

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE PETITION OF</b>	)	<b>CASE NO. IPC-E-18-07</b>
<b>IDAHYDRO, SHOROCK HYDRO, INC.,</b>	)	
<b>J.R. SIMPLOT COMPANY, AND</b>	)	<b>NOTICE OF PETITION</b>
<b>RENEWABLE ENERGY COALITION FOR</b>	)	
<b>MODIFICATION OF THE 90/110</b>	)	<b>NOTICE OF</b>
<b>PERFORMANCE BAND AND</b>	)	<b>INTERVENTION DEADLINE</b>
<b>CALCULATION OF OPERATION AND</b>	)	
<b>MAINTENANCE CHARGES FOR PURPA</b>	)	
<b>QUALIFYING FACILITIES</b>	)	<b>ORDER NO. 34059</b>

On April 16, 2018, Idahohydro (“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 modify, amend, or stay existing orders or rules, and to clarify rights and obligations implementing Section 210 of the Public Utility Regulatory Policies Act of 1978 (“PURPA”), 16 U.S.C. §824a-3 *et seq.*

**BACKGROUND**

The Petitioners are Qualifying Facilities (“QFs”) under PURPA. The Petitioners either sell power to Idaho Power Company (the “Company”) under Energy Sales Agreements (“ESAs”), or are attempting to develop new QFs that would sell power to the Company. Application 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.<sup>1</sup>

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.<sup>2</sup>

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<sup>1</sup> 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.

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

*Id.* at 20. The Commission ordered that energy delivered in excess of 110% of the contract amount (up to a 10 MW cap)<sup>3</sup> 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.

### **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. 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.

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<sup>3</sup> 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.*

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.

#### 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](mailto: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](mailto:peter@richardsonadams.com)  
[greg@richardsonadams.com](mailto: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 <sup>th</sup> Street, #325 Boise, Idaho 83702 E-Mail: <a href="mailto:kahle@kahlebeckerlaw.com">kahle@kahlebeckerlaw.com</a>	Irion Sanger (pro hac vice motion pending) Sanger Law, PC 1117 SE 53 <sup>rd</sup> Avenue Portland, Oregon 97215 E-Mail: <a href="mailto:irion@sanger-law.com">irion@sanger-law.com</a>
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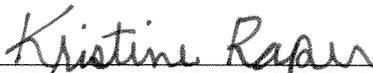
### **ORDER**

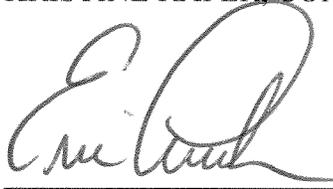
IT IS HEREBY ORDERED that persons desiring to intervene in this matter shall file a Petition to Intervene no later than 21 days from the service date of this Order. Once the deadline for intervention has passed, the Commission Secretary shall prepare and issue a Notice of Parties.

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

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this *8<sup>th</sup>*  
day of May 2018.

  
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PAUL KJELLANDER, PRESIDENT

  
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KRISTINE RAPER, COMMISSIONER

  
\_\_\_\_\_  
ERIC ANDERSON, COMMISSIONER

ATTEST:

  
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Diane M. Hanian  
Commission Secretary

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