

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF) CASE NO. IPC-E-18-07
IDAHYDRO, SHOROCK HYDRO, INC.,)
J.R. SIMPLOT COMPANY, AND) AMENDED NOTICE OF PETITION
RENEWABLE ENERGY COALITION FOR)
MODIFICATION OF THE 90/110) AMENDED NOTICE OF
PERFORMANCE BAND AND) INTERVENTION DEADLINE
CALCULATION OF OPERATION AND)
MAINTENANCE CHARGES FOR PURPA)
QUALIFYING FACILITIES, CASE NO.) ORDER NO. 34065
IPC-E-18-07)
)

On April 16, 2018, Idaho Hydro (“Idahydro”), Shorock Hydro, Inc. (“Shorock”), the J.R. Simplot Company (“Simplot”), and the Renewable Energy Coalition (“REC”) (collectively, “the Parties”) jointly petitioned to the Commission to amend or stay existing orders or rules, and to clarify rights and obligations implementing Section 210 of the Public Utilities Regulatory Policy Act of 1978 (“PURPA”), 16 U.S.C. § 824a-3 *et seq.* Specifically, Petitioners asked the Commission to revisit the 90/110 performance band for non-wind Qualifying Facilities (“QFs”). Petitioners also asked the Commission to modify how Idaho Power Company (the “Company”) calculates the Operations & Maintenance (“O&M”) charges that QFs pay to interconnect with it under Schedule 72, as approved in in Order No. 24025, so the Company only can charge a QF for the Company’s actual O&M costs to interconnect with that QF’s facilities.

On May 8, 2018, the Commission issued a Notice of Petition and Notice of Intervention Deadline that addressed Petitioners’ request regarding the 90/110 performance band. *See* Order No. 34059. The Commission now issues this Amended Notice of Petition and Amended Notice of Intervention Deadline to address that issue *and* Petitioners’ request to modify the Schedule 72 O&M charges. This Amended Notice supersedes the prior Notice.

BACKGROUND

The Petitioners are QFs under PURPA. The Petitioners either sell power to the Company under Energy Sales Agreements (“ESAs”), or are attempting to develop new QFs that would sell power to the Company. Petition at 1-2. The Commission approved Petitioner

Shorock's ESA with the Company in Order No. 33549, subject to a stipulated motion that the Commission granted in Order No. 33918, that that ESA would be subject to the outcome of this Petition.¹

In Case No. IPC-E-04-10, certain QFs complained that the Company had proposed contract provisions that obviated the Company's requirement to buy all of the output from the QFs at full avoided cost rates when the output is less than 90% or more than 110% of projected output (the "90/110 performance band"). Order No. 29632 at 2-3. Further, the Company proposed pricing methods for energy deliveries that fell outside the 90/110 performance band. *Id.* at 14-15. In Order No. 29632, the Commission found that the 90/110 performance band was reasonable.² *Id.* at 20. The Commission ordered that energy delivered in excess of 110% of the contract amount (up to a 10 MW cap)³ should be priced at 85% of the Mid-C market or the contract price, whichever is less, and that the QF will receive no payment for energy delivered above the 10 MW cap. *Id.* The Commission ordered that energy delivered at less than 90% of the monthly commitment amount should be priced at 85% of the market price, or contract rate, whichever is less. *Id.*

Since 2004, the 90/110 performance band was an issue in several cases. *See generally*, Order Nos. 29880, 30000 30109, and 30206. In 2007, the Company asked the Commission to eliminate the 90/110 performance band requirement for ESA's involving intermittent wind-powered QFs where certain conditions were met. In Order No. 30488, the Commission stated that, "The wind forecasting and mechanical availability guarantee in conjunction with other provisions of the Settlement in this case, we find, make elimination of the 90%/110% performance band reasonable." *Id.* at 13. In parallel proceedings, the Commission also established a wind integration adjustment to published avoided cost rates and eliminated the 90/110 performance band for wind QFs that agree to provide a mechanical availability guarantee and share in the cost of wind forecasting services. *See* Order Nos. 30497 and 30500.

AMENDED NOTICE OF PETITION

YOU ARE HEREBY NOTIFIED that Petitioners request that the Commission revisit the 90/110 performance band for non-wind QFs because:

¹ The ESA between Evergreen Energy Inc., and the Company, currently pending approval or rejection in Case No. IPC-E-18-04 also contains the 90/110 performance band, pending the outcome of this Petition.

² The performance band did not apply to energy deliveries that fall below 90% due to forced outages or force majeure.

³ The 10 MW cap referred to the maximum monthly generation that qualifies for published rates. Order No. 29632 at 20. The cap was set as the total number of hours in the month multiplied by 10 MW. *Id.*

AMENDED NOTICE OF PETITION

AMENDED NOTICE OF INTERVENTION DEADLINE

ORDER NO. 34065

1. Changed circumstances have obviated the need for a 90/110 performance band, including:

- a. The variability of hydro QFs in the aggregate is within the range of variability exhibited by the Company's hydropower facilities.
- b. Hydropower and other non-wind and non-solar QFs are sufficiently predictable in the aggregate that the Company can reasonably incorporate their variability into its planning and operations.
- c. The individual, non-wind and non-solar QF is so small in the Company's system that any monthly excess energy or shortfall energy amounts would be de minimis (lost in the "noise") of operating the Company's system.

2. It was not designed to address the unique situation regarding the predictable, aggregated value of small hydropower, biomass, cogeneration, and baseload QFs.

