

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 2210**

In the Matter of

IDAHO POWER COMPANY,

Application for Waiver of Competitive  
Bidding Rules

RENEWABLE ENERGY  
COALITION'S COMMENTS

**I. INTRODUCTION**

The Renewable Energy Coalition (the “Coalition”) hereby respectfully submits these comments on Idaho Power Company’s (“Idaho Power’s”) Application for Waiver of Competitive Bidding Rules (“Waiver Application”)<sup>1</sup> and in response to Staff’s Report recommending denial of Idaho Power’s waiver request because good cause does not exist.<sup>2</sup> The Coalition supports Staff’s recommendation that the Oregon Public Utility Commission (the “Commission”) deny Idaho Power’s Waiver Application. The Coalition provides these comments to highlight a longstanding issue in Oregon that is at least partially responsible for the predicament in which Idaho Power apparently finds itself: the Commission’s sufficiency-deficiency policy for procurement under the Public Utility Regulatory Policies Act (“PURPA”). But for this policy, Idaho Power’s current and past avoided cost pricing would be higher, and that would have encouraged the development of Qualifying Facilities (“QFs”) that avoided Idaho Power’s capacity need.

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<sup>1</sup> Waiver Application at 1-21 (Dec. 9, 2021).

<sup>2</sup> Staff Report at 1 (Mar. 2, 2022).

The Commission should reject Idaho Power’s Waiver Application as an undisguised attempt to further discourage the availability of non-utility owned resources, like QFs. The harm from Idaho Power discouraging QF development for at least the past six years cannot be remedied now. However, the Commission can and should direct Idaho Power to respect the competitive bidding rules and acknowledge the value of non-utility owned generation for Oregon ratepayers. The Coalition respectfully requests that the Commission reject Idaho Power’s Waiver Application.

## **II. COMMENTS**

### **A. The Sufficiency-Deficiency Policy Discourages QF Development and Is Partially Responsible for This Apparent Predicament**

The Coalition is not asking the Commission to adopt a policy change in this docket. However, the Coalition believes the sufficiency-deficiency policy is at least partially responsible for the circumstances in which Idaho Power apparently finds itself. Therefore, the Coalition asks the Commission to acknowledge that the sufficiency-deficiency policy is at least partially responsible for Idaho Power’s lack of adequate capacity.

#### **1. Background on the Sufficiency-Deficiency Policy**

The sufficiency-deficiency policy differentiates the avoided cost pricing offered to QFs based on the utility’s resource position. If a utility is deemed resource “sufficient,” avoided cost pricing are generally considerably lower than pricing when a

utility is deemed resource “deficient.” When, as now, the sufficiency policy incorporates market-based pricing,<sup>3</sup> the sufficiency period pricing can be very low.

The Commission has explained that:

The theory that underlies separate calculations for periods of resource sufficiency and deficiency is that a utility is actively planning to acquire, and therefore can actually avoid acquiring new resources, only when the utility is in a resource deficient position.<sup>4</sup>

As discussed further below, this theory is incorrect. Worse, the determination of resource position is locked in by a utility’s Integrated Resource Plan and is thus inflexible.<sup>5</sup>

## **2. Idaho Power’s Implementation**

The Commission’s sufficiency-deficiency policy is a longstanding problem. Nonetheless in 2005, the Commission exempted Idaho Power and allowed it to use the non-differentiating pricing methodology followed in Idaho on the basis on administrative efficiency.<sup>6</sup>

Seven years later, in 2012, Idaho Power claimed that the non-differentiating approach produced too high of avoided cost pricing and therefore asked to use the

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<sup>3</sup> In the past, the Commission used the marginal operating cost to set sufficiency period pricing. *See, e.g., in re Staff’s Investigation Relating to Electric Utility Purchases from QFs*, Docket No. UM 1129, Order No. 05-584 at 22 (May 13, 2005) (“Historically, when in a period of resource surplus or sufficiency, Oregon electric utilities have calculated avoided costs based only on the variable costs of operating existing generating facilities.”). The Commission ordered the use of market-based rates in 2005. Docket No. UM 1129, Order No. 05-584 at 2.

<sup>4</sup> Docket No. UM 1129, Order No. 05-584 at 22.

<sup>5</sup> *In re Investigation into Determination of Resource Sufficiency pursuant to Order No. 06-538*, Docket No. UM 1396, Order No. 10-488 at 8 (Dec. 22, 2010).

