

ITEM NO. 1

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: February 13, 2012**

REGULAR   X   CONSENT        EFFECTIVE DATE   February 14, 2012  

DATE: February 10, 2012

TO: Public Utility Commission

FROM: Adam Bless

THROUGH: Bryan Conway and Maury Galbraith

SUBJECT: IDAHO POWER COMPANY: (Advice No. 12-02) Requests approval of change to Schedule 85, lowering the Standard Contract Eligibility Cap for Qualifying Facilities (QFs).

**STAFF RECOMMENDATION:**

I recommend the Commission open an investigation into the standard contract eligibility cap ("Cap") and the appropriate methodology for Idaho Power's calculation of standard contract avoided cost prices for QFs. During the investigation, I recommend that the Commission provisionally lower the eligibility cap, for wind QFs only, from its current level of 10 MW to 100 kW. If, after the investigation, the Commission restores the 10 MW Cap for wind QFs, or imposes some other size limit, I recommend that any wind QF that executed a non-standard contract during the investigation and becomes eligible under the new permanent cap be allowed to reform their contract, or terminate the non-standard agreement and execute a standard agreement, to conform to the results of the investigation at its sole discretion.<sup>1</sup>

**DISCUSSION:**

Idaho Power has submitted two separate requests. The first, titled "Advice Filing 12-02," asks the Commission to approve a change to its Schedule 85, "Cogeneration and Small Power Production Standard Contract Rates." The requested change is to immediately and permanently lower the Cap for the standard contract from its current level of 10 MW to 100 kW. This matter has been docketed as UE 244. In Advice 12-02, Idaho Power

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<sup>1</sup> If, at the end of the investigation, the cap is set somewhere between 100 kW and 10 MW, then the option to terminate the non-standard agreement and execute a standard agreement would apply to QFs meeting the new Cap.

also anticipates an investigation and alternatively requests that, should the Commission choose to suspend the Advice filing, it allow the reduced eligibility cap to go into effect during the investigation with the provision that “the changes be conformed to the outcome of the additional proceedings.”

The timing of Idaho Power’s Advice Filing 12-02 is related to requests for a standard contract from nine QFs that the Company received on January 25, 26 and 27, 2012. The total capacity represented by these QFs is 73 MW, of which 70 MW are wind and the remaining 3 MW are hydroelectric.<sup>2</sup> Idaho Power states that its customers will be significantly harmed if they are required to pay these QF developers “...inflated avoided cost rates for the life of the standard contracts.” Idaho Power’s immediate request is for relief from the standard contract in the case of these nine QFs.

In its second request, docketed as UM 1575, Idaho Power requested a contested case investigation into the eligibility cap and submitted an “Application to Lower Standard Contract Eligibility Cap” (“Application”). Like its Advice filing, Idaho Power requests immediate approval to lower the eligibility cap during the investigation.

Review and approval of rates paid by utilities to QFs are governed by statutes at ORS 758.005 to 758.555.<sup>3</sup> These statutes give the Commission broad latitude regarding its process and decisions regarding Idaho Power’s advice filing and request for investigation.

The two filings make substantively the same request, but Advice 12-02 seeks immediate relief based on the nine QFs currently under consideration, while the Investigation may take several months. We consider the two requests separately.

#### Request to Permanently Lower the Eligibility Cap (Advice No. 12-02):

In Advice No. 12-02, Idaho Powers seeks to immediately and permanently lower the Cap for the standard contract from its current level of 10 MW to 100 kW. The Commission can approve the schedule change or reject the schedule change with no further action.

Approving the schedule change provides the immediate relief that Idaho Power seeks. Idaho Power argues that negotiated contracts better reflect the true avoided cost, to the ratepayers’ benefit. This action would affect the nine QFs in line right now and all QFs

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<sup>2</sup> The nine QFs are listed and described in Attachment 1 to the Application.

