ORDER NO. 16 129

ENTERED: MAR 29 2016

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1725

In the Matter of IDAHO POWER COMPANY, Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Change, and for Change in Resource Sufficiency Determination.	ORDER

DISPOSITION: APPLICATION GRANTED IN PART, AS MODIFIED, AND DENIED IN PART

I. SUMMARY

In this order, we respond to Idaho Power Company's application to modify the terms and conditions governing the company's obligations under the Public Utility Regulatory Policies Act (PURPA), as they relate to power purchase agreements (PPAs) with qualifying facilities (QFs). Based on the information developed through this proceeding, we propose to reduce the eligibility cap for avoided costs prices in standard contracts to 3 megawatts (MW) for solar QFs. We deny the company's request to reduce the negotiated contract term from 20 years to 2 years for all projects above 100 kilowatts (kW), but approve Idaho Power's application for a mid-cycle update and postpone the company's stated need for an additional major resource until 2021.

II. BACKGROUND

PURPA, federal legislation enacted in 1978, has the primary purpose of providing a market for the electricity produced by small power producers and co-generators. Although PURPA is a federal law, states are responsible for implementing significant aspects of the law, and Oregon has enacted its own complementary legislation in ORS 758.505 *et al.* In several previous dockets, we have considered, applied, and revised the rates, terms, and conditions for QF PPAs in Oregon.

Three prior decisions are relevant to this proceeding. First, in Order No. 05-584, docket UM 1129, we provided QFs with nameplate capacity of 10 MW and below the opportunity to enter into standard contracts for 20 years, with 15-year fixed prices.

Second, in Order No. 10-488, docket UM 1396, we addressed the issue of when a utility should be considered resource deficient for purposes of setting avoided cost prices. In that order, we determined that the demarcation of resource sufficiency and deficiency would be based on the start date of the first major resource acquisition in a utility's most recently acknowledged Integrated Resource Plan (IRP) Action Plan. Idaho Power's current standard avoided cost prices are based on a resource deficiency period beginning in 2016.

Third, in Order No. 14-058, docket UM 1610, we reviewed our prior decisions and maintained the 10 MW eligibility cap and 20-year term for standard contracts, reasoning that standard contract terms are intended to reduce transaction costs associated with QF contract negotiation. In addition, we decided not to include solar resource integration costs in the calculation of standard avoided cost rates, but committed to revisit that issue in the future after more solar development occurs.

III. PROCEDURAL HISTORY

On April 24, 2015, Idaho Power filed three applications to modify the terms and conditions under which the company enters into PPAs with QFs. Specifically, Idaho Power requests that we: (1) lower Idaho Power's standard contract eligibility cap for wind and solar QFs to 100 kW and reduce the term for negotiated (or "non-standard") contracts to two years; (2) approve a solar integration charge; and (3) modify the company's resource sufficiency determination. Idaho Power concurrently filed a motion for a stay or temporary relief pending our consideration of the three applications.

Commission Staff (Staff) and intervening parties Community Renewable Energy Association (CREA); Gardner Capital Solar Development, LLC (Gardner Solar); Pacific Northwest Solar, LLC (PNW); and the Renewable Energy Coalition (REC) filed responses, and Idaho Power filed a reply to the parties' responses. PacifiCorp, dba Pacific Power; the Oregon Department of Energy; Northwest Energy Coalition (NWEC); Renewable Northwest (Renewable NW); Obsidian Renewables, LLC (Obsidian); and Cypress Creek Renewables, LLC also filed petitions to intervene and were granted party status.

By Order No. 15-199, entered June 23, 2015, we rejected Idaho Power's request for a temporary stay of its obligation to enter into standard fixed-price contracts, citing the explicit requirement of federal law that standard avoided cost prices be available to QFs that are 100 kW and less. Noting the unprecedented growth in the number of applications and expressions of interest by QF developers, we found sufficient cause to grant temporary relief, ordering that projects greater than 3 MW would fall under our large QF policies, where contracts are negotiated between the developer and the utility pursuant to Commission-approved guidelines set forth in the company's Schedule 85. We declined the company's request for other relief, including the shortening of the contract term for

energy service agreements (ESAs), and directed parties to address the solar integration charges in docket UM 1610.[1]

Following our decision to grant temporary relief in Order No. 15-199, the underlying proceeding continued and the parties filed intervenor testimony, cross response testimony, reply testimony, and pre-hearing briefs according to the approved procedural schedule.

Shortly before the hearing, Obsidian moved to hold the proceeding in abeyance pending our consideration of a petition for rulemaking it filed addressing many of the issues in these proceedings. In Order No. 16-056, docket AR 593, we granted, in part, Obsidian's petition for rulemaking, thus rendering its motion to stay these proceedings moot.

