

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER RAPER
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DAPHNE HUANG
DEPUTY ATTORNEY GENERAL

DATE: MARCH 13, 2015

SUBJECT: AGREED HEARING SCHEDULE FROM PREHEARING CONFERENCE FOR CONSOLIDATED PURPA CASES; PETITION AND CROSS-PETITIONS TO CLARIFY ORDER NO. 33222 BY INTERMOUNTAIN ENERGY PARTNERS, RENEWABLE ENERGY COALITION, AND CLEARWATER PAPER AND SIMPLOT; CASE NOS. IPC-E-15-01, AVU-E-15-01, PAC-E-15-03

On January 30, 2015, Idaho Power filed a Petition to reduce the length of the contracts under which electric utilities must purchase energy generated by qualifying facilities (QFs) pursuant to the Public Utility Regulatory Policies Act (PURPA). The Commission issued a Notice of Petition setting a February 20, 2015 deadline for petitions to intervene. Order No. 33222. The Commission also granted interim relief, temporarily reducing Idaho Power's PURPA contract lengths from 20 years to five years pending further order. *Id.* at 6.

On February 27, 2015, Avista Corporation petitioned for the same temporary and permanent relief already and to-be granted Idaho Power. Rocky Mountain Power Company filed a petition seeking similar relief on March 2, 2015. *See* Order No. 33250 (Consolidation Order). The Commission issued a Notice of Petitions and Order consolidating the Avista and Rocky Mountain Petitions with Idaho Power's case. *Id.* In that Order, the Commission set a new deadline of March 27, 2015 for petitions to intervene in the consolidated matters. *Id.*

BACKGROUND

The Utilities in these consolidated cases seek to modify the length of their contracts entered under PURPA. That Act requires electric utilities to purchase electric energy from QFs at rates approved by the applicable state regulatory agency – in Idaho, this Commission. 16 U.S.C. § 824a-3; *Idaho Power Company v. Idaho PUC*, 155 Idaho 780, 789, 316 P.3d 1278, 1287 (2013). The purchase or “avoided cost” rate shall not exceed the “incremental cost” to the

utility, defined as the cost of energy which, “but for the purchase from [the QF], such utility would generate or purchase from another source.” 16 U.S.C. § 824a-3(d); 18 C.F.R. § 292.101(6) (defining “avoided cost”).

There are two methods of calculating avoided cost, depending on the size of the QF project: (1) the surrogate avoided resource (SAR) methodology, and (2) the Integrated Resource Plan (IRP) methodology. *See* Order No. 32697 at 7-8. The SAR methodology applies to wind and solar QFs with a design capacity of up to 100 kilowatts (kW), and up to 10 megawatts (MW) for QFs of all other resource types. *Id.* In other words, the “eligibility cap” for published rates for wind and solar QFs is set at 100 kW and the cap for all other QF projects is set at 10 MW. The Commission uses the SAR methodology to establish what is commonly referred to as published rates. *Id.* The IRP methodology applies to QFs with design capacity above the eligibility cap for published rates. *Id.* When a QF project is larger than the eligibility cap, the avoided cost rates for the project must be individually negotiated by the QF and the utility using the IRP methodology. Order Nos. 32697 at 2; 32176.

PURPA, and regulations implementing the Act, are silent as to contract length; consequently, the issue is in the Commission’s discretion. *See Afton Energy, Inc. v. Idaho Power*, 107 Idaho 781, 785-86, 693 P.2d 427, 431-32 (1984); *Idaho Power*, 155 Idaho at 782, 316 P.3d at 1280. On February 5, 2015, the Commission granted Idaho Power interim and temporary relief by reducing the length for PURPA contracts from 20 years to five years, pending further order. Order No. 33222 at 4, 6.

THE PREHEARING CONFERENCE

Consistent with Order No. 33222, Staff Counsel convened an informal prehearing conference on March 10, 2015. The prehearing conference was attended by all the parties granted intervention to date except for Amalgamated Sugar. At the prehearing conference, the parties discussed the pending Petition and Cross-Petitions to Clarify Order No. 33222, and developed a schedule for processing this consolidated proceeding.

A. The Petitions to Clarify

Various parties in the Idaho Power case filed a total of four Petitions or Cross-Petitions to Clarify Commission Order No. 33222. These Petitions can be divided into two sets. Each set is discussed in greater detail below.

1. Petition and Cross-Petition to Clarify by Intermountain Energy Partners and Renewable Energy Coalition

Idaho Power stated on pages 1-2 of its Petition that its request to reduce PURPA contract length is “limited to transactions with proposed QF projects that exceed the published rate eligibility cap.” However, in its “Prayer for Relief” on page 36, the Company characterized its requested relief as an Order “directing that the maximum required term for any Idaho Power PURPA [contract] be reduced from 20 years to two years.” (Emphasis added.) Order No. 33222 granting interim relief did not specify the explicit type of PURPA contracts to which the five-year interim relief applied.

