

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF APPLICATION OF) CASE NO. IPC-E-18-12
IDAHO POWER COMPANY FOR)
APPROVAL OR REJECTION OF AN)
ENERGY SALES AGREEMENT WITH) ORDER NO. 34200
MCCOLLUM ENTERPRISES, LIMITED)
PARTNERSHIP, FOR THE SALE AND)
PURCHASE OF ELECTRIC ENERGY FROM)
THE CANYON SPRINGS HYDRO PROJECT)

On September 11, 2018, Idaho Power Company (“Company”) filed an Application seeking approval of an Energy Sales Agreement (“ESA” or “Agreement”) between the Company and McCollum Enterprises, L.P. (“McCollum”). McCollum operates the Canyon Springs Hydro Project (“Canyon Springs” or “Facility”), a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). The QF is a 112 kW nameplate hydroelectric facility near Twin Falls, Idaho.

BACKGROUND

PURPA was enacted in 1978 “to lessen the country’s dependence on foreign oil and to encourage the promotion and development of renewable energy technologies as alternatives to fossil fuels.” *FERC v. Mississippi*, 456 U.S. 742, 745-46 (1982). Under PURPA and its implementing regulations, utilities must purchase the power produced by QFs. 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.303(a). The utility must purchase the power at the avoided cost rate. 18 C.F.R. § 292.304(a). The avoided cost represents “the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.” 18 C.F.R. § 292.101(b)(6). State utilities commissions have broad discretion to set the avoided cost rates within their respective jurisdictions. *Rosebud Enterprises, Inc. v. Idaho PUC*, 128 Idaho 624, 627, 917 P.2d 781, 784 (1996).

QFs have the option to sell energy either (1) as it becomes available, or (2) pursuant to a legally enforceable obligation. 18 C.F.R. 292.304(d). If a QF opts to sell energy as it becomes available, the QF sells the energy pursuant to a standard tariff for non-firm energy. *See* Order No. 33053. In the case of Idaho Power, that tariff is Schedule 86. If a QF opts to sell energy pursuant

to a legally enforceable obligation, the QF sells the energy under terms established by the Commission. *See e.g.*, Order No. 33357. The Commission must establish published avoided cost rates for all QFs 100 kW and smaller. 18 C.F.R. 292.304(c)(1). The Commission, in its discretion, may also establish published avoided cost rates for QFs above 100 kW. 18 C.F.R. 292.304(c)(2).

The Commission has established published avoided cost rates for non-wind and non-solar QFs up to 10 aMW. Order No. 32697 at 14. Wind and solar QFs up to 100 kW are entitled to published avoided cost rates. *Id.* at 13. Published avoided cost rates are determined by the Surrogate Avoided Resource methodology (“SAR”). The Commission uses a combined-cycle combustion turbine as the proxy resource in calculating published avoided cost rates under the SAR methodology. *Id.* at 17. These published avoided cost rates are updated annually to reflect updated natural gas forecasts. Order No. 32802.

The Commission uses the Integrated Resource Plan (“IRP”) methodology to determine avoided cost rates for QFs that are not entitled to published avoided cost rates. The IRP methodology “assesses the value of each QF project in terms of its capability to deliver resources in relation to the timing and magnitude of the utility’s need of such resources.” Order No. 32697 at 17. The Commission annually updates certain inputs to the IRP methodology such as natural gas forecasts, utility load forecasts, and long-term contract commitments. Order No. 32697 at 22 (timing of filing changed from June 1 to October 15 of each year by Order No. 32802 at 3).

For both SAR-based and IRP-based rates, the Commission has determined that it is in the public interest to compensate QFs separately for the energy they produce and the capacity they contribute to the purchasing utility. *Id.* at 16. QFs selling energy under a SAR-based or an IRP-based contract are not entitled to compensation for capacity until the utility’s first capacity deficit date. Order No. 32697 at 21. The first capacity deficit date is determined through the IRP planning process. Order No. 33357 at 25-26. If a QF renews its contract with the utility, the capacity deficit date is still determined as of the date the original contract was executed. Order No. 33419 at 26. *See also* Order No. 32737 at 5 (clarifying that Staff will tailor SAR-based rates to include capacity for renewal contracts from the outset). Schedule 86 contracts—for QFs that sell energy to Idaho Power as it becomes available—do not have a separate energy and capacity component.

THE APPLICATION

The Facility has been selling power to Idaho Power under a Schedule 86 Uniform Agreement dated September 22, 2004. *Id.* at 4. The First Energy Date, the Operation Date, and

the termination of the Schedule 86 Uniform Agreement are set to occur on the first day of the month after the Commission issues an Order approving the new ESA. *Id.* The new ESA is for a 20-year term and contains published non-levelized, non-seasonal hydro avoided cost rates. *Id.* at 3. Because the Agreement is a replacement contract for an existing QF, and the QF has been included in the utility's load and resource mix since 2004, the proposed ESA contains capacity payments for the entire term of the Agreement with no capacity sufficiency period. *Id.* at 2. The Company requests the Commission issue an order accepting the ESA, and declaring that all payments made by Idaho Power for purchases under the ESA be allowed as prudently incurred expenses for ratemaking purposes.