<sup>6</sup> Docket No. UM 1129, Order No. 05-584 at 26-27.

Commission’s sufficiency-deficiency approach.<sup>7</sup> The Commission agreed,<sup>8</sup> and since then Idaho Power has offered avoided-cost pricing differentiated by sufficiency-deficiency.<sup>9</sup>

At this time, Idaho Power’s standard avoided cost pricing provides a deficiency date of August 2028 even though the Waiver Application shows that its actual need begins in 2023.<sup>10</sup> Further, the pricing has been sending market signals for at least *six years* that Idaho Power would not have a capacity need until sometime after 2023. Before the 2021 update, Idaho Power’s pricing had a deficiency date in 2026, with a sufficiency period of up to 8 years.<sup>11</sup> Before that, it was 2024, with a sufficiency period

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<sup>7</sup> *In re Idaho Power Application to Revise the Methodology Used to Determine Standard Avoided Cost Prices and Motion for Temporary Stay of Obligations to Enter into New Power Purchase Agreements with QF and Request to Revise Standard Contract Avoided Cost Prices Paid to QFs under Schedule 85*, Docket Nos. UM 1590 & UM 1593, Order No. 12-146 at 1 (Apr. 25, 2012) (discussing Idaho Power’s request).

<sup>8</sup> Docket Nos. UM 1590 & UM 1593, Order No. 12-146 at 1 (approving the change to the “Oregon method”).

<sup>9</sup> *See in re Request to Adopt a Scope and Process for the Investigation into PURPA Implementation*, Docket No. UM 2000, Order No. 19-254, Appendix A at 11 n9 (July 31, 2019).

<sup>10</sup> *In re Idaho Power Update to Avoided Cost Rates, Schedule 85*, Docket No. UM 1730, Order No. 21-198, Appendix A at 3 (June 16, 2021). Idaho Power sought and obtained approval of these low avoided cost rates based on an August 2028 deficiency date after Idaho Power announced on May 1, 2021 that the Company’s near-term capacity position had changed. While Idaho Power is seeking to waive nearly all the competitive bidding rules to acquire a utility owned resource, Idaho Power has not sought to change the deficiency date for avoided costs.

<sup>11</sup> Docket No. UM 1730, Order No. 21-198, Appendix A at 3; Docket No. UM 1730, Order No. 18-188, Appendix A at 2 (May 24, 2018); *see* Docket No. UM 1730, Idaho Power’s 2018 Annual May Update of Avoided Cost Rates and Post 2017 Integrated Resource Plan (“IRP”) Acknowledgment Avoided Cost Update - Schedule 85, Cogeneration and Small Power Production Standard Contract Rates at 3 (May 1, 2018).

of also up to 8 years.<sup>12</sup> The Commission approved the deficiency date change to 2024 in 2016,<sup>13</sup> thus Idaho Power's avoided cost pricing have been sending a market signal to QFs for at least the last *six years* that development and sales to Idaho Power are not valuable or useful in the near future.

As the Waiver Application makes painfully obvious, Idaho Power's lack of recent procurements is a problem. These inaccurate market signals have discouraged recent QF procurements, with current QF contracting slowed to roughly one-tenth its prior pace.<sup>14</sup> These inaccurate market signals therefore are at least partially responsible for any lack of adequate capacity.

### **3. It is Past Time to Address These Problems with the Sufficiency-Deficiency Policy**

Stakeholders have been protesting the sufficiency-deficiency policy since at least 2005. In that year, for example, the Oregon Department of Energy ("ODOE") flagged that "is difficult to distinguish between when a utility is resource deficient as opposed to sufficient."<sup>15</sup> ODOE therefore recommended, as did various other stakeholders, that the

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<sup>12</sup> Docket No. UM 1730, Order No. 16-219, Appendix A at 3 (June 8, 2016); Docket No. UM 1730, Idaho Power Company's 2016 Annual May Update of Avoided Cost Rates, Schedule 85, Cogeneration and Small Power Production Standard Contract Rates at 3 (May 2, 2016).

<sup>13</sup> Docket No. UM 1730, Order No. 16-219, Appendix A at 3; *In re Idaho Power Changes to Schedule 85 and Energy Sales Agreements for QFs in Compliance with Order No. 16-129*, Docket No. UM 1725, Order No. 16-169, Appendix A at 2 (May 3, 2016) (indicating the deficiency period originally was in 2016).