All proffered testimony, supported by witnesses' affidavits, was admitted into the record and the record was closed on January 27, 2016.

IV. POSITIONS OF THE PARTIES[2]

Idaho Power asks that we lower the company's standard contract eligibility cap for wind and solar QFs to 100 kW under PURPA and reduce the negotiated (or "non-standard") contract term of wind and solar QFs from 20 years to 2 years. The company also seeks to update the start of its resource sufficiency period from 2016 to 2021 to reflect the addition of significant demand response resources.[3] Idaho Power states that the request is specific to its company and is intended to align avoided cost rates and PURPA implementation across its Idaho and Oregon service territory and balancing area authority.[4] Idaho Power contends that adopting its proposals will assure that the company is not required to enter into substantial long-term contracts that will exceed the company's actual avoided costs at a time when no new generation is needed to reliably serve customers.

Renewable NW and NWEC urge we reject Idaho Power's proposal, saying that drastically reducing the eligibility cap for QFs seeking standard contract terms would decrease the marketability of energy produced by Oregon QFs. They also contend that the Oregon PURPA statute requires a 20-year term at fixed avoided cost rates.

CREA and REC assert that we should maintain the standard contract eligibility cap at 10 MW for all QF resource types and increase the length of the contract term for fixed avoided cost rates from 15 to 20 years. But REC does not oppose the company's proposal to change its resource sufficiency demarcation in the event we waive one of the

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[1] Order 15-199 at 6-7.
[2] Although Obsidian and Cypress Creek filed joint direct testimony, neither party participated in the briefing process.
[3] The request to implement a solar integration charge was moved to docket UM 1610. *See* Order No. 15-230 at 4 (Aug 6, 2015).
[4] Idaho Power/400, Allphin 1-2, citing Standard Contract Eligibility Cap Application at 23-24.

upcoming avoided cost rate updates. REC believes that the solar size threshold should be in the 3 MW – 5 MW range rather than 100 kW and recognizes that Idaho Power's circumstances are different from other Oregon utilities. REC also requests we adopt the Idaho Public Utilities Commission's policy that requires Idaho Power to make capacity payments to existing QFs. That issue is currently pending in docket UM 1610, and will be addressed in that proceeding.

Staff recommends that we affirm the decision in Order No. 07-360[5] that grants QFs the right to unilaterally select a contract term of up to 20 years with 15 years of fixed prices. Staff does not believe that a 20-year contract term is legally required, but interprets the decision as seeking a balance between the QFs' needs to obtaining financing and limiting the potential for actual avoided costs to diverge from forecasted avoided costs. Staff contends that, in so doing, we made a policy choice rather than reflecting a perceived statutory obligation.

Staff further recommends that, in light of current circumstances, we lower the eligibility cap for wind and solar in order to rebalance the Commission's interest in reducing market barriers for QFs with limited resources and ensuring that avoided cost prices accurately reflect Idaho Power's actual avoided costs. Staff also believes that administrative efficiency and consistency between jurisdictions are sufficiently important so as to warrant the imposition of the same eligibility cap in Oregon as is currently in effect in Idaho—100 kW. In putting this recommendation forward, Staff argues that the potential benefit of eliminating market barriers for QFs larger than 100 kW no longer outweighs the risk associated with standard avoided cost prices for these QFs. Finally, Staff believes that the recent acquisition of 400 MW of capacity postpones the company's need for an additional major resource until 2021 and warrants a mid-cycle update to reflect the change in circumstances.

V. DISCUSSION

A. Nameplate Capacity of QF Projects Eligible for Standard Contracts

Although federal rules implementing PURPA require utilities to offer standard contracts to QFs with a nameplate capacity of 100 kW and less, state commissions may establish a higher eligibility cap.[6] Over the years we have increased the nameplate capacity of QFs eligible for standard contracts, first to 1 MW in 1991,[7] and then to 10 MW in 2005.[8]

Due to unprecedented growth in QF activity in Idaho Power's service territory, we recently granted the company's request for temporary relief and lowered the eligibility cap for standard contracts to 3 MW for solar QF projects. In Order No. 15-199, we stated:

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[5] Docket UM 1129 (Aug 20, 2007).
[6] 18 C.F.R. 292.304(c)(1),(2).
[7] Order No. 91-1383 (1991 WL 501291 at 10).
[8] Order No. 05-584 at 15 (May 13, 2005).

