

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR) CASE NO. IPC-E-19-38
APPROVAL OR REJECTION OF AN)
ENERGY SALES AGREEMENT WITH BIG)
WOOD CANAL COMPANY FOR THE SALE) ORDER NO. 34956
AND PURCHASE OF ELECTRIC ENERGY)
FROM THE SAGEBRUSH HYDRO)
PROJECT)
_____)**

On May 28, 2020, the Commission approved, as modified by its findings, Idaho Power Company’s (“Idaho Power” or the “Company”) energy sales agreement (“ESA”) with Big Wood Canal Company (“Seller”) for the Sagebrush hydro project (“Facility”). *See* Order No. 34677. The Facility is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”).

On June 18, 2020, Idaho Power filed an Amended ESA as required by Order No. 34677. Idaho Power also filed a Motion to Approve First Amendment to Energy Sales Agreement in Compliance with Order No. 34677 (collectively with the ESA the “Amended ESA”) or Alternatively for Clarification and/or Reconsideration (“Motion”).

The Commission granted Idaho Power’s Motion on July 23, 2020. *See* Order No. 34727. The Commission also found it reasonable to allow the parties in the case to conduct discovery and to file written comments on the Amended ESA and the issues raised by Commission Staff (“Staff”) in its Answer to the Motion filed on June 25, 2020, before the Commission issued a final order on clarification. *See* Order No. 34727 at 3.

Staff filed comments on clarification on August 7, 2020. On August 11, 2020, Wood Hydro, LLC, (“Wood Hydro”) filed a Petition to Intervene. On August 14, 2020, Idaho Power and Wood Hydro each filed comments on clarification. On August 21, 2020, the Commission granted Wood Hydro’s Petition to Intervene. *See* Order No. 34755.

Having reviewed the record, the Commission issues this Order approving the Amended ESA and clarifying Order No. 34677.

ESA AND ORDER NO. 34677

The ESA was entered into and filed to replace an energy sales agreement between Idaho Power and Seller that expired on May 31, 2020. *See* Order No. 34677 at 2. The nameplate capacity for the Facility is set at 575 kilowatts (“kW”), a 145 kW increase from the 430 kW set in the expired energy sales agreement. *Id* at 5.

On May 28, 2020, the Commission approved the ESA but restricted the amount the Seller could be paid for capacity to a maximum of 430 kW. Specifically, the Commission found:

Under the expiring contract, the Seller is being paid for capacity for 430 kW. As such, 430 kW from the Sagebrush Facility is already included in [Idaho Power’s] load and resource balance and would not be surplus power. *See* Order No. 32697 at 21-22. The Commission finds it reasonable for the Seller to be paid for capacity up to 430 kW for the full term of this renewal ESA. *See* Order No. 32697 at 21-22. The Commission also finds that the 145 kW increase in capacity for the Sagebrush Facility comes at a time when [Idaho Power’s] is not capacity deficient. This “new” capacity is analogous to a new QF whose output and pricing must be evaluated when an executed energy sales agreement with an electric utility is filed with the Commission for review. Therefore, the Commission finds that the Seller shall not receive capacity payments for the 145 kW increase to the nameplate capacity of the Sagebrush Facility until [Idaho Power] becomes capacity deficient.

Order No. 34677 at 5-6 (emphasis added) (footnote omitted).

AMENDED ESA

Idaho Power represented the Amended ESA would allow Idaho Power to pay the Seller a different rate (that would exclude capacity) for any hourly delivery of generation above 430 kW. *Motion* at 2.

Idaho Power stated it can obtain hourly meter data for the Facility so the Company can administer the ESA so each hour it can pay the Seller one rate that includes capacity and energy for Facility-delivered generation up to 430 kW, and another rate (that excludes capacity) for Facility-delivered generation over 430 kW. *Id.* at 3. Idaho Power claimed employing both rates required it to amend the Commission-approved ESA with an additional rate schedule (Appendix H to the Amended ESA) and changing the language to effectuate the two rates.

COMMENTS ON CLARIFICATION

A. Staff’s Comments on Clarification

Staff analyzed “whether the new provisions proposed in the Amended ESA are consistent with Order No. 34677” and: (1) whether the Amended ESA ensures that the Seller won’t

receive capacity payments for the 145 kW increase to the nameplate capacity of the Facility until Idaho Power becomes capacity deficient in 2026; (2) whether Idaho Power has a reasonable method to determine the payment to the QF when monthly generation falls outside of the 90/110 band; and (3) whether the Amended ESA complies with past Commission orders. *Staff Comments on Clarification* at 2-3.