YOU ARE FURTHER NOTIFIED that the Petition alleges that the Commission should modify its existing policy and orders approving the 90/110 performance band's applicability to small hydropower, cogeneration, biomass, and baseload QFs that choose to enter into ESAs or other enforceable obligations. Petitioners allege that the Commission should instead allow such QFs to sell energy to Commission-regulated utilities at forecasted, fixed avoided rates calculated at the time the obligation is incurred, not at the time of delivery.

YOU ARE FURTHER NOTIFIED that In Order No. 24025, the Commission approved O&M charges to be paid by QFs to the Company on QF-provided, utility owned interconnection facilities set forth in Schedule 72.

YOU ARE FURTHER NOTIFIED that Petitioners allege that the Commissioners should modify existing policy and orders approving Schedule 72 O&M charges for QFs and require the Company to assess only the actual O&M costs that the Company expends for each individual QF interconnection, and be limited to the interconnections facilities of that QF because:

1. The O&M charge was intended to recover ongoing operational and maintenance costs over and above the initial upfront costs of interconnection construction assessed to the QF. Petition at 8. The payments are progressively increased over the life of the facility's interconnection. *Id.* The Schedule 72 monthly percentages are based on financial assumptions from 1991. *Id.*

2. Schedule 72 is based on average O&M costs for the Company's entire distribution and transmission plant, not on individual QF costs or aggregate QF costs. *Id.*
3. Approval of Schedule 72 was based on the belief that separate accounting for individual QF projects was too complex in 1991. *Id.* Computing and technological advances now make separate accounting feasible. *Id.* The Company assesses actual O&M costs to interconnection customers under interconnections subject to the Federal Power Act, consistent with Federal Energy Regulatory Commission directives in its Order No. 2003 and 2006.
4. Percentage-based charges in most, if not all, cases exceed the actual O&M expenses for QF interconnection facilities, indicating that the average O&M on the Company's system-wide transmission and distribution facilities is either inapplicable or inaccurate as a reflection of the cost of O&M actually performed on QF interconnection facilities. *Id.* at 8-9.
5. The Schedule 72 O&M charges are not reasonable non-discriminatory charges under applicable federal regulations. *See id.* at 9 (citing 18 C.F.R. § 292.101(7),.303(c), and.306).

YOU ARE FURTHER NOTIFIED that the Petition and any supporting workpapers, testimonies and exhibits have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices. The Petition and supporting documents are also available on the Commission's web site at www.puc.idaho.gov. Click on the "File Room" tab at the top of the page, scroll down to "Open Electric Cases," and then click on the case number as shown on the front of this document.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code. The Commission may enter any final Order consistent with its authority under Title 61.

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

AMENDED NOTICE OF INTERVENTION DEADLINE

YOU ARE FURTHER NOTIFIED that persons who wish to intervene in this matter to obtain the rights of party (e.g., to file formal discovery, or present evidence or cross-examine witnesses at a hearing) must file a Petition to Intervene with the Commission under the

Commission's Rules of Procedure 72 and 73, IDAPA 31.01.01.072 and .073. **Persons who wish to intervene as a party must file a Petition to Intervene no later than 21 days from the service date of this Order.** Such persons shall also provide the Commission Secretary with their electronic mail address to facilitate further communications. After the intervention deadline runs, the Commission Secretary shall issue a Notice of Parties that identifies the parties and assigns exhibit numbers to each party. Once the Notice of Parties has issued, Commission Staff shall informally confer with the Petitioners and any other intervening parties about how to further process this case, and shall then report to the Commission on a proposed case schedule.

YOU ARE FURTHER NOTIFIED that persons who would like to present their views without parties' rights of participation and cross-examination are not required to intervene but may present their views by submitting written comments to the Commission.

YOU ARE FURTHER NOTIFIED that the following person is designated as Idahydro's and Shorock's representative in this matter:

C. Tom Arkoosh
Arkoosh Law Offices
802 W. Bannock Street, Suite 900
P.O. Box 2900
Boise, Idaho 83701
E-Mail: tom.arkoosh@arkoosh.com

YOU ARE FURTHER NOTIFIED that the following persons are designated as Simplot's representatives in this matter:

Peter J. Richardson
Gregory M. Adams
Richardson Adams, PLLC
515 N. 27th Street
Boise, Idaho 83702
E-Mail: peter@richardsonadams.com
greg@richardsonadams.com

YOU ARE FURTHER NOTIFIED that the following persons are designated as the REC's representatives in this matter:

J. Kahle Becker Attorney at Law 223 North 6 th Street, #325 Boise, Idaho 83702 E-Mail: kahle@kahlebeckerlaw.com	Irion Sanger (pro hac vice) Sanger Law, PC 1117 SE 53 rd Avenue Portland, Oregon 97215 E-Mail: irion@sanger-law.com
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ORDER

IT IS HEREBY ORDERED that persons desiring to intervene in this case for the purpose of obtaining parties' rights of participation must file a Petition to Intervene with the Commission no later than 21 days after the service date of this Order.

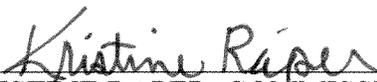
IT IS FURTHER ORDERED that, after Notice to the Parties has issued, Commission Staff shall confer with the parties regarding a procedural schedule for this matter.

IT IS FURTHER ORDERED that this Order supersedes Order No. 34059 (the prior Notice of Petition and Notice of Intervention Deadline).

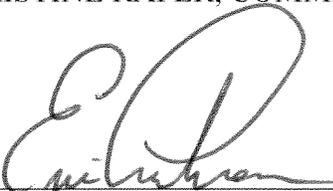
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30th
day of May 2018.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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