

# McDowell Rackner & Gibson PC



SHARON COOPER  
Direct (503) 290-3628  
sharon@mcd-law.com

July 30, 2015

## VIA ELECTRONIC MAIL

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

**Re: UM 1730 – In the Matter of IDAHO POWER COMPANY, Application to Update  
Schedule 85 Qualifying Facility Information**

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic copy of Idaho Power Company's Motion for Leave to File Reply and Idaho Power Company's Reply in Support of Application for Reconsideration.

Please contact this office with any questions.

Very truly yours,

Sharon Cooper  
Legal Assistant

Attachments

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1730

In the Matter of

IDAHO POWER COMPANY

Application to Update Schedule 85  
Qualifying Facility Information

**IDAHO POWER COMPANY'S  
MOTION FOR LEAVE TO FILE REPLY**

**I. INTRODUCTION**

1 Idaho Power Company ("Idaho Power" or "the Company") respectfully requests  
2 that the Public Utility Commission of Oregon ("Commission") accept and consider Idaho  
3 Power's timely filed Reply to the responses filed by the Commission Staff ("Staff") and the  
4 Renewable Energy Coalition ("REC") regarding Idaho Power's Application for  
5 Reconsideration of Order No. 15-204 ("Application"). By Application dated July 8, the  
6 Company requested that the Commission reconsider its decision in Order No. 15-204 on  
7 the basis that (1) the order was based on an error of fact essential to the decision; and (2)  
8 there is good cause for further examination of an issue essential to the decision.  
9 Accordingly, Idaho Power requests that the Commission approve the revised Schedule 85  
10 sheets based on a 2016 capacity deficiency date instead of the more accurate pricing  
11 based on a capacity deficiency date of 2021.

**II. REQUEST FOR LEAVE TO FILE REPLY**

12 The Commission's rules do not provide for an automatic reply to a response to an  
13 application for reconsideration; however, the Commission may accept a reply in its  
14 discretion.<sup>1</sup> For example, the Commission has granted a motion for leave to file a reply

---

<sup>1</sup> See, e.g., *PáTu Wind Farm, LLC v. Portland Gen. Elec. Co.*, Docket UM 1566, Order No.14-425 (Dec. 8, 2014) (granting PáTu Wind Farm, LLC's request for leave to file reply comments).

1 where the response raises factual questions about a party's conduct, and the party asserts  
2 that additional information is necessary to provide a full record about the party's conduct.<sup>2</sup>  
3 Idaho Power seeks permission to file its Reply to address the following points in the  
4 parties' responses and correct the record. First, the parties assert that reconsideration is  
5 precluded because Idaho Power should have explained its position--that the addition of  
6 approximately 400 MW of demand side resources pursuant to its acknowledged 2013  
7 Integrated Resource Plan ("IRP) pushed its capacity deficiency date from 2016 to 2021—  
8 earlier or differently. Second, the parties mischaracterize the consequences of Order No.  
9 15-204 for Idaho Power's customers. Idaho Power's Reply corrects the record on these  
10 important issues, and the Commission's decision to accept and consider Idaho Power's  
11 Reply will not delay the Commission's review of the Company's Application.

12 /////  
13 /////  
14 /////  
15 /////  
16 /////  
17 /////  
18 /////  
19 /////  
20 /////  
21 /////  
22 /////  
23 /////

---

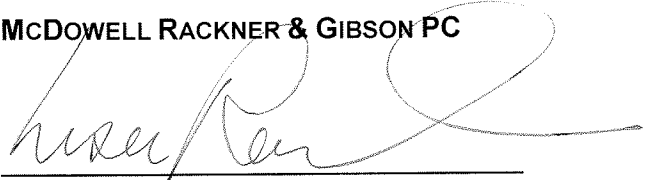
<sup>2</sup> *Re Pac. Power & Light Co.*, Docket UE 177, Order No. 08-002 (Jan. 3, 2008) (granting a request for leave to file a reply where the procedural rules do not provide an opportunity for reply in the context of a motion to amend a protective order).