1. Limiting Capacity Payments to Generation from Original Capacity

Staff believes the payment method in the Amended ESA contradicts Order No. 34677 and would likely result in the Seller receiving capacity payments from the incremental 145 kW of new capacity before Idaho Power becomes capacity deficient in 2026. *Id.* at 3. Staff reasoned this will occur if the hourly eligibility limit for capacity payments (“Eligibility Limit”) is set by nameplate capacity measured in kW instead of maximum historical, actual generation measured in kilowatt hours (“kWh”). *Id.*

Staff contended that because published rates are applied on a \$/kWh basis, to comply with Order No. 34677 the original 430 kW nameplate capacity must be separated from the new 145 kW based on the actual amount of historical generation from the Facility. *Id.* at 5. Based on the data in Idaho Power’s response to Staff Production Request No. 2, Staff asserted that in 2018 and 2019 the Facility generated a maximum amount in kWhs for any hour that was less than 430 kWh (or 430 kW). *Id.* Staff believes that because 100% of the Facility’s generation fell below the nameplate capacity of 430 kW (or 430 kWh of maximum, potential generation on an hourly basis) the generation eligible for capacity payments should be based on the maximum historical generation of the Facility. *Id.* at 6.

Staff reasoned that if the hourly Eligibility Limit is set at 430 kWhs as proposed in the Amended ESA, any hourly generation over the maximum historical level of 304 kWhs up to 430 kWhs will receive capacity payments. Staff believed future generation above the maximum historical generation will likely come from the 145 kW increase in nameplate capacity of the Facility. *Id.* Staff argued that paying capacity above the maximum historical generation of the Facility would violate the Commission’s intent in Order No. 34677 to prevent the Seller from receiving capacity payments for the 145 kW increase to the nameplate capacity of the Facility until Idaho Power becomes capacity deficient. *Id.*; *see also* Order No. 34677 at 6.

Staff reasoned that a new generating unit likely will generate more energy than the old unit it replaces. *Id.* But Staff contended that Idaho Power determines its need for capacity by

determining the QF's contribution to it from the historical generation from the old, less efficient generating unit. *Id.* Staff argued this would create a discrepancy between the amount a QF receives for capacity by generating with the new unit and the amount a QF is contributing based on actual historical generation from the old unit. *Id.* at 6-7. Staff proposed a 10% efficiency adjustment could be applied to Staff's proposed Eligibility Limit resulting in a higher per kWh Eligibility Limit that the Seller would be able to receive capacity payments up to. *Id.* at 7. Staff believes that combining the Amended ESA's proposed method to establish an hourly Eligibility Limit with Staff's modifications to the Eligibility Limit based on the maximum hourly amount of historical generation ensures Idaho Power will not "shortchange" the Seller. *Id.*

2. Method Should Not Be Applied to Other ESAs

Staff asserted that if the Commission authorizes Staff's proposed method for limiting capacity payments it should not be automatically applied to other QFs. *Id.* Rather, each QF energy sales agreement should be evaluated on its own merits. *Id.* Applying the method employed here to other types of QFs also could promote gaming and violate PURPA's Customer Indifference Standard by allowing a QF to receive benefits exceeding the value to the utility. *Id.*

3. Method to Determine Payments Outside The 90/110 Performance Band

Staff evaluated Idaho Power's proposed method for determining avoided cost payments when monthly generation falls outside of the 90/110 performance band. *Id.* at 8. Staff believes this calculation method is reasonable and appropriate, but recommended the parties incorporate the method into the Amended ESA through an additional amendment. *Id.*

Staff noted that QFs estimate the energy they expect to generate each month. *Id.* If the QF delivers more than 110% of the estimated amount, the excess energy is priced at the lesser of the contract price or 85% of the market price. *Id.* If the QF delivers less than 90% of the estimated amount, the total energy delivered is priced at the lesser of the contract price or 85% of the market price. *Id.* citing Order No. 29632. However, Staff asserted that from 2020 through 2025, there are two sets of contract rates, one with capacity payments and one without, depending on whether each hour's generation is below or above the Eligibility Limit. *Id.* Idaho Power proposed to blend the rates for purposes of 90/110. *Id.* Each month, Idaho Power will determine the total generation amount (MWh) generated below 430 kW at the hourly level and multiply the corresponding All-Hours Energy Price. *Id.* Then, Idaho Power will determine the total generation amount (MWh) generated above 430 kW at the hourly level and multiply the corresponding All Hours Energy