On February 18, 2015, intervenor Intermountain Energy Partners (IEP) petitioned for clarification under Rule 325. That rule allows any person to file a petition “to clarify any order, whether interlocutory or final.” IDAPA 31.01.01.325. In its Petition, IEP addresses the ambiguity of granting interim relief to only IRP-based projects, or any Idaho Power PURPA contract. IEP suggested that the Commission clarify its Order by adding the following language::

IT IS HEREBY ORDERED that . . . the maximum contractual term for Idaho Power’s new PURPA contracts shall be five years, provided however this Order shall not apply to proposed QF projects that do not exceed the published rate eligibility cap.

IEP Petition at 1.

The Cross-Petition for Clarification by Renewable Energy Coalition (REC) concurs with the clarifying language proposed in IEP’s Petition.¹ REC’s Cross-Petition also observed that in a discovery response dated February 24, 2015, Idaho Power conceded that its requested interim relief “is limited to transactions with proposed QF projects that exceed the published rate eligibility cap.” Resp. No. 1 to Simplot, citing Idaho Power Petition at 1-2 (attached). At the prehearing conference, all parties agreed that the Commission should clarify its Order to clarify that the five-year interim relief should not apply to QF contracts that are eligible for published avoided cost rates.

¹ The Commission has also received a Petition to Intervene and Joinder in Petitions to Clarify by AGPower DCD, LLC and AGPower Jerome, LLC, which agrees with IEP’s and REC’s Petitions.

2. Cross-Petition for Clarification by Clearwater Paper and Simplot

Clearwater Paper and Simplot also filed a Cross-Petition for Clarification on February 25, 2015, proposing that the five-year term for interim relief granted in Order No. 33222 should apply to only “new intermittent solar and wind projects.” Clearwater Cross-Petition at 3-4. In their Cross-Petition, Clearwater and Simplot argue that this limitation should apply because Idaho Power’s initial Petition highlights the dramatic increase in “predominantly wind, and now, solar, QF projects coming on-line and under contract.” *Id.* at 2-3. They maintain that “there is no record suggesting a need to reduce the maximum contract length for any type of resource other than wind and solar.” *Id.* at 5.

Their Cross-Petition and proposed language were discussed at the March 10 prehearing conference. The parties were unable to reach consensus. However, the parties agreed upon a schedule to address this second Petition. Parties interested in responding to the Cross-Petition should do so by March 19, 2015, and Clearwater and Simplot may reply by March 26, 2015.

PROPOSED SCHEDULING AND TECHNICAL HEARING

At the prehearing conference, the parties also agreed to the following schedule for case management and a technical hearing:

April 23, 2015	Staff / Intervenors file direct testimony
May 14, 2015	Staff / Intervenors file rebuttal testimony
June 11, 2015	Petitioners file rebuttal testimony
June 29, 30, July 1, 2015	Technical hearing
*June 2015	Public hearings

COMMISSION DECISION

1. Does the Commission wish to grant Intermountain Energy Partners’ Petition and Renewable Energy Coalition’s Cross-Petition for Clarification of Order No. 33222, by limiting the five-year interim relief to IRP-based contracts, as agreed by all parties at the prehearing conference?

2. Does the Commission wish to adopt the response and reply schedule agreed to by the parties regarding Clearwater and Simplot’s Cross-Petition for Clarification, or take other action?

3. Does the Commission adopt the proposed schedule and dates for the technical hearing agreed to by the parties?
4. What does the Commission want to do about public hearings?
5. Anything else?

Daphne Huang

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Deputy Attorney General

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Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)
COMPANY'S PETITION TO MODIFY) CASE NO. IPC-E-15-01
TERMS AND CONDITIONS OF)
PROSPECTIVE PURPA ENERGY SALES) IDAHO POWER COMPANY'S
AGREEMENTS) RESPONSES TO THE FIRST
) PRODUCTION REQUESTS OF THE
) J. R. SIMPLOT COMPANY
)

COMES NOW, Idaho Power Company ("Idaho Power" or "Company"), and in response to the First Production Requests of the J. R. Simplot Company dated February 3, 2015, herewith submits the following information:

REQUEST FOR PRODUCTION NO. 1: Reference the direct testimony of Lisa Grow at page 15:23 to 16:3. Is Idaho Power's proposal to limit contract terms to two years limited to QFs ineligible for standard avoided cost rates or to limit the term for all QFs as Ms. Grow suggests?

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Idaho Power's Petition states that the Company's request "is limited to transactions with proposed QF projects that exceed the published rate eligibility cap." Petition, pp. 1-2. The statements in Ms. Grow's testimony were not meant to differ from this limitation.

The response to this Request is sponsored by Lisa Grow, Senior Vice President of Power Supply, Idaho Power Company.