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July 16, 2020

VIA ELECTRONIC FILING

Diane Hanian, Secretary
Idaho Public Utilities Commission
11331 W. Chinden Boulevard
Building 8, Suite 201-A
Boise, Idaho 83714

Re: Case No. IPC-E-20-02
Idaho Power Company's Petition to Establish Avoided Cost Rates and Terms for Energy Storage Qualifying Facilities under PURPA

Dear Ms. Hanian:

Attached for electronic filing in the above matter are Comments of Idaho Power Company. If you have any questions about the enclosed documents, please do not hesitate to contact me.

Very truly yours,

Donovan Walker

DEW/ cld
Enclosures

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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 ESTABLISH AVOIDED COST RATES APPLICABLE TO PURPA ENERGY STORAGE QUALIFYING FACILITIES.	)	CASE NO. IPC-E-20-02 COMMENTS OF IDAHO POWER COMPANY

Idaho Power Company ("Idaho Power" or "Company"), in accordance with RP 201, *et seq.,* as well as the Idaho Public Utilities Commission's ("IPUC" or "Commission") Notice of Modified Procedure in this matter, Order No. 34699, hereby respectfully submits the following Initial Comments.

I. INTRODUCTION AND BACKGROUND

Idaho Power filed the Petition in this matter on January 21, 2020. This was the next business day following the United States District Court for the District of Idaho's ("Federal District Court") Memorandum Decision and Order issued January 17, 2020, in *Franklin Energy Storage One et al. v. Kjellander et al.*, Case No. 1:18-cv-00236-REB, holding that the Commission's decision in Order No. 33785 "established an implementation plan that impermissibly classified the QF status of Plaintiffs' energy

storage facilities that are certified under [PURPA] as energy storage facilities." Memorandum Decision at 37. "Classifying such facilities as 'solar QFs' is outside the Commissioners' authority as state regulators and therefore in violation of federal law." *Id.* While finding that the Commission could not treat these energy storage QFs as solar QFs, the Court specifically declined "to order [the Commission] to require utilities under their jurisdiction to afford energy storage QFs all rights and privileges afforded to 'other QFs' under the IPUC's PURPA implementation plan." *Id.* Both the Commission and Idaho Power have appealed this decision to the United States Court of Appeals for the Ninth Circuit. Case Nos. 20-35146, 20-35144.[1]

Idaho Power's Petition in this matter was not only filed in response to the Federal District Court's decision in the *Franklin* matter, but also in response to two new requests for PURPA battery storage contracts that it received in less than one business day between the release of the Federal District Court's decision and the filing of the Petition herein. Part of the Federal District Court's ruling expressly stated, "The Court specifically declines to order Defendants [IPUC] to require utilities under their jurisdiction to afford energy storage QFs all rights and privileges afforded to 'other QFs' under the IPUC's PURPA implementation plan." However, Idaho Power received four separate requests for four battery storage QF contracts from the same developer within days of the Court's decision. Despite the above quoted express language of the Federal District Court to the contrary, each of those battery storage QF contract requests claims entitlement to published avoided cost rates up to 10 aMW for a twenty-year term as an "other QF". The

[1] The fact that the Federal District Court's decision is currently under appeal does not obviate the need or validity of IPUC action to establish the appropriate avoided cost for energy storage QFs as requested in Idaho Power's Petition.

projects' letters/applications all state, "The project is an energy storage QF and qualifies for the 'Other projects" avoided costs as found in 1:18-cv-00236-REB (Franklin Energy Storage v. Idaho PUC & Idaho Power)." Additionally, two of the proposed projects, Black Mesa Energy 1 and Black Mesa Energy 2, have filed a formal complaint with the Commission alleging under the same facts underlying the claims of Franklin Energy Storage in the Federal District Court case that they have established legally enforceable obligations entitling them to avoided cost rates and terms as "Other" QFs: committing Idaho Power and its customers to purchase the net output of those proposed battery storage projects utilizing the Commission's published avoided rates for "Other" QF facilities and for a 20-year term. This matter is currently pending before the Commission. Case No. IPC-E-20-17.

On February 10, 2020, the Commission issued Notice of Idaho Power's Petition and a Notice of Intervention Deadline soliciting interested persons to intervene and participate in this case by filing a Petition to Intervene by February 28, 2020. Order No. 34552. No Petitions to Intervene were filed. On June 23, 2020, the Commission issued a Notice of Modified Procedure, Order No. 34699. Because no parties intervened in the case, Commission Staff recommended "an enhanced version of Modified Procedure designed to solicit different viewpoints." Staff Decision Memorandum, June 2, 2020, p 2.