Price in Appendix H. *Id.* The sum of the two items will be divided by the total generation for that month to calculate a single, blended All Hours Energy Price. *Id.* at 8-9. Next, the blended rate will be compared against 85% of the market price, and the lower number will be applied to the energy generated outside the 90/110 band in that month. *Id.* at 9. Beyond 2026, there will be only one set of rates, so no blending is needed. *Id.* Although the Commission rejected the use of Staff's proposal for blended rates in Order No. 34677 for payment within the 90/110 band, Staff does not believe that payments outside of the band can avoid some type of blending. *Id.*

4. Analysis of Rates

Staff believes Idaho Power should pay the QF using avoided cost rates that were effective when the parties signed the original ESA in November of 2019. *Id.* at 9. However, rates listed in the All-Hours Energy Price section of Appendix H to the Amended ESA are incorrect. *Id.* Staff corrected rates for the All-Hours Energy Price included as Attachment C to Staff's additional comments on clarification. *Id.*

B. Idaho Power's Comments on Clarification

Idaho Power disagreed that the Amended ESA should be modified – except by including Replacement Page 4 of the Amended ESA to correct the all-hours rates found in Appendix H-3, as recommended by Staff. *Idaho Power Comments on Clarification* at 4. Idaho Power asserted the Amended ESA complies with Commission Order No. 34677 because it requires Idaho Power to pay the Seller up to 430 kW of capacity and treats the 145 kW incremental increase like it was a new contract for new nameplate capacity, where Idaho Power does not pay the Seller for capacity until Idaho Power becomes capacity deficient in 2026. *Id.* Idaho Power also alleged that Staff's proposal to set a "limit" at a different kW level based on historical generation contradicts past applications of the SAR method and how capacity payments are allocated to existing and new QFs in their respective PURPA ESAs. *Id.*

1. Eligibility Limit for Capacity Payments

Idaho Power asserted that Order No. 34677, which approved the replacement ESA with prices containing capacity value, follows Order No. 32697 and the Commission's approval of other ESAs. *Id.* Idaho Power contended these previous ESAs included value for capacity up to the nameplate capacity for the entire period of the replacement ESAs, so long as the nameplate

capacity was less than or equal to the nameplate capacity of the QF identified in the expiring ESA.¹ *Id.* Idaho Power noted that is not the case here. *Id.*

Idaho Power stated that if the Facility continues to operate consistent with its historical generation, then the Seller likely would not be paid for capacity up to 430 kW. *Id.* Idaho Power also represented that even if the Facility exceeds historical generation levels, the Amended ESA provides that the Seller cannot be paid for capacity for the new 145 kW of nameplate capacity until Idaho Power's first capacity deficiency in 2026. *Id.*

Idaho Power understands Staff's concern that the Facility may not have historically delivered up to its full nameplate capacity. But Idaho Power has concerns about introducing a new capacity limit based upon historical generation because Idaho Power believes that limit would contradict the Commission's prior orders. *Id.* Idaho Power contended this issue is more appropriately addressed in an avoided cost case considering the SAR method. *Id.*

Idaho Power agreed with Staff that the SAR method provides a fixed capacity value regardless of nameplate capacity. *Id.* However, Idaho Power asserted that nameplate capacity is an input to the SAR method and used to determine when new capacity is assigned capacity value, based on Idaho Power's first capacity deficiency. *Id.* Idaho Power represented the SAR method also adjusts capacity value based on assumed capacity factors of various resource types. *Id.* Idaho Power represented that a seasonal hydro facility has a summer capacity factor of 78%. *Id.* The Eligibility Limit Staff proposed - including Staff's alternative suggestion of a 10% efficiency adjustment - results in the same capacity factor already applied in determining capacity value for a seasonal hydro facility under the SAR method. *Id.*