> Since we confirmed many of our PURPA policies in Order No. 14-058, there has been an unprecedented growth in the number of applications and expressions of interest by QF developers-particularly solar. The numbers presented in Idaho Power's motion document the extreme expansion of QF growth. Currently, the company has just six operating QF projects in Oregon with a combined output of 21 MW. Yet almost twice the number (11) of wind and solar QF projects with more than five times the output (110 MW) are under contract but not yet operational – and 26 solar QF projects with a combined output of 245 MW are seeking or inquiring about ESAs. Moreover, in addition to these projects, Idaho Power has received, just this month, applications to interconnect from four 10 MW QF solar projects and two others QF projects with a combined output of 10.5 MW. We acknowledge that some of these solar QF projects may not be built. Nonetheless, even using conservative estimates, we are convinced that a sufficient number of projects will proceed and eventually require Idaho Power, without some form of interim relief, to enter into substantial long-term contracts that exceed the company's actual avoided costs. [9]

We now address whether to modify the 10 MW eligibility cap on a more permanent basis. Both Idaho Power and Staff argue that the size threshold should be lowered to 100 kW for wind and solar projects. They claim that there are sophisticated developers that can disaggregate their projects to avoid the 10 MW size threshold. Other parties disagree. The main objections to decreasing the QF nameplate capacity for standard contracts rest upon the belief that there has been no proof that "a project developer's ability or sophistication of a project developer magically changes at 100 kW" or there exists an analysis providing a "realistic probability of how many of those [standard contract-eligible] QF facilities may become operational."[10]

At the outset, we are not persuaded by the arguments that administrative efficiency and consistency between jurisdictions warrant our adoption the same 100 kW eligibility cap currently in effect in Idaho. We decline to simply adopt standards used in a neighboring jurisdiction, and instead focus on Idaho Power's experience with QF contracting here in Oregon.

We agree with REC that any change to the standard contract eligibility threshold should be targeted to remedy specific and verified problems Idaho Power has had with the QF contracting process. For this reason, we limit our consideration to address solar QF projects only. Based on the evidence presented, we agree that single solar QF developers have developed multiple projects to avoid the 10 MW threshold. Furthermore, there is evidence that single solar developers can enter into negotiated contracts for QF projects

[9] Order No. 15-199 at 6.
[10] Coalition/200, Lowe/3-4 (REC).

sized in the 4 to 10 MW range.[11] Accordingly, we find that the eligibility threshold for solar projects should be 3 MWs.

We restrict this threshold reduction, however, to only the avoided cost prices contained in the standard contracts. A primary advantage of the standard contract is that it guarantees for the applicant the certainty of fixed avoided cost rates for the project's output over a long term. It is primarily for this reason that Idaho Power sought to decrease the eligible nameplate capacity for QF projects.

We find no factual basis to support a reduction to the standard contract eligibility threshold for wind QFs. As REC notes, there is no evidence that developers of wind QF projects have recently signed contracts with Idaho Power for projects below 10 MWs. Even Staff acknowledges that "there are essentially no wind QFs 10 MW and smaller seeking standard contracts * * *."[12] Although Staff cites that fact to argue that lowering the threshold will have no practical harm to developers, we find that information supports a decision to maintain the status quo. Thus, we conclude that the standard contract eligibility standard should remain at 10 MW for wind QF projects.

In summary, we conclude that standard contracts, with all fixed terms and prices, should be available for solar QF projects with a nameplate capacity no greater than 3 MW. Standard contracts with negotiated avoided cost prices should be available to solar QFs with nameplate capacities above 3 MW up to 10 MWs. Standard contracts with all fixed terms and prices should continue to be available for other types of QF facilities, including wind projects, with nameplate capacities of 10 MW or less.

B. Standard Contract Term

Idaho Power seeks to shorten the contract term for *negotiated* QF contracts to a two-year minimum. Other parties oppose the company's proposal on both legal and policy grounds.

We first address the threshold question whether a two-year minimum contract is permissible under the Oregon PURPA statute. ORS 758.525 provides in pertinent part as follows:

> (1) At least once every two years each electric utility shall prepare, publish and file with the [Commission] a schedule of avoided costs equaling the utility's forecasted incremental cost of electric resources over at least the next 20 years. Prices contained in the schedules filed by public utilities shall be reviewed and approved by the commission.

[11] Idaho Power/501, Allphin/3.
[12] Staff/100, Andrus/7.

> (2) An electric utility shall offer to purchase energy or energy and capacity whether delivered directly or indirectly from a qualifying facility. Except as provided in subsection (3) of this section, the price for such a purchase shall not be less than the utility's avoided costs. At the option of the qualifying facility, exercised before the beginning deliver of the energy or energy and capacity, such prices may be based on:
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> (b) The projected avoided costs calculated at the time the legal obligation to purchase the energy or energy and capacity is incurred.