### III. CONCLUSION

1 For the foregoing reasons, Idaho Power requests that the Commission accept and  
2 consider the Reply filed with this Motion.

3 Respectfully submitted this 29th day of July, 2015.

**MCDOWELL RACKNER & GIBSON PC**



Lisa F. Rackner

### IDAHO POWER COMPANY

Donovan Walker  
Lead Counsel  
1221 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707

Attorneys for Idaho Power Company

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

3                                   **UM 1730**

4    In the Matter of  
5    IDAHO POWER COMPANY  
6    Application to Update Schedule 85  
7    Qualifying Facility Information

**IDAHO POWER COMPANY’S REPLY IN  
SUPPORT OF APPLICATION FOR  
RECONSIDERATION**

8  
9                                   **I.     INTRODUCTION**

10                    In accordance with ORS 756.561, OAR 860-001-0720, and OAR 860-001-0420, on  
11    July 8, 2015, Idaho Power Company (“Idaho Power” or “the Company”) timely filed an  
12    Application for Reconsideration of Order No. 15-204<sup>1</sup> (“Application”) in this proceeding.  
13    On July 23, 2015, the Commission Staff (“Staff”) and the Renewable Energy Coalition  
14    (“REC”) filed responses to the Company’s Application. The Public Utility Commission of  
15    Oregon’s (“Commission”) administrative rules provide that a reply is permitted only if  
16    requested by the Administrative Law Judge (“ALJ”).<sup>2</sup> Because there are several issues  
17    raised in the parties’ responses that require clarification, Idaho Power has concurrently  
18    filed a request for leave to file this Reply.

19                    The Commission should grant Idaho Power’s Application and issue an order  
20    approving Idaho Power’s revised Schedule 85 sheets based on a 2021 capacity deficiency  
21    date, because denying Idaho Power’s request would have unacceptable consequences for  
22    Idaho Power’s customers. Absent the Commission’s immediate action to approve the  
23    2021 resource deficiency date, energy sales agreements (“ESAs”) between Idaho Power

24  
25                    <sup>1</sup> *Application to Update Schedule 85 Qualifying Facility Information*, Docket UM 1730, Order No. 15-  
204 (June 23, 2015) (hereinafter “Order No. 15-204”).

26                    <sup>2</sup> OAR 860-001-0720(4).

1 and qualifying facilities (“QFs”) entered into after June 24, 2015, will require Idaho Power’s  
2 customers to purchase power at capacity-deficient prices between 2016 and 2021—even  
3 though Idaho Power will be capacity-sufficient until 2021 pursuant to Idaho Power’s  
4 acknowledged 2013 Integrated Resource Plan (“IRP”). The Public Utility Regulatory  
5 Policies Act of 1978 (“PURPA”) requires state commissions to ensure that the avoided  
6 cost prices paid by a utility for the purchase of electricity from a QF are not above a utility’s  
7 actual avoided cost.<sup>3</sup> While the Commission must weigh both the need to set accurate  
8 avoided costs prices **and** the need to create predictability and fairness for QF developers,  
9 Order No. 15-204 does not strike the proper balance. For this reason, the Commission  
10 should grant Idaho Power’s Application and approve the Schedule 85 sheets based on the  
11 2021 capacity deficiency date.

## 12 II. DISCUSSION

### 13 A. Idaho Power’s Acknowledged 2013 IRP Results in Capacity Sufficiency Until 14 2021—a Fact Not Considered by Order No. 15-204

15 Staff and REC agree with Idaho Power that the criteria controlling the  
16 Commission’s review of Idaho Power’s Application are set forth at OAR 860-001-0720(3),  
17 and provide that the Commission may grant an application for reconsideration if there is,  
18 as relevant here, “an error of law or fact in the order that is essential to the decision” or  
19 “[g]ood cause for further examination of an issue essential to the decision.”<sup>4</sup> The parties  
20 disagree, however, as to whether Idaho Power has demonstrated that these criteria have  
21 been met. In particular, Staff and REC both assert that there was no “error of law or fact”  
22 essential to the Commission’s order, raising a range of responses.