COMMENTS

A. Commission Staff.

Staff filed comments disagreeing with including capacity payments from the outset of the Agreement. Staff believes that the QF is not entitled to capacity payments until the utility's capacity deficit date of July 2026 because the QF is not currently receiving capacity payments under the Schedule 86 standard contract with the Company. Staff notes that the Schedule 86 standard contract does not contain performance guarantees, such as the 90-110 performance band, that are found in SAR-based or IRP-based contracts. Staff argues that the Company should not be able to include a QF's contribution to capacity in its long-term resource planning until contractual conditions designed to make the energy more firm are in place. Therefore, Staff argues, the QF was not obligated to help the Company avoid capacity costs in its previous contract and should not be compensated for doing so in its renewal contract until the utility's first capacity deficit date, as determined on the date of the renewal contract.

B. Idaho Power.

Idaho Power filed reply comments indicating that the Company has been including the generation from the QF in its IRP generation forecasts because it believes it is reasonable to rely on the QF's historic output data for forecasting. Therefore, Idaho Power argues, the QF's existing capacity has already been included in the utility's load and resource balance, and therefore could not be considered surplus power.

C. Canyon Springs.

Canyon Springs filed reply comments indicating that the QF had a long-term energy supply contract with the Company before 2004. Canyon Springs argued it would be unfair to

preclude the Facility from receiving capacity payments until the Company's capacity deficit date in 2026 because the Company has been including the QF's energy in its resource stack. Therefore, Canyon Springs asserts, Idaho Power customers have been receiving the benefits of energy and capacity from Canyon Springs for just the price of energy since 2004.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-502 and 61-503. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503. In addition, the Commission has authority under PURPA and Federal Energy Regulatory Commission ("FERC") regulations to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs, and to implement FERC rules. The Commission may enter any final order consistent with its authority under Title 61 and PURPA.

The Commission has reviewed the record, including the Application, the ESA, the comments of Commission Staff, and the reply comments of Idaho Power and Canyon Springs Hydro. Based on our review, we find it reasonable to approve the ESA.

The Application raises an issue of first impression for the Commission. Specifically, whether a QF that has been selling energy under a standard non-firm contract (Schedule 86 in the case of Idaho Power) is entitled to capacity payments from the outset of what amounts to a renewal contract, or whether a QF changing from non-firm to firm delivery of energy must wait until the utility's first capacity deficit date, as determined on the date of execution of a firm contract. In previous orders we have addressed the issue of contract renewals that continue under SAR-based or IRP-based contracts and have stated that "if a QF project is being paid for capacity at the end of the contract term and the parties are seeking renewal/extension of the contract, the renewal/extension would include immediate payment of capacity." Order No. 32697 at 21-22. We find here that the fact that the QF was not receiving a separate capacity payment under its Schedule 86 contract is not fatal to the QF's ability to receive payment for capacity from the outset of its IRP-based or SAR-based contract.

We find that the logic that underpins our previous determination that a QF is entitled to immediate payment for capacity in a renewal contract based on the first capacity deficit date

established at the time the original contract was entered is applicable here. In Order No. 32697, we stated, “An existing QF’s capacity would have already been included in the utility’s load and resource balance and could not be considered surplus power.” *Id.* Idaho Power acknowledges that it has included Canyon Springs’ production in its IRP load and resource balances because it has found it reasonable to rely on the QF’s historic output data. Additionally, when Canyon Springs executed a Schedule 86 standard contract with the Company in 2004, the Company was in a capacity procurement phase. Order No. 29672. Because the utility has been relying on the QF’s power production for IRP planning purposes and to meet its capacity needs, and no significant physical or operational changes are contemplated in the replacement contract, we find that it would be unfair and unreasonable to delay capacity payments simply because the QF is exercising its option to provide power pursuant to a firm contract.

ORDER

IT IS HEREBY ORDERED that the ESA between Idaho Power and McCollum Enterprises is approved, effective on today’s date.

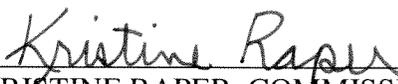
IT IS FURTHER ORDERED that all payments made by Idaho Power for purchases of energy and capacity under the ESA are allowed as prudently incurred expenses for ratemaking purposes.

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 with regard to any matter decided in 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.

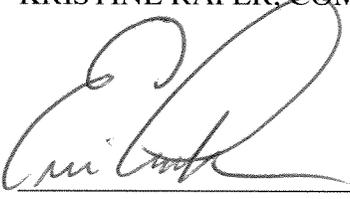
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this ^{4th} day of December 2018.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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