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Attorney for Ted Sorenson

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OR REJECTION OF AN ENERGY SALES AGREEMENT WITH BIG WOOD CANAL COMPANY FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY FROM THE SAGEBRUSH HYDRO PROJECT	Case No. IPC-E-19-38 **WOOD HYDRO, LLC COMMENTS IN RESPONSE TO CONFIDENTIAL COMMENTS OF THE COMMISSION STAFF ON THE FIRST AMENDMENT TO THE ENERGY SALES AGREEMENT**

COMES NOW Petitioner Ted Sorenson of Wood Hydro, LLC ("Wood Hydro"), by and through his counsel of record, Amber Dresslar of Arkoosh Law Offices, hereby offers the following comments in response to *Confidential Comments of the Commission Staff on the First Amendment to the Energy Sales Agreement*:

Big Wood Canal Company ("Big Wood") owns the Sagebrush hydroelectric facility ("Sagebrush"), which is at issue in this docket. Wood Hydro is the lessee and operator of the Sagebrush hydroelectric project and thus a real party in interest.

I. PHYSICAL FACTS

Sagebrush's initial contract signed in April 1, 1985, recited a 430 kW nameplate capacity and occupied that space in Idaho Power Company's ("Idaho Power" or "Utility") integrated resource planning queue. Recent Sagebrush upgrades increased the nameplate capacity of the project to 575 kW, an increase of 145 kW.

II. PROCEEDINGS THUS FAR

Big Wood and Idaho Power presented the Idaho Public Utilities ("Commission") a renewal contract for approval on December 9, 2019. The renewal contract was an agreement between Big Wood and the Utility for a straightforward inclusion of the total 575 kW name plate capacity of Sagebrush for capacity payments. In the Comments by the Commission Staff, the agreement was objected and Staff instead suggested a novel melded rate. Wood Hydro commented that at least the initial 430 kW of nameplate capacity be paid its capacity entitlement, and the remaining new capacity of 145 kW be paid at new energy prices until the Utilities' capacity deficit date. After the capacity deficit date, the new capacity be paid both capacity and energy prices. The Commission adopted the latter proposal in *Final Order* 34677.

Big Wood and Idaho Power signed an amendment to the original agreement encapsulating the Commission's ruling. Unfortunately, Idaho Power presented this amendment to the Commission seeking either approval, if the amendment reflected the Commission's ruling; or, in the alternative, a declaratory ruling if the Commission wanted something else. Staff took the opportunity to reopen the case to conduct discovery of prior Commissions orders and Idaho Powers metering capacity to implement the amendment to the contract. The Commission reopened the case.

III. STAFF'S CURRENT PROPOSAL

Staff now has another novel proposal presented in its *Comments* of August 7, 2020. Staff proposes that Sagebrush receive capacity payments not for its historic nameplate capacity (430 kW), but instead, Staff proposes Sagebrush capacity payments be limited to the maximum of what Sagebrush delivered in 2019 (just one year), or what Staff calls maximum historical actual generation of 304 kW, a deficit of capacity of 126 kW.

Staff is fickle. In this case, Staff first proposed the melded rate from nowhere.[1] Staff now proposes another novel avoided cost rate paradigm that contravenes both law and equity and ignores the conventions found in both PURPA and the Commission's orders.

PURPA adopts the nameplate convention when measuring capacity.

> PURPA and its implementing regulations require that published/standard avoided cost rates be established and made available to QFs with a design capacity of 100 kW or less. 18 C.F.R. § 292.304(c).

Order No. 32697, p. 7.

When the Commission revisited the surrogate avoided cost ("SAR") methodology in Case No. GNR-E-11-03 for small hydroelectric plants, among other projects, under 10MW, Staff advocated for the same nameplate convention spelled out in PURPA,

> Staff maintains that, by using a QF 's nameplate capacity in the SAR calculation, capacity payments can be determined based on a project's ability to incrementally contribute to a utility's capacity deficiency. Tr. at 1067-68. Through use of this method, a QF would be paid earlier, but at an incremental rate, for its capacity contribution to the utility. This method also recognizes that there are times when capacity provided in only

[1] As will be pointed out, changing how the Commission calculates avoided costs under the Public Utilities Policy Act ("PURPA") most probably requires the initiation of a rate case.

> one season does, in fact, translate into capacity avoided by the utility. *Id.* at 1068. Under Staff's approach, capacity deficiency would be identified based on load and resource balances found in each utility's IRP plan.

Id., p. 11.

And the Canal Companies agreed:

> The Canal Companies further support Staff's proposal regarding use of a QF's nameplate capacity in the SAR calculation in order to derive capacity payments that can be determined based on a project's ability to incrementally contribute to a utility's capacity deficiency. *Id.* at 890. They "find Staff's revised model a simple, transparent and straightforward approach to determine capacity need, allocation and pricing." *Id.*

Id., p. 12.

Finally, the Commission concurred in Staff's ruling:

> We find that utilizing a QF's nameplate capacity in the SAR calculation is a reasonable approach that provides payment to QFs for capacity based on a project's ability to incrementally contribute to a utility's capacity deficiency. We further find it appropriate to identify each utility's capacity deficiency based on load and resource balances found in each utility's IRP.

Id., p. 16.

Staff exposes its new premise at page 4 if its *Comments*, writing, "The method for paying QFs for avoided cost of capacity in published rates is strictly based on the amount of actual generation on a $ per kWh basis, and not the nameplate capacity of a QF." Staff cites as authority the string of annual SAR update orders since 2013. Those update orders, notwithstanding how Staff reads them, in turn cite as authority for the annual updates *Order No.* 32697, which holds

exactly contrary to the Staff's premise. It is nameplate capacity of the project, as stated in the contracts and employed in Idaho Power's integrated resource plan, then processed through the SAR method that controls, not a random production date.