CREA, NWEC, and Renewable NW argue that these provisions indicate that a QF who chooses to enter into a contract with avoided cost pricing based on a utility's projected avoided costs is statutorily entitled to fixed avoided cost prices for a term that is as long as the utility's avoided cost projections. Although the text of the statute does not expressly mandate a 20-year term for negotiated contracts, the parties cite legislative history as resolving any ambiguity.[13] They also contend that we should adopt 20-year term for negotiated contracts with fixed prices as a matter of policy.

We find the legislative history to be inconclusive and conclude that we are not constrained in setting policy in the matter of contract duration by either the language of ORS 758.525 itself or by the legislative history that gave rise to it. There is neither explicit statutory language nor unambiguous legislative history indicating that negotiated contracts must be of a particular duration.

Nevertheless, we adhere to our current policy. As we have repeatedly recognized, our role implementing PURPA is to promote QF development while also ensuring that ratepayers pay no more than a utility's avoided costs. To that end, we balance the need for a "a settled and uniform institutional climate for QFs"[14] in Oregon, while ensuring that electric utilities "purchase power from QFs at rates that are just and reasonable to the utility's customers, in the public interest, and that do not discriminate against QFs, but that are not more than avoided costs."[15]

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[13] Audio Recording, Senate Committee on Energy and Environment, House Bill 2320, June 15, 1983, Tape 168, Side A. Legislative Comments of Representative William Bradbury: "In two areas HB 2320 goes beyond federal law: it requires avoided costs to be forecasted and if desired by the facility owner, obligated under contract for at least the next twenty years * * *." But compare to Audio Recording, House Committee on Environment and Energy, April 29, 1983, Tape 178, Side A, Counter Nos. 156-183. Rep. Bradbury: "The addition that this law makes to the federal law is that the utilities are required to make a good faith effort to wheel that power to the utility that can provide a better price. That is basically, the only change this bill makes from federal law."

[14] Order No. 14-058 at 23.

[15] Order No. 14-058 at 3, citing Order No. 05-584 at 6.

We recognize the benefits and risks associated with longer QF contract terms. Longer term contracts help align the financing period with an asset's useful life, making the investment less risky and likelier to obtain far more reasonable financing terms. On the other hand, longer term contracts increase the likelihood of forecasting errors in developing QF avoided prices, thus potentially subjecting ratepayers to costs that exceed the utility's actual avoided costs.

After further consideration in this docket, we conclude that our current policy appropriately balances these interests. That policy provides for 20-year contracts, with prices fixed at avoided cost rates in place at the time of signing remaining in effect for a 15-year period, and indexed pricing for the remaining five years, continues to have merit. By specifying index-based rates for the final five years, QF developers will be given an incentive to realistically address future projects and manage their operations in ways that will maximize efficiency. These factors bring down the cost of renewable energy, making it more competitive with less environmentally-friendly alternatives and thereby further the public interest.

C. Resource Sufficiency Start Date

In 2013, we granted Idaho Power permission to temporarily suspend two of its demand response programs and modify a third program, resulting in a capacity deficit in 2016. However, the company subsequently entered in a stipulation with Staff and stakeholders to maintain those programs even though no peak hour deficits were anticipated. This would allow the program infrastructure to remain at the ready when capacity deficits returned.[16] Staff has examined the company's analysis of its updated loads and resources and concurs with Idaho Power's conclusion that the acquisition of 400 MW of capacity postpones the company's need for an additional major resource until 2021.[17]

OAR 860-029-0080(7) provides that the acquisition of a new resource can be a change in circumstance that warrants a mid-cycle update if the change to avoided costs is "significant."[18] Since the additional capacity via the approved demand response stipulation included an obligation to accept up to 440 MW and, in 2014, actually exceeded 400 MW, we find that the resource is of a magnitude sufficient to warrant such a mid-cycle update.

Accordingly, we adopt the Staff's conclusions and allow Idaho Power to update its avoided cost prices to reflect the impact of the acquisition and to postpone the start date for an additional resource until 2021.

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[16] Staff/100, Andrus/3; Order No. 13-482 at 2-3, Appendix A, Demand Response Programs Settlement Agreement (Dec 19, 2013, Docket No. 1653).
[17] Staff/100, Andrus/3-4.
[18] Order No. 14-058 at 26.

VI. ORDER

IT IS ORDERED that:

1. Idaho Power Company's Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term is approved to the extent specified in this order and denied in all other respects. We direct our Staff to include these changes through rulemaking as appropriate.

2. Idaho Power Company's Application for Change in Resource Sufficiency Determination is approved.

3. Obsidian Renewables, LLC's Motion to Hold Procedural Schedule in Abeyance, filed November 13, 2015, is dismissed as moot.

Made, entered, and effective MAR 29 2016.

Susan K. Ackerman
Chair

John Savage
Commissioner

Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.