<sup>14</sup> *See generally in re Idaho Power Information Filing of QF Contracts or Summaries per OAR 860-082-0020(1)*, Docket No. RE 141 (showing a considerable reduction in QF contracting since 2016, with 10 contracts signed in 2015, or roughly 10/year, versus only a total of 5 non-community solar contracts signed from 2017 to today, or roughly 1/year).

<sup>15</sup> Docket No. UM 1129, Order No. 05-584 at 25 (discussing ODOE's comments).

Commission “not differentiate with regard to the calculation of avoided costs when a utility is in a resource deficient position versus a resource sufficient position.”<sup>16</sup> The Commission declined to do so.<sup>17</sup>

Similarly, in 2017, the Commission itself acknowledged—but has not since resolved—the “some policy gaps in how setting avoided costs is informed by our IRP and RFP processes for all utilities in Oregon subject to PURPA regulation,” including the need to address:

1. Challenges that may exist with examining a utility's resource deficiency date for avoided cost purposes, including when the deficiency date identified in the IRP is outside the action plan window or when the utility pursues a resource action or RFP without IRP acknowledgment; and
2. The avoided cost implications where a utility is pursuing near-term capacity investments that are not driven by reliability, renewable portfolio standard (RPS), or load-service needs.<sup>18</sup>

More recently, in 2019, Commission Staff summarized this issue in the white paper provided in Docket No. UM 2000, stating:

The Commission adopted the resource sufficiency/deficiency period pricing methodology for PacifiCorp and PGE in 2005. Fifteen years ago the utility acquisition of resources tended to be lumpier, the Renewable Portfolio Standard (RPS) was not in effect, and the Energy Imbalance Market (EIM) did not exist. Another driver of current market evolution is the rapid advances in technology, and associated declining costs, especially storage and

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<sup>16</sup> Docket No. UM 1129, Order No. 05-584 at 25 (discussing ODOE’s comments).

<sup>17</sup> Docket No. UM 1129, Order No. 05-584 at 27.

<sup>18</sup> *In re PacifiCorp Investigation into Schedule 37 – Avoided Cost Purchases from QFs of 10,000 kW or Less*, Docket No. UM 1794, Order No. 17-219 at 3 (July 7, 2017) (discussing the struggle to adapt PacifiCorp’s pricing to recognize substantial changes from the 2016 passage of SB 1547).

renewable resources. The costs are also closely tied to state and federal tax treatments. Also, utility procurement may not adhere as closely to IRPs as it has in the past.

The utilities conduct RFPs for resources that are not included in IRPs, or are outside of the identified need, and the utilities regularly purchase hundreds of megawatts of capacity of various durations in short-term markets (see the IRP filings for reference). Meanwhile QFs are generally paid for avoided capacity costs associated with the utility's resource sufficiency/deficiency demarcation in their acknowledged IRP, which may not match the utilities actual acquisitions.<sup>19</sup>

The Coalition has been pointing out the flaws in the sufficiency-deficiency demarcation since at least 2010 and is currently focusing its efforts in the Commission's generic capacity investigation, Docket No. UM 2011.<sup>20</sup> The Coalition appreciates that, in that docket, Staff has "recommend[ed] that the delineation of sufficiency/deficiency periods be removed" from the utility/IRP control and instead determined through a bright-line three or five-year ramp from full "sufficiency" to full "deficiency."<sup>21</sup> The Coalition has concerns about situations in which Staff's proposal would be worse than the status quo but is generally supportive of a framework less prone to utility gaming.

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<sup>19</sup> Docket No. UM 2000, Order No. 19-254, Appendix A at 18-19.

<sup>20</sup> *E.g.*, Docket No. UM 1396, Order No. 10-488 at 6-7 ("REC urges the Commission to consider measures to prevent the utilities from 'gaming' their major resource acquisitions...").

<sup>21</sup> *In re General Capacity Investigation*, Docket No. UM 2011, Staff's Reply Comments at 14 (Apr. 26, 2021). Staff's most recent Best Practices Proposal is included in Docket No. UM 2011, Staff's Agenda and Matrix for Nov. 4, 2021 Special Public Meeting (Nov. 2, 2021). The Coalition understands Staff is currently reviewing and updating its proposal in light of utility modeling results.