23  
24 \_\_\_\_\_  
25 <sup>3</sup> 18 CFR § 292.304(a)(2).

26 <sup>4</sup> OAR 860-001-0720(3).

1 Fundamentally, Staff and REC seem to misunderstand Idaho Power’s position.  
2 The factual error on which Idaho Power believes that Order No. 15-204 was improperly  
3 premised is this—that Idaho Power’s proposed 2021 capacity deficiency date represents a  
4 *deviation* from its acknowledged 2013 IRP, when in fact it is *wholly consistent* with the  
5 2013 IRP as acknowledged by the Commission. Idaho Power recognizes that it could  
6 have done more to highlight this fact in its Application for Approval of Annual Update of  
7 Avoided Cost Rates, Schedule 85, filed May 1, 2015, as Staff points out.<sup>5</sup> Nonetheless,  
8 the Commission’s evaluation of this request for reconsideration depends on the merits of  
9 the issue raised, and OAR 860-001-0720(3) does not suggest that the Commission may  
10 overlook an “error of law or fact in the order that is essential to the decision” just because  
11 those facts or law could have been more clearly presented at some earlier date.

12 **B. Good Cause Exists to Support Idaho Power’s Application for**  
13 **Reconsideration**

14 Moreover, even if the Commission does not agree with Idaho Power that its Order  
15 No. 15-204 was based on an error of law or fact, the Company’s request for  
16 reconsideration should prevail because “there is good cause for further examination of an  
17 issue essential to the decision.”<sup>6</sup> Notwithstanding Staff and REC’s suggestions to the  
18 contrary, whether good cause for reconsideration of an order exists is a fact-specific  
19 determination at the Commission’s sole discretion.<sup>7</sup> Here, the facts clearly warrant  
20 reconsideration of Order No. 15-204 and approval of the Schedule 85 sheets based on a  
21 capacity deficiency date of 2021.

---

22 <sup>5</sup> Staff’s Response at 6.

23 <sup>6</sup> OAR 860-001-0720(3).

24 <sup>7</sup> See ORS 756.561 (“the Commission may grant reconsideration if sufficient reason is made to  
25 appear”); *see also Re Verizon NW Inc.*, Docket UD 13, Order No. 02-639 (Sept. 12, 2002) (finding  
26 that good cause for reconsideration of an order existed where the Commission was “not so certain  
that [its] decision was correct” and that further investigation was necessary).

1           Requiring Idaho Power to continue to enter into QF contracts based on an out-of-  
2 date capacity deficiency date will impose a substantial and unwarranted burden on Idaho  
3 Power's customers. As described in Idaho Power's Application, the change in Idaho  
4 Power's capacity deficiency date is a result of the Commission's direction that Idaho  
5 Power implement demand respond ("DR") programs at levels up to 400 MW,<sup>8</sup> presumably  
6 for the benefit for Idaho Power's customers. In acknowledging the 2013 IRP, the  
7 Commission implicitly approved the addition of the demand side resources that push  
8 Idaho Power's capacity deficiency date out to 2021.<sup>9</sup> This is not a situation in which the  
9 parties are debating the accuracy of forecasts and projections in the avoided cost rates.  
10 Here, the Commission approved continuation and operation of up to 400 MW of DR prior  
11 to acknowledgement of the 2013 IRP, with actual subscription and participation in the DR  
12 programs for 2014 and 2015 at and above 400 MW. Inclusion of up to 440 MW of DR was  
13 included in the resource portfolio analysis in the 2013 IRP, and inclusion of up to 400 MW  
14 results in capacity sufficiency through July 2021. To ignore the **actual** capacity  
15 contribution of 400 MW of DR, and lock in capacity payments for 2016 through 2021 in  
16 PURPA QF contracts guarantees that customers will overpay for those PURPA resources.  
17 In light of those facts, it does not make sense for the Commission to order, or even allow,  
18 Idaho Power to pay QFs avoided cost prices inflated by payment for capacity for a five-  
19 year period in which the utility **does not need additional capacity**. The Commission  
20 should reconsider Order No. 15-204 because it tips the scale too far in favor of certainty  
21 for QF developers and at too great of an expense to Idaho Power's customers.

