BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY TO APPROVE THE FIRST AMENDMENT TO ITS AGREEMENT FOR SALE AND PURCHASE OF SURPLUS ENERGY WITH THE AMALGAMATED SUGAR COMPANY, LLC	)	**CASE NO. IPC-E-17-05**
	)	**ORDER NO. 33756**

On March 24, 2017, Idaho Power Company applied to the Commission for approval of the First Amendment to its Agreement for the Sale and Purchase of Surplus Energy with the Amalgamated Sugar Company, LLC. The Amendment replaces a reference to the Dow Jones Mid-Columbia index with reference to the Intercontinental Exchange (ICE) Mid-Columbia index. The Company asserted that the Amendment is "virtually identical" to and covers the same issue addressed in the settlement stipulation approved by the Commission in Case No. IPC-E-13-25. Application at 1-2. The Commission approved similar changes without further process in several subsequent applications for amendments to existing agreements in Case Nos. IPC-E-14-21, IPC-E-14-37, IPC-E-14-40, and IPC-E-15-10. *Id.*

BACKGROUND

The Agreement was originally approved in Order No. 30220, Case No. IPC-E-06-29. Under the Agreement, the Company agrees to purchase up to 3 MW of surplus electric energy generated by the electric generating equipment located at Amalgamated's refined sugar production facility in Twin Falls. Order No. 30220 at 1. The surplus energy is non-firm energy and is available only if Amalgamated does not consume the energy at the plant. *Id.* Idaho Power pays Amalgamated for this non-firm surplus energy at rates that are less-than-market-based non-firm rates—the price is described as 85% of the weighted average non-firm Dow Jones Mid-Columbia index.[1] *Id.* at 1-2. The Agreement provides specific formulas for the calculation. Amalgamated also takes service from Idaho Power at the Twin Falls plant under Idaho Power's Schedule 19 to supplement the energy it produces itself. Application at 2.

[1] In the Agreement, Amalgamated asserted that the facility is a qualifying facility under the Public Utility Regulatory Policy Act of 1976 (PURPA). However, Amalgamated and Idaho Power have agreed to pricing and terms and conditions other than those required by PURPA and this Commission's PURPA precedent, and the Agreement is not a PURPA contract. Counsel for Idaho Power confirmed that this Agreement is not a PURPA contract on March 31, 2017.

The Dow Jones Mid-Columbia index was discontinued as of October 2013. *Id.* at 2. That month, Idaho Power filed a tariff advice to update its tariff Schedule 86, which referenced the Dow Jones index, to replace the reference (Case No. IPC-E-13-25). *See id.* and Application, Case No. IPC-E-13-25. The parties to the case executed a stipulation in which it was agreed to change the market index reference in Schedule 86 to the ICE Mid-Columbia index. *See* Order No. 33053, Case No. IPC-E-16-23, at 2. The parties also agreed to amend the existing agreements between Idaho Power and each intervening party "to reference the ICE index using the same language as, and consistent with, the Schedule 86 language." *Id.* at 3.

In its Order in that case, Order No. 33053, the Commission approved the stipulation and the changes to Schedule 86 and the intervenors' agreements. The Commission

> also [found] it reasonable to allow any additional PURPA QFs that currently have a contract with Idaho Power containing reference to the Dow Jones non-firm Mid-C electricity price index, should they choose, to amend their respective agreements consistent with the terms of this Settlement Stipulation and similar to the contract amendments approved by this Order.

Id. at 4.

Since then, the Commission has approved, without further process, revisions to remove Dow Jones references and replace them with ICE references consistent with the language in Schedule 86 in several other PURPA agreements and two non-PURPA agreements. *See* Order Nos. 33110, 33184 and 33192 (PURPA agreements) and Order No. 33274 (one PURPA and two non-PURPA agreements). Some of these amendments included an 85% weighting on the index price to result in a less-than-market price for surplus energy (like the Agreement and Amendment in the present Application). *See, e.g.*, Order No. 33274 and Application in Case No. IPC-E-15-10 (for Hidden Hollow); Order No. 33110 and Application in Case No. IPC-E-14-21 (both approving the ICE index amendment in PURPA agreements, such that the price Idaho Power pays for surplus energy is the lower of 85% of the price based on the ICE index or the agreement's specified avoided cost price.)

Idaho Power stated that after the issuance of Order No. 33053, in October 2014, it tendered the Amendment to Amalgamated and made reminder phone calls, but that Amalgamated did not sign and return the Amendment until January 2017. Application at 3. During the time that the Amendment had been tendered but was not executed, Amalgamated's

Twin Falls facility generated negligible surplus energy and was not paid for any surplus energy, given that the reference Dow Jones price index no longer existed. *Id.*

PROPOSED AMENDMENT

The Amendment retains the 85% weighting currently in the Agreement but replaces the reference to the Dow Jones index with reference to the ICE Mid-Columbia index. Application at 4 and Attachment 1. It also makes corresponding changes to the formulas and calculation details consistent with the changes adopted in Order No. 33053. Application at 4.

According to Idaho Power, the Amendment sets forth, "virtually verbatim, the provisions from Schedule 86 to define the 'Purchase Price.'" *Id.* Idaho Power asked that the Commission approve the Application without further process and without change or condition. *Id.* at 4-5. If the Commission determines that further process is necessary, Idaho Power asked that the case be processed under Modified Procedure. *Id.*

STAFF RECOMMENDATION

Commission Staff reviewed the Application and corresponding Amendments. Staff believes the proposed changes are consistent with Order No. 33053 and subsequent Orders approving similar changes in other cases and are limited in scope. Accordingly, Staff recommended that the Company's request be approved without further process.

DISCUSSION AND FINDINGS

The Commission has jurisdiction over this matter under Title 61 of the Idaho Code. We find the proposed Amendment to Idaho Power's Agreement with Amalgamated Sugar to be reasonable and appropriate and consistent with our past Orders. As noted above, the Commission has approved, without further process, similar revisions in other cases. We find that no further process is needed and thus approve the Amendment as proposed.

O R D E R

IT IS HEREBY ORDERED that the First Amendment to its Agreement between Idaho Power and Amalgamated Sugar, LLC, for the Sale and Purchase of Surplus Energy is approved without change or condition.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27th day of April 2017.

PAUL KJELLANDER, PRESIDENT

KRISTINE RAPER, COMMISSIONER

ERIC ANDERSON, COMMISSIONER

ATTEST:

Diane M. Hanian
Commission Secretary

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