The Coalition has concerns about situations in which Staff's proposal would be worse than the status quo but is generally supportive of a framework less prone to utility gaming.

However, Idaho Power and the other utilities have been a vocal opponent to Staff's proposed bright-line three-to-five year ramp solution, and they initially recommended a *ten-year* ramp for Idaho Power due to Idaho Power's lack of recent acquisitions.<sup>22</sup> Now that Idaho Power has filed its Waiver Application, Idaho Power has not sought to alter its position in UM 2011, and apparently continues to take the position that there should be long resource sufficiency periods for QFs, while Idaho Power actively acquires new generation resources.

Idaho Power's Waiver Application demonstrates that, contrary to Idaho Power's protestations, Idaho Power should have been making acquisitions recently and should have its resource sufficiency periods eliminated or shortened.<sup>23</sup>

In summary, the Coalition is not asking the Commission in this docket to resolve the sufficiency-deficiency problem. The Coalition is and will continue to address this problem in UM 2011, which the Coalition hopes can be speedily resolved and begin producing benefits in the near future.<sup>24</sup> However, the sufficiency-deficiency problem is at least one cause of the predicament Idaho Power apparently finds itself in.

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<sup>22</sup> See Docket No. UM 2011, Staff's Reply Comments at 15-16 (Apr. 26, 2021).

<sup>23</sup> See Docket No. UM 2011, Coalition's Comments on Staff's Value of Capacity Straw Proposal at 1 (Aug. 3, 2021) (arguing for Idaho Power to have the same three-year ramp as other utilities).

<sup>24</sup> See Docket No. UM 2011, The Coalition, Northwest & Intermountain Power Producers Coalition, Obsidian Renewables, LLC, Renewable Northwest, and Pacific Ocean Energy Trust Joint Response To Utilities' Proposal at 1 (Dec. 3, 2021).



## **B. The Commission Should Deny Idaho Power’s Waiver Application**

### **1. Legal Standard**

The Commission’s competitive bidding rules apply when an electric utility seeks to acquire resources or a contract for more than an aggregate of 80 megawatts and five years in length.<sup>25</sup> The Commission can waive any of the competitive bidding rules upon request or its own motion if good cause is shown.<sup>26</sup> The Oregon administrative rules do not clearly identify a standard for finding good cause that would allow for a waiver of the competitive bidding rules, but Staff has identified three criteria to evaluate good cause: 1) minimization of long-term costs and risks; 2) whether the resource or contract complements the integrated resource planning (“IRP”) process; and 3) whether acquisition of the resource or contract can be conducted in a manner that is “transparent, understandable, and fair.”<sup>27</sup> These are essentially the same requirements that are the goals of the competitive bidding rules,<sup>28</sup> and the Coalition agrees that they are the appropriate standards to evaluate a waiver request under.

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<sup>25</sup> OAR 860-089-0100(1).

<sup>26</sup> OAR 860-089-0010(2).

<sup>27</sup> Staff Report at 5.

<sup>28</sup> OAR 860-089-0010(1) (“The rules contained in this Division apply to electric companies, and are intended to provide an opportunity to minimize long-term energy costs and risks, complement the integrated resource planning (IRP) process, and establish a fair, objective, and transparent competitive bidding process, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms.”).

## **2. Good Cause Does Not Exist to Grant Idaho Power’s Waiver Application Because Idaho Power Should Have Corrected Its QF Market Signals to Encourage New Capacity Development But Did Not Do So**

The Commission should deny Idaho Power’s Waiver Application for lack of good cause because Idaho Power has failed to correct course to mitigate the problem by taking actions consistent with the Commission’s current IRP and avoided cost processes. In other words, Idaho Power could have corrected its QF market signals to encourage new capacity development but did not (and still has not) done so.

As noted earlier, Idaho Power’s avoided cost pricing have been sending a market signal to QFs for at least the last *six years* that development and sales to Idaho Power are not valuable or useful. Recently, Idaho Power affirmed these market signals in its avoided cost filing on April 30, 2021 which proposed a 2028 capacity deficiency date.<sup>29</sup> According to Idaho Power’s Waiver Application, Idaho Power first learned of its 2023 capacity in May 2021, *before* the Commission adopted Idaho Power’s rates in June 2016.<sup>30</sup> Idaho Power could have promptly alerted the Commission to this potential concern. Instead, the utility ignored the facts and waited for the Commission to decrease its QF pricing.<sup>31</sup>

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<sup>29</sup> Docket No. UM 1730, Idaho Power Company’s 2021 Annual May Update of Avoided Cost Rates and Post 2019 Integrated Resource Plan (“IRP”) Acknowledgment Avoided Cost Update – Schedule 85, Cogeneration and Small Power Production Standard Contract Rates at 2 (Apr. 30, 2021).