22

23

24 <sup>8</sup> *In Re Staff Evaluation of Demand Response Programs*, Docket No. UM 1653, Order No. 13-482  
25 at Appendix A, page 3 (December 19, 2013).

26 <sup>9</sup> *In the Matter of Idaho Power Company's 2013 Integrated Resource Plan*, Docket No. LC 58,  
Order No. 14-253 (July 8, 2014).



1 Staff asserts that the interests of Idaho Power’s ratepayers are “adequately  
2 protected by the processes to change avoided cost prices that the Commission has in  
3 place,” and that the Commission has already limited the potential harm to customers by  
4 reducing the eligibility cap for standard contracts from 10 MW to 3 MW.<sup>10</sup> Staff insists that  
5 the multi-month procedural schedule for UM 1725 is the proper forum for further  
6 consideration of Idaho Power’s capacity deficiency date.<sup>11</sup> Idaho Power respectfully  
7 disagrees. Given the current pace and volume of QF development in its service territory,  
8 Idaho Power has every reason to expect that it will enter into a significant number of new  
9 QF standard contracts, even with the 3 MW eligibility cap for solar, between now and final  
10 resolution of the issue in UM 1725. Without immediate reconsideration of Order No. 15-  
11 204, every such QF standard contract will lock Idaho Power and its customers into a  
12 *known overpayment*. The Commission’s own policy, as well as PURPA, do not support  
13 this approach.<sup>12</sup>

14 REC asserts that the annual avoided cost update process that the Commission  
15 adopted in UM 1610 specifically precludes Idaho Power from updating its capacity  
16 deficiency date through any process other than filing an IRP update.<sup>13</sup> REC is correct that  
17 the Commission’s Order No. 14-058 does not contemplate utilities updating their capacity  
18

---

19 <sup>10</sup> Staff’s Response at 7.

20 <sup>11</sup> *Id.*

21 <sup>12</sup> *Re Staff’s Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket  
22 UM 1129, Order No. 05-584 at 11 (“We seek to provide maximum incentives for the development of  
23 QFs of *all* sizes, while ensuring that ratepayers remain indifferent to QF power by having utilities  
24 pay no more than their avoided costs.”) and 19 (“A primary goal in this proceeding is to accurately  
25 price QF power.”); *So. Cal. Ed. Co.*, 71 F.E.R.C. ¶ 61,269, 62,079 (F.E.R.C. 1995) (“PURPA  
26 requires an electric utility to purchase power from a QF, but only if the QF sells at a price no higher  
than the cost the utility would have incurred for the power if it had not purchased the QF’s energy  
and/or capacity”); 16 U.S.C. §§ 824a-3(b), (d) (rates for purchases by utilities must be at the  
avoided cost).

<sup>13</sup> REC Response at 5.

1 deficit periods in an annual avoided cost update unless such a change was included in an  
2 acknowledged IRP update. That point, however, is inapposite here, where the change  
3 was acknowledged in an actual IRP, thereby obviating the need for an IRP update.

4 **III. CONCLUSION**

5 For the reasons stated above, Idaho Power requests that the Commission grant its  
6 application for reconsideration and issue an order either approving Idaho Power's new  
7 avoided cost prices using the 2021 resource deficiency period.

8 Respectfully submitted this 29th day of July, 2015.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**MCDOWELL RACKNER & GIBSON PC**



\_\_\_\_\_  
Lisa F. Rackner

**IDAHO POWER COMPANY**

Donovan Walker  
Lead Counsel  
1221 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707

Attorneys for Idaho Power Company