

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF IDAHO POWER ) CASE NO. IPC-E-19-39**  
**COMPANY'S APPLICATION FOR )**  
**APPROVAL OR REJECTION OF AN )**  
**ENERGY SALES AGREEMENT WITH PICO ) ORDER NO. 34544**  
**ENERGY, LLC FOR THE SALE AND )**  
**PURCHASE OF ELECTRIC ENERGY FROM )**  
**THE PICO ENERGY DAIRY DIGESTER )**  
**COGENERATION FACILITY )**

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On December 16, 2019, Idaho Power Company (“Idaho Power” or “Company”) filed an Application that asked the Commission to approve or reject a replacement Energy Sales Agreement (“ESA” or “Agreement”) with Pico Energy, LLC (“Pico Energy”) for energy generated by the Pico Energy dairy digester cogeneration project (“Facility”). The Facility is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”).

On December 17, 2019, the Commission issued a Notice of Application and Notice of Modified Procedure, setting a December 31, 2019 comment deadline and a January 7, 2020 reply comment deadline. Commission Staff filed comments, and Idaho Power filed reply comments.

Now, based on our review of the record, the Commission approves the Application.

**THE APPLICATION**

The Facility is a 2.276 megawatt nameplate capacity PURPA small power production facility near Jerome, Idaho. The Facility has been delivering energy to Idaho Power under a ten-year energy sales agreement dated May 4, 2010. *See* Order No. 32024. Pico Energy is reconfiguring the Facility from a small power production facility to a cogeneration facility with the same nameplate capacity. Where previously the Facility used methane from a dairy digester to run two reciprocating engines to produce electric energy, the Facility will now use pipeline natural gas to run the same reciprocating engines. Waste heat from the engines will heat the dairy digester to produce renewable natural gas.

As the cogeneration facility will use fossil fuel as its fuel source, it will no longer be eligible for the small power production avoided cost rates established by the Commission. *See* Order No. 34350. Under the ESA, the Facility will use published avoided cost *fueled* rates. The ESA will be for a ten-year term and will replace the existing energy sales agreement with Idaho Power. The Company believes the Scheduled First Energy Date and Scheduled Operation Date for

the Facility will occur simultaneously; the parties will agree on a date after Commission approval of the ESA and append the agreed date to the ESA.

### STAFF COMMENTS

Staff's review of the ESA focused on the implementation of the 90/110 performance band, the eligibility for and amount of capacity payments, adherence to the capacity-size threshold to qualify for published rates, and avoided cost rates. Staff recommended the Commission approve the ESA on the condition that the parties change the ESA in two ways.

Staff verified that the Facility does not exceed the 10 average megawatt threshold, and therefore qualifies for published rates. Staff noted a typographic error in Appendix B of the ESA, which mistakenly lists the nameplate capacity of the Facility as 2.276 kilowatts ("kW"). The Facility's nameplate capacity is 2,276 kW. Staff recommended the Commission order the Company to file a replacement Appendix B that corrects the mistake.

Concerning avoided cost rates, Staff noted the ESA lists the non-adjustable rates for the entire 10-year contract term, but the adjustable rates only for 2019. *See* Application, Appendix E. Staff stated the Company verbally explained to Staff that Idaho Power plans to update the adjustable component of the rates annually on June 1 of each year, applying the 2019 adjustable rates to the period from June 1, 2019 through May 31, 2020. Staff disagrees with this rate structure. Staff argued that "in order to incorporate the annual adjustment for the adjustable component of the fueled rates, each specific year should have two sets of rates: rates for the period from January 1 through May 31 using the latest version of the [SAR] model[,] and rates for the period from June 1 through December 31 using a newer version of the model after it is updated on June 1 to incorporate the new natural gas forecast from the Energy Information Agency..." Staff Comments at 4. If this method is used, Staff stated the adjustable component of the SAR model for January 1, 2020 through May 31, 2020 would be 26.53 mills/kW-hour (kWh),<sup>1</sup> rather than the 2019 adjustable component in the ESA of 24.44 mills/kWh.

Going forward, Staff recommended:

[T]o ensure...the [F]acility is always being paid for operation that corresponds with the Commission-approved adjustable component of the fueled avoided cost rate, the [F]acility will necessarily need to be paid two sets of rates for each year remaining in the contract. The first is a change in rates that normally occurs each new calendar year due to annual cost and rate buckets used to calculate

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<sup>1</sup> A mill is equal to 1/1,000 of a U.S. dollar, or 1/10 of a cent. A megawatt-hour (MWh) is equal to 1,000 kWhs.

avoided cost rates embedded in the SAR model. The second is a change in the rates starting June 1 due to the update from the new natural gas price forecast.

*Id.* at 4-5. Staff recommends the Commission condition its approval on the parties to the ESA updating the avoided cost rates in the ESA as described above.

Staff verified the 5-Day Ahead monthly generation forecast provision complies with the provision approved by the Commission in IPC-E-19-01. Staff noted the Facility has been delivering energy to the Company since at least 2009, and therefore has significant historical production data that the Company can use for both short-term and long-term planning. Additionally, Staff verified the ESA includes capacity payments for the full term of the contract, as the Facility is receiving capacity payments under its current energy sales agreement. *See* Order No. 32697.