<sup>3</sup> In its advice filing, Idaho Power referred to its request as a tariff change, and requested approval with less than 30 days statutory notice, citing ORS 757.220. ORS 757.220 does not apply to the rates paid by utilities to QFs. The applicable statutes for QFs are ORS 758.005 through 555. See, e.g., Order 12-032.

larger than 100 kW in the future as well. The Commission would be basing this action only on the facts at hand.

The current eligibility cap of 10 MW was set in Order 05-0584. Idaho Power argues that, since that Order was issued, wind penetration and integration costs have increased, developers are larger and more sophisticated, and the new negotiation guidelines of Order 07-360 address prior concerns about asymmetric information. Idaho Power asserts that developers are disaggregating large projects to get the standard contract.

If the Commission rejects the schedule change outright, QF rates will be set by the Commission's standard process, which calls for an update following acknowledgement of Idaho Power's 2011 IRP. That IRP is scheduled for consideration at the public meeting on February 14, 2012. Without presuming the Commission's action at that meeting, Staff believes that the standard update process is timely and assures a fair avoided cost in the long term. However, the current nine QFs would receive the current standard contract prices, regardless of the outcome of that update.

Staff recommends that the Commission reject Idaho Power Advice No. 12-02 and the company's request to permanently lower the standard contract eligibility cap. Staff discusses Idaho Power's request for immediate relief later in this Staff Report. Staff is persuaded that an investigation into the appropriate methodology for calculating standard avoided costs, and the size of the Cap, for QFs is warranted. The appropriate scope of the investigation is discussed next.

#### Alternative Request for Investigation (UM 1575):

If the Commission rejects its request to immediately and permanently lower the eligibility cap for standard QF contracts, Idaho Power then requests that the Commission open an investigation into lowering the eligibility cap. The Commission can either deny the request or open an investigation.

In its application, Idaho Power asks the Commission to investigate its request to lower the eligibility cap for the standard contract from its current level of 10 MW to 100 kW. However, a primary argument of the company's is that the current methodology for calculating standard contract avoided cost prices does not accurately reflect the Company's true avoided cost.

Staff concludes that Idaho Power's main concern is that the current methodology for calculating avoided cost prices does not accurately represent the Company's avoided cost. Idaho Power's proposed solution to this problem is to lower the eligibility cap for standard contracts. Staff recommends that the Commission investigate the alleged inaccuracy of the current methodology and, if necessary, Idaho Power's proposed

solution. The Commission should also investigate other potential solutions, including ones that do not involve changing the eligibility cap.

If the Commission decides to open an investigation, then it should also consider the options available to QFs during the investigation. The alternative options are discussed next.

#### QF Eligibility During the Investigation

If the Commission decides to open an investigation, then the Commission needs to consider the options available to QFs during the period of the investigation. The Commission could decide to leave the Cap at its current level of 10 MW, provisionally lower the Cap to 100 kW, or provisionally lower the Cap to some intermediate level. The Commission also needs to consider how the results of the investigation would impact any contracts signed during the period of the investigation.

Staff identifies the following four options:

1. Provisionally lower the Cap pending the investigation. If the Commission subsequently raises the Cap to a size greater than 100 kW:
  - (a) Eligible QFs who signed contracts in the interim have the option of a new standard contract conforming to the outcome of the investigation, or
  - (b) Contracts signed in the interim remain in effect, with no option for a new contract.
2. Leave the cap at 10 MW pending the investigation. At the end of the investigation:
  - (a) Eligible QF's who signed contracts in the interim have the option of a new standard contract conforming to the outcome of the investigation, or
  - (b) Contracts signed in the interim remain in effect, with no option for a new contract.

Option 1(a) is similar to what Idaho Power proposed in Advice 12-02. It provides the immediate relief that Idaho Power seeks regarding the nine QFs. If the investigation shows that current standard contracts overstate the avoided cost, this option protects ratepayers from overpaying. If the Commission ultimately restores the 10 MW cap, those QFs have the option of a conforming standard contract. However, this option

creates uncertainty for QFs. Without knowing how the investigation will end, QFs and their lenders may be reluctant to proceed.