Idaho Power stated Staff's suggestion that Idaho Power "bases its need for capacity by determining the QF's contribution of capacity primarily based on historical generation from the old, less efficient generating unit" is not entirely correct. *Id.* Idaho Power represented it derives its cogeneration and small power production ("CSPP") forecast from a variety of sources, the most reliable of which generally has been historical generation. *Id.* But if a QF delivers more generation, whether by installing a new, more efficient generating unit or increasing motive force, the CSPP forecast captures the added generation and adjustments are made as needed to recognize the increased output. *Id.* Idaho Power updates its Integrated Resource Plan ("IRP") every two

¹ Originally, Idaho Power requested approval of the ESA that would have included eligibility for capacity payments up to 575 kW.

years and identifies its need to acquire new capacity resources through the IRP process. *Id.* at 6-7. If a QF's generation increases, then the QF's contribution to Idaho Power's capacity sufficiency period in its load and resource balance also increases. *Id.* at 7.

2. Payments for Generation Below 90% or Above 110%

Idaho Power asserted it can properly administer the 90/110 provisions without changing the Amended ESA. *Id.* Idaho Power contended the Amended ESA contains language specific to determining the All-Hours Energy Price. *Id.* Idaho Power described how the single applicable All-Hours Energy Price can be determined and compared with the Market Energy Reference Price to satisfy Article 7.2 of the ESA, which states "for all Surplus Energy, Idaho Power shall pay to the Seller the current month's Market Energy Reference Price or the applicable All-Hours Energy Price, whichever is lower." *Id.*

Idaho Power asserted the easier way to ensure Idaho Power pays the proper price for Surplus Energy is for it to compare end-of-month payment amounts—calculated using the QF's monthly net generation multiplied by the month's Market Energy Reference Price—compared with the monthly net generation multiplied by the month's All-Hours Energy Price as described in Article 7.6 of the Amended ESA. *Id.* Because the monthly net generation is constant, the lower payment amount for Surplus Energy results in the lower of the current month's Market Energy Reference Price or the applicable All-Hours Energy Price, thus satisfying Article 7.2 of the Amended ESA. *Id.* at 7-8.

3. Correction of All-Hours Energy Price in the Amended ESA

Idaho Power stated Staff correctly identified the errors in the All-Hours Energy Prices being listed in the table under Appendix H-3 of the Amended ESA. *Id.* at 8. Idaho Power submitted Attachment 1 to its comments on clarification as a Replacement Page 4 to the Amended ESA, with corrected All-Hours Energy Prices as recommended by Staff. *Id.*

C. Wood Hydro's Comments on Clarification

Wood Hydro asserted that Staff's Eligibility Limit for capacity payments based on maximum historical generation was a "novel avoided cost rate paradigm that contravenes both law and equity and ignores the conventions found in both PURPA and the Commission's orders." *Wood Hydro Comments on Clarification* at 3. Wood Hydro further claimed Staff's proposal contradicts Order No. 32697, which it argued establishes that nameplate capacity sets the maximum kW eligible for capacity payments. *Id.* Wood Hydro also asserted it is the Facility's

nameplate capacity which is employed in Idaho Power's IRP and processed through the SAR method that controls, not a random production date. *Id.* at 5.

1. Staff's Proposal Proposes a New Rate Design that Warrants Broad Notice

Wood Hydro asserted that Staff's proposal is a new rate design and that others in the industry would be entitled to notice under IDAPA 31.01.01.121 in order to participate and comment on such a proposal. *Id.* Wood Hydro also argued that the "non-discrimination and the equal protection ramifications of Staff's proposal are beyond these comments, but very real and need not be needlessly implicated." *Id.*

2. Staff's Proposal Invites an Unintended Consequence

Wood Hydro claimed that Idaho Power and the other Idaho electric utility IRPs have capacity deficiency dates based upon input queues calculated from nameplate capacity. *Id.* at 5-6. Wood Hydro argued that if the QFs' queue capacity is reduced to actual production, then the capacity deficiency date for each electric utility leaps backward years, immediately qualifying new QF contracts for capacity payments. *Id.* at 6. Wood Hydro also suggested that if QF developers looked at large hydroelectric projects filling IRPs' capacity queues in a quantity measured by actual daily or yearly peak production rather than available nameplate capacity, then the capacity deficiency would be greatly increased. *Id.* Wood Hydro claimed this would be unfair to Idaho Power, ratepayers, and the renewable resource community. *Id.*