### **IDAHO POWER'S REPLY COMMENTS**

In its reply comments, Idaho Power agreed with Staff on all points<sup>2</sup> except Staff's recommendation regarding the adjustable component of the avoided cost rates in the ESA. The Company believes "only the currently published adjustable component rate is utilized until the Commission publishes a new adjustable component rate in its annual SAR update which occurs on June 1, of each year." Company's Reply at 2.

The Company argued the 2019 adjustable component of the avoided cost rate should be effective from June 1, 2019 through May 31, 2020, and this rate update schedule should be used for the whole of the Agreement. The Company noted this method is administratively efficient and consistent with how the adjustable component in other published rates are generally implemented. The Company stated that "Staff's proposal to bifurcate the adjustable rate based upon calendar year results in Idaho Power paying the [Facility] an adjustable portion for a specific time period that is not an updated published adjustable portion but is an escalated value from within the SAR model." *Id.* at 3. While acknowledging the SAR model can produce an adjustable portion for each calendar year, Idaho Power argued the Commission "would need to publish an interim rate for the adjustable portion from the model for the period January 1 [through] May 31 of each year to implement Staff's proposal." *Id.* at 5.

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<sup>2</sup> In response to Staff's recommendation that the Commission condition its approval of the ESA on parties to the ESA correcting the typographic error in Appendix B of the ESA, Idaho Power provided a replacement Appendix B as part of its reply comments. The replacement Appendix B corrects the typographic error.

The Commission, the Company noted, has historically updated the adjustable portions of published rate contracts once a year. The Company pointed to the annual adjustment to avoided cost rates for the energy sales agreement with the Colstrip coal-fired generating facility in Montana. *See* Order No. 34362. The Company argued the Commission should continue this practice.

The Company requested the Commission approve the ESA without requiring parties to the Agreement to modify the adjustable rate component of the ESA.

### **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 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, and the comments of Commission Staff and Idaho Power. Based on our review, we find it reasonable to approve the ESA because the ESA contains Commission-approved terms that the Facility is eligible for based on its characteristics such as fuel source, project size, generation output profile, and renewal contract status. We also find that the Company’s payments for purchases of energy and capacity under the ESA are prudently incurred expenses for ratemaking purposes.

Specifically, we approve the Company’s schedule for updating the adjustable component of the avoided cost rates in this ESA. While Staff’s position is also reasonable, setting a single rate that will be effective for a full year is consistent with our past practices and efficient for the parties to the ESA. Based on Staff’s conversations with the Company, Idaho Power contemplates updating the adjustable component of the avoided cost rate on June 1 of each year and having the same rate in place through May 31 of the following year. This is a sound and efficient approach. The parties to the ESA will have a consistent rate for the avoided cost rate’s adjustable component for a full twelve months. The Company is also accustomed to a once-a-year update. An example would be QFs that use a variable cost associated with the Colstrip facility in

Montana. *See* Order No. 34362. Consequently, we find the Company's method to be fair, just, and reasonable.

Regarding capacity payments, we note the Facility has self-certified with FERC as a cogeneration facility where previously it was a small power production facility. As such, it could be considered a new facility and not eligible to receive capacity payments until Idaho Power becomes capacity deficient. *See* Order No. 32697. In multiple previous orders, we have held that a QF may only receive immediate capacity payments if it was receiving capacity payments in its previous energy sales agreement, or if the QF had been included in the utility's load and resource balance during periods of capacity deficiency. *See* Order Nos. 34512, 34295, and 34200. Despite the change in status and new filing (Form 556) at FERC, we approve immediate capacity payments to the Facility because its nameplate capacity has not changed and its previous energy sales agreement included capacity payments. However, a new configuration that requires new federal certifications and state review and approval could reasonably be deemed a new facility that would need to qualify for capacity payments as does any other new QF.

Finally, we are uneasy about the circumstances of this reconfigured Facility even as we approve its ESA. Certification of QFs rests with FERC; whether a facility is a QF is outside our jurisdiction. However, this Commission has never considered an energy sales agreement for a QF with the same configuration as Pico Energy's newly minted Facility. With the ever-increasing demand for renewable natural gas, this configuration could easily proliferate. We fear that this could ultimately lead to higher rates for customers. We encourage the utilities under our jurisdiction to be diligent in scrutinizing these projects as they develop.

### **ORDER**

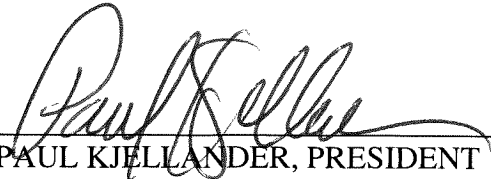
IT IS HEREBY ORDERED that the ESA between Idaho Power and Pico Energy is approved, effective on the service date of this Order.

IT IS FURTHER ORDERED that all payments made by Idaho Power for purchases of energy and capacity under the ESA 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.*

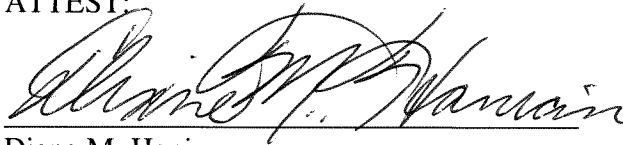
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 17<sup>th</sup> day of February 2020.

  
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PAUL KJELLANDER, PRESIDENT

  
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KRISTINE RAPER, COMMISSIONER

  
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ERIC ANDERSON, COMMISSIONER

ATTEST:

  
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Diane M. Hanian  
Commission Secretary

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