<sup>30</sup> Waiver Application at 1; Docket No. UM 1730, Order No. 21-198 at 1 .

<sup>31</sup> Docket No. UM 1730, Order No. 21-198, Appendix A at 3.

### **3. Good Cause Does Not Exist to Grant Idaho Power’s Waiver Application Because the Waiver Application and Its Counterpart in Idaho Are an Undisguised Attempt to Further Discourage QF Development**

The Commission should deny Idaho Power’s Waiver Application for lack of good cause because Idaho Power’s requests are an undisguised attempt to further discourage QF development and promote utility-owned resources. This fact is most clear from the application filed in Idaho, where Idaho Power details at length its dislike for PURPA.

Idaho Power argues for a waiver in Idaho because:

Idaho’s long-standing, successful, and lawful system of utility regulation relies upon and needs financially healthy utilities *that are able to rate base investment that is used and useful in the public service and have an opportunity to earn a return on that investment at a regulated rate.*<sup>32</sup>

In other words, it wants a waiver *so it can build a resource itself and profit off of it.*

The application continues by criticizing non-utility ownership at length, saying:

The modern tools used in attempts to force deregulation onto state jurisdictions that have chosen to retain the traditional vertically integrated, state regulated service providers, such as the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and its unbounded mandatory purchase Power Purchase Agreements (“PPAs”), the Federal Energy Regulatory Commission’s (“FERC”) promotion of Regional Transmission Organizations (“RTO”) and Independent System Operator (“ISO”) operational environments, anticompetitive tax credit policy for renewable energy procurement, and competitive procurement rules and regulations specifically designed to “remove the utility’s

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<sup>32</sup> *In re Idaho Power’s Application for Authority to Proceed with Resource Procurements to Meet Identified Capacity Deficiencies in 2023, 2024, and 2025 to Ensure Adequate, Reliable, and Fair-Priced Services to its Customers*, Idaho Public Utilities Commission Docket No. IPC-E-21-41, Idaho Power Application at 23 (emphasis added), available at <https://puc.idaho.gov/Fileroom/PublicFiles/ELEC/IPC/IPCE2141/CaseFiles/20211203Application.pdf>.

competitive advantage” (or in other words to give competitive advantage to nonutility, third-party generation or PPAs with incentives mis-aligned with customer benefit).

While some aspects of these policies can, and have, resulted in positive outcomes for utilities and the customers they serve, certain policy aspects, if not properly implemented, have the potential to create an environment that erodes the financial health and viability of the regulated utility, and the ability of a utility to reliably serve customers, and in turn can erode the state’s ability to protect customers through its regulation of the public utility.

These tools of deregulation, promoting a proliferation of third-party, PPA generation resources creates an environment where the public utility is no longer protected from competition in its certificated service area, but must still be subjected to the economic regulation of the state and face disadvantages in the marketplace. In essence, the model gravitates toward defaulting the utility and its customers into less useful, more expensive, and operationally difficult PPA arrangements that undermine the regulatory environment while allowing non-utility, third party generators - who have no obligation to customers and mis-aligned incentives - to walk away with profits and to consider their own bottom line, as opposed to reliable service to electric utility customers.<sup>33</sup>

The Commission should reject this blatant opposition to Oregon’s pro-competition policies, like PURPA.<sup>34</sup> Idaho Power has made obvious that its true purpose is not to pursue the best path for customers but merely to avoid competition.

### **III. CONCLUSION**

For the reasons stated above, the Commission should deny Idaho Power’s Waiver Application.

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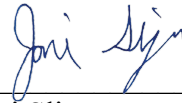
<sup>33</sup> Idaho Public Utilities Commission Docket No. IPC-E-21-41, Idaho Power Application at 23-24.

<sup>34</sup> ORS 758.525.

Dated this 7th day of March 2022.

Respectfully submitted,

Sanger Law, PC

A handwritten signature in blue ink that reads "Joni Sliger". The signature is written in a cursive style with a horizontal line underneath it.

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