Under Option 1(b), QFs who sign non-standard contracts in the interim are bound to the contract regardless of the outcome of the investigation. Both options 1(a) and (b) could also lead to less QF development for the duration of the investigation.

Option 2(a) provides regulatory certainty to QFs. It offers the current nine QFs the standard contract now and gives them a chance to benefit if the investigation outcome is favorable to them. Option 2(a) protects the QFs from risk of an unfavorable investigation result, because they can do no worse than the current standard contract.

Option 2 (b) is most consistent with the current status quo and provides the most certainty to everyone. It assures no changes to avoided costs or eligibility until an investigation is complete and all stakeholders have stated their case. In short, Option 2(b) provides the greatest stability. However, Options 2(a) and (b) offer none of the ratepayer protection that Idaho Power seeks with respect to the current nine QFs. We cannot know how the investigation will turn out, but it might result in a lower eligibility cap, a lower avoided cost rate or both. Under either Option 2(a) or (b), ratepayers could pay the avoided cost rate in the current standard contract for the life of that contract regardless of the investigation's result.

On balance, I recommend option 1(a). The uncertainty presented by this option is temporary, and after the investigation QFs will again face a known eligibility cap and avoided cost method. Under Option 1(a), QFs can sign a non-standard contract, knowing they can still opt for terms conforming to the investigation outcome if it favors them. QF development might be forestalled during the investigation, but not permanently. Under Option 2(a) or 2(b), any overpayment by ratepayers is permanent and irreversible, even if the investigation results in lower avoided costs or a lower cap.

I believe the potential for temporary and reversible harm to QFs in Option 1(a) is outweighed by the potential for permanent overpayment by ratepayers under Option (2)(a) or (b). I recommend reducing the Cap pending the outcome of the investigation into avoided cost methodology with the provision that if the Commission ultimately restores the Cap to 10 MW, or some other size limit, any QFs who sign contracts in the interim have the option to conform those contracts to the results of the investigation.

Three non-wind QFs (Renewable Energy Coalition, DR Johnson Lumber, and Yakima-Tieton Irrigation District) have written to oppose lowering the eligibility cap. All three argue that the Company's request is overbroad because Idaho Power's arguments for lowering the Cap are based primarily on costs related to wind QFs.

I recommend the Commission address this concern by limiting the temporary reduction of the eligibility cap to wind QFs. During the investigation, I recommend that the Commission provisionally lower the standard contract eligibility cap from 10 MW to 100 kW for wind QFs only. This provides the immediate ratepayer protection sought by Idaho Power while addressing the concern of the three parties mentioned above.

I recommend the Commission:

- i. Reject Idaho Power's Advice 12-02 and the company's request to permanently lower the standard contract eligibility cap.
- ii. Open an investigation into the accuracy of the current avoided cost methodology and the appropriate eligibility cap for Idaho Power's standard QF contracts.
- iii. Direct Idaho Power to provisionally reduce the eligibility cap for wind QFs to 100 kW during the investigation, and
- iv. Direct Idaho Power to provide QF's that sign a non-standard contract during the investigation, and are eligible for the standard contract at the end of the investigation, the option to terminate their existing contract and execute a standard contract conforming to the results of the investigation, at their sole discretion.

**PROPOSED COMMISSION MOTION:**

- i. Idaho Power's Advice 12-02 and the company's request to permanently lower the standard contract eligibility cap be rejected,
- ii. An investigation into the accuracy of the current avoided cost methodology and the appropriate eligibility cap for Idaho Power's standard QF contracts be opened.
- iii. Idaho Power be directed to provisionally reduce the eligibility cap for wind QFs to 100 kW during the investigation, and
- iv. Idaho Power be directed to provide QF's that sign a non-standard contract during the investigation and are eligible for the standard contract at the end of the investigation the option to reform their contract, or terminate their existing contract and execute a standard contract, to conform to the results of the investigation, at their sole discretion.