESA for their
19 respective solar projects some time into future. Idaho Power responded to all Schedule 85
20 requests for draft ESAs within the required 15-day window.⁵⁷ Idaho Power agrees with the
21 parties that the Commission need not resolve the issue of which facts create a LEO in

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23 ⁵⁶ Gardner Response at 18.

24 ⁵⁷ Idaho Power also notes that, while Gardner Capital’s requests for ESAs appear to include much
25 of the information required in Section 2(b)(ii) of Schedule 85, there are significant issues that would
26 need to be clarified and addressed before Idaho Power could provide a draft ESA (if that were
required). Specifically, it appears that the Olds Ferry and Cooper solar projects for which Gardner
Capital requested an ESA are located within 5 miles of each other and would therefore appear to
constitute a single QF under PURPA. See Order No. 14-058 at 26-27.

1 order to grant Idaho Power's request for a stay.⁵⁸ However, it is worth noting that
2 determination of when a PURPA QF establishes the right to a particular rate or contract
3 terms pursuant to a LEO is fact-specific determination that lies exclusively within the
4 discretion and authority of the state commission with jurisdiction over the matter.⁵⁹

5 Gardner Capital and PNW also suggests that the Commission should treat QFs
6 that have already requested ESA's under Schedule 85 as having a special status, and
7 therefore should not be subject to the requested stay or other interim relief.⁶⁰ However,
8 when the Commission previously suspended Idaho Power's obligation to enter into
9 standard QF contracts pending updated avoided cost prices, the Commission did not
10 distinguish between those projects that had already requested an ESA and those that had
11 not.⁶¹ As discussed further above, the Commission should not do so here.

12 Given the changed circumstances since the Commission's Order No. 14-058 and
13 approval of Schedule 85, Idaho Power acted promptly and properly within its legal rights,
14 duties, and obligations to bring this significant matter before the Commission in the form of
15 the applications and this Motion for Stay. The Commission should grant the requested
16 stay or order other interim relief at its earliest opportunity.

17 **G. If the Commission Does Not Grant a Stay as Requested, Other Interim Relief**
18 **is Warranted.**

19 If the Commission does not stay Idaho Power's requirement to enter into new and
20 additional standard QF contracts during the pendency of its investigation of Idaho Power's

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22 ⁵⁸ Gardner Response at 18.

23 ⁵⁹ *Power Res. Group, Inc., v. Pub. Util. Comm'n of Tex.*, 73 S.W.3d 354 (Tex. 2002); *Power Res.*
24 *Group, Inc., v. Klein*, No. A-03-CA-762-H, slip op. at 12 (W.D. Tex. 2004); *Power Res. Group, Inc.,*
v. Pub. Util. Comm'n of Tex., 422 F.3d 231 (5th Cir. 2005) *cert. denied*, 547 U.S. 1020, 126 S.Ct.
1583, 164 L.Ed.2d 301 (2006).

25 ⁶⁰ Gardner Response at 9-12; PNW Amendment to its Response at 2-3.

26 ⁶¹ Order No. 12-042.

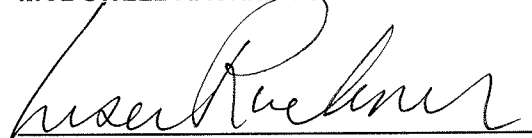
1 applications, other action is urgently needed to prevent the likelihood of substantial harm
2 to customers until the Commission renders its decision on the Company's applications. If
3 the Commission denies Idaho Power's request for a stay, it should either grant the interim
4 relief recommended by Staff or requested by Idaho Power, thereby enabling the Company
5 to move forward with QF contracts on terms protective of its customers.⁶²

6 **IV. CONCLUSION**

7 For all of the reasons stated above, Idaho Power requests that the Commission
8 issue an order either (1) temporarily staying Idaho Power's obligation to enter into
9 standard PURPA contracts; or (2) adopting Staff's recommended interim relief until the
10 Commission has concluded its investigation into the applications concurrently filed with
11 Idaho Power's Motion for Stay.

12 Respectfully submitted this 9th day of June, 2015.

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14 

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25 ⁶² In the event that the Commission later determines that prices or contract terms more favorable to
26 QFs are required, affected entities could be given the option of amending its contract with Idaho
Power to get the benefit of the revised standard contract or prices. See, e.g., Order No. 05-1061 at
4.