3. Staff's Proposal Is Unnecessary and Ad Hoc

Wood Hydro argued it "has increased the nameplate capacity with development analogous to new project development without disturbing the old nameplate capacity." *Id.* Wood Hydro claimed the only issue is whether the metering at the Facility can differentiate old capacity for which capacity payments are due under this Commission's rules and PURPA from new capacity for which no capacity payment is due until Idaho Power's deficiency date. *Id.* Wood Hydro asserted that Staff's proposals are unworkable and would deprive the Seller of 126 kW in potential capacity payments. *Id.* at 7.

4. Staff's Concerns about 90/110 do not arise under Final Order 34677

Wood Hydro asserted the correct, and easy, method would apply the end-of-month estimate to the entire plant output. *Id.* This would make the full plant capacity of 575 kW the numerator of the calculation to determine whether the actual delivery is less than 90% or more than 110% of the estimate. *Id.* Wood Hydro alleged the 90/110 rule's purpose is to ensure Idaho

Power has reliable firm energy delivery, not reliable pricing. *Id.* Wood Hydro contended if the Seller estimates it will deliver some of its 575-kW nameplate capacity in a month, then the relevant number is that estimate measured against total capacity. *Id.*

5. Wood Hydro's Proposed Outcome

Wood Hydro asserted the correct outcome “is the legal and entitled outcome provided by PURPA as interpreted by this Commission in Order No. 32697.” *Id.* at 8. Wood Hydro argued that Order No. 34677 entitles the Seller to SAR pricing for its nameplate capacity that incrementally benefits Idaho Power as reflected in Idaho Power's IRP. *Id.* Wood Hydro stated, “[i]f the Staff finds change necessary, the Commission might consider a bright-line rule that ignores incremental changes in nameplate capacity brought about by upgrade or improvement if the same is de minimus [sic].” *Id.*

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 regulations to set avoided costs, to order electric utilities to enter fixed-term obligations for the purchase of energy from QFs, and to implement rules. The Commission may issue any final order consistent with its authority under Title 61 and PURPA.

After reviewing the record, the Commission finds the Amended ESA is consistent with the Commission's intent in Order No. 34677 to restrict Seller from receiving capacity payments for the 145 kW increase to the nameplate capacity of the Facility. *See* Order No. 34677. In other words, Order No. 34677 was intended to limit the Seller's ability to receive capacity payments up to 430 kW through the Amended ESA, the original nameplate capacity of the Facility in the expired energy sales agreement. We believe Idaho Power, Seller and Wood Hydro relied on this intent as shown by the contents of the Amended ESA. Accordingly, we approve the Amended ESA with corrected Appendix H-3 reflecting published rates for projects of 10 average megawatts (“aMW”) or less pursuant to Commission Order No. 34350.

The comments on clarification have provided the Commission with a greater understanding of issues that arise when a QF increases its energy generation or nameplate capacity

over what it had been under the current approved energy sales agreement. But at this time, based on the record of this case, it would be inappropriate to set an Eligibility Limit for capacity payments based on the Facility's maximum historical generation because Idaho Power, Seller, and Wood Hydro relied on and complied with Order No. 34677 by filing the Amended ESA. Staff's position to set the Eligibility Limit based on the Facility's maximum, historical generation is more appropriately considered in a generic docket.

The Commission also finds that Idaho Power's payments for energy and capacity under the Amended ESA, as modified by this Order, are allowed as prudently incurred expenses for ratemaking purposes.

ORDER


IT IS HEREBY ORDERED that the Amended ESA with corrected Appendix H-3, is approved, effective on the service date of this Order.

IT IS FURTHER ORDERED that all payments made by Idaho Power for purchases of energy and capacity under the ESA, as modified by this Order, 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 about 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.

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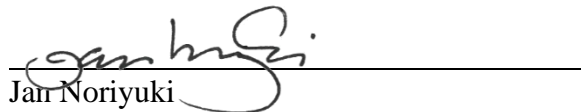
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 17th day of March 2021.


PAUL KJELLANDER, PRESIDENT


KRISTINE RAPER, COMMISSIONER


ERIC ANDERSON, COMMISSIONER

ATTEST:


Jan Noriyuki
Commission Secretary

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