IV. WHAT'S WRONG WITH STAFF'S CURRENT PROPOSAL

A. Staff proposes a rate case.

Staff's proposal of calculating the entitlement to avoided cost pricing for capacity by looking at any one year or peak production in any one year rather than the nameplate capacity of a Qualifying Facility ("QF") constitutes a new rate design to which other's in the industry are entitled to notice under IDAPA 31.01.01.121. That rule further outlines numerous due process protections that a simple contract approval is not designed to provide. Although Staff clearly sets out that this methodology is not proposed for all, like the 90/110 rule, once these smoke signals escape, there is not stuffing them back into the fire. Further, the PURPA non-discrimination and the equal protection ramifications of Staff's proposal are beyond these comments, but very real and need not be needlessly implicated.

Perhaps of more significances is how this proposal will interface with FERC's newly anticipated rules. Industry should have some say in handling capacity payment changes most especially if the energy component in contracts may be calculated differently than how the energy component is now calculated.

B. Staff's proposal invites a sinister unintended consequence.

Idaho Power, and the other two Idaho electric utilities integrated resource plans, have capacity deficiency dates based upon input queues calculated from nameplate capacity.

What if . . . QF queues' capacity become reduced to actual production. The capacity deficiency date leaps backward years, immediately qualifying new QF contracts for capacity payments. With wind and solar intermittency, the daily intestacies between nameplate capacity and actual production, when combined together for all projects in Idaho Power's integrated resource plan capacity queue, widens into a canyon of capacity deficiency to be filled by new QF development.

What if . . . QF developers looked at large hydroelectric projects filling the integrated resource plans capacity queue in a quantity measured by actual daily or yearly peak production rather than available nameplate capacity. The canyon would widen into an abyss. This would not be fair to the Utility, the rate payer, or the renewable resource community.

C. Staff's proposal is unnecessary and ad hoc.

Sagebrush is an established and reliable hydroelectric resource on Idaho Power's grid. While in some years it may not have peaked out to nameplate capacity[2], it clearly is a resource integrated into the Idaho Power system. Wood Hydro has increased the nameplate capacity with development analogous to new project development without disturbing the old nameplate capacity. The only issue (and the issue Staff posited to the Commission to reopen this case) is whether the metering at Sagebrush can differentiate between old capacity for which capacity payments are owed under this Commission's rules and PURPA, and new capacity for which no capacity payment

[2] Staff's comments make no mention of why Sagebrush did not produce maximum nameplate power, and never asserts it did not have the capacity to do so. It could have been low water, mechanical deficit, sludge build up behind the facility, weather, outages, or any number of matters that, if they become relevant, can be explored.

is due until Idaho Power's deficiency date. Staff does not mention the outcome of its investigation of the metering issue, the major issue is reopening the case.[3]

Staff's proposals are not only one-off's, but unworkable. In the first proposal, the melded rate, the Utility must isolate and segregate this project in its system for special rate treatment. In the second proposal, Sagebrush is deprived of 126 kW capacity payments without any precedent, accepted convention or legal basis.

D. Staff's concerns about the operation of the 90/110 do not arise under Final Order *34677.*

While Staff is correct that the 90/110 rule "requires comparisons based on monthly amounts [sic-levels] of market price against contract price and of the amount of committed energy against actual generation," this is not an impediment to the smooth operation of *Final Order* 34677. The correct, and easy, method of operation would apply the end of month estimate to the entire plant output. By simply making the full plant capacity of 575 kW the numerator of the percent calculation to determine whether the actual delivery is 90 percent less or 110 percent more than the estimate, speculative problems dissipate.

Firm energy delivery upon which the Utility can rely, not pricing, is both the purpose and the quiddity of the 90/110 rule. The price of the underlying energy, and whether or not it encompasses a capacity component, is irrelevant. If Sagebrush estimates it will deliver in a particular month some portion of its 575 kW capacity, that estimate measured against total capacity, are the relevant numbers. Seeing this clearly eliminates Staff's speculation that "Staff does not believe that payments outside of the band can avoid some type of blending." Seeing this

[3] Staff also alleged it wished to reopen the case to look at the Commission's previous orders. That was available to Staff without the uncertainty to all involved of reopening the case and without the need to miscite the orders reviewed.

simply and clearly not only eliminates the speculation there needs to be a blending, but also eliminates the speculation about what that blending would need to be.

V. WHAT'S THE CORRECT OUTCOME

The correct outcome here is the legal and entitled outcome provided by PURPA as interpreted by this Commission in *Order No.* 32697: Sagebrush is entitled to SAR pricing for its nameplate capacity incrementally beneficial to Idaho Power as reflected in its integrated resource plan. That was the outcome in *Final Order* 34677 and is the correct outcome. We would request *Final Order* 34677 be reinstated.

If the Staff find change necessary, the Commission might give consideration to a bright line rule that ignores incremental changes in nameplate capacity brought about by upgrade or improvement if the same is *de minimus*. A suggested bright line rule would be that an increase of 1MW or less, or some other increment, would be ignored so long as the increase did not surpass the 10MW limit for hydropower, or less for wind and solar. When established projects and utilities seek to understand and apply precedent for planning purposes, such a bright line rule would avoid unnecessary chaos and uncertainty for the utility, the project, and ultimately the ratepayer.

DATED this 11th day of August 2020.

ARKOOSH LAW OFFICES

Amber Dresslar

Amber Dresslar
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of August 2020, I served a true and correct copy of the foregoing document(s) upon the following person(s), in the manner indicated:

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