> Staff proposes to first file preliminary comments that state preliminary Staff positions and seek public input on specific issues that may lend valuable insight regarding the project eligibility cap and contract length. Staff would then assess whether and to what degree to incorporate the publicly provided information in its analysis and file a revised set of comments. Staff recommends the Company follow the same procedure of issuing preliminary comments that seek additional input and then filing revised comments after reviewing the public input.

Id.

The Commission's Notice of Modified Procedure establishes that parties to the case, Idaho Power and Commission Staff, file initial comments and requests for public input by July 16, 2020. The initial comments are to state the parties' initial positions regarding the Petition and to solicit additional information from interested parties by August 6, 2020. The parties will then have until August 27, 2020, to file follow-up comments taking into consideration any public comments that may have been filed.[2]

Idaho Power's initial position is no different than that which was filed in its Petition. There are no intervenors in this case, and the Company is not aware of what position Staff may take with regard the issues raised in the Petition. The Company has a good idea of the position of Franklin Battery Storage and Black Mesa Energy, the two developers that have submitted 9 different proposed battery storage QF projects seeking PURPA contracts: they believe they are entitled to published avoided cost rates up to 10 aMW in size and twenty-year contracts as if they were a baseload type of resource in the "other QF" category such as geothermal, cogeneration, biogass, landfill gas, or biomass. Additionally, as referenced above, they persist in this belief even though the Federal District Court's did not support their position. Without any other positions yet voiced by others in this matter, Idaho Power's position for these preliminary comments remains the same. Idaho Power's position, in addition to being supported by the law and the record, is necessary to protect customers from overpaying for potentially large amounts of generation that are not needed until well into the future, and thus the Commission should

[2] Idaho Power has no objection to Staff and the Commission's chosen method of Modified Procedure with the reservation that Idaho Power may seek leave to file Reply Comments to any new items raised by Staff in its August 27, 2020, follow-up comments.

apply the federally required 100 kilowatt ("kW") standard/published rate eligibility cap to battery/energy storage QFs.

II. COMMENTS

The Commission should adopt a 100 kW published rate eligibility cap for energy storage QFs for two primary reasons: (1) the ICIRP methodology based upon the QFs specific hourly generation profile is the only way to protect customers by properly considering the output, which can vary greatly and is not dispatchable by Idaho Power, from the energy storage QF; and (2) the 100 kW published rate cap is the only effective measure to combat the potential disaggregation of energy storage QFs into 10 aMW increments in order to seek published rates over ICIRP based rates and 20-year contracts over 2-year contracts.

The ICIRP Methodology and Negotiated PURPA Contract

The Federal District Court stated that the IPUC is "permanently enjoined from considering the energy source input into Plaintiffs' energy storage QFs for the purpose of classifying the QFs in any way other than as energy storage QFs." Memorandum Decision and Order, supra, p 37. At the same time, the Federal Court has stated that, "The Court ***specifically declines*** to order Defendants [the IPUC] to require utilities under their jurisdiction to afford energy storage QFs all rights and privileges afforded to "other QFs" under the IPUC's PURPA implementation plan." *Id.* (emphasis added). The setting of avoided cost rates and the contractual terms and conditions of purchase are the exclusive jurisdiction and responsibility of the IPUC. *Id.*, at p 35-36. Consequently, according to the Federal District Court determination, the IPUC must establish the proper avoided cost rate eligibility for energy storage QFs without regard to the source of

generation used by the energy storage QF. However, the IPUC ***can*** properly consider the output of the energy storage QF that such QF proposes to sell to the utility. 18 C.F.R. § 292.304(c)(3)(ii). In establishing avoided costs rates for purchases from QFs the IPUC can expressly "differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies" (Id.), including the availability of capacity and energy during daily and seasonal peaks; dispatchability; reliability; and other factors. 18 C.F.R. § 292.304(e).

The output from an energy storage QF could vary greatly depending upon both the configuration and the operation of the facility. For example, current battery storage technology allows for a discharge of the batteries for differing, but limited intervals. Some are limited to four hours of discharge, or for instance, from Black Mesa's proposal, "The project will provide scheduled, dispatchable power output in forward looking time intervals ranging from 5-240 minutes pending final system design." Notably, the output profile submitted for each of the Proposed Battery Storage Facilities generally matches the shape and timing of the generation profile of a solar generator, and is not scheduled, not dispatchable, and not proposed in forward-looking time intervals ranging from 5-240 minutes. See, Attachment 1-5 to the Petition for Declaratory Order, Case No IPC-E-17-01. None of the Proposed Battery Storage Facilities propose to operate in a manner that would realize the potential benefits of energy storage facilities—they simply propose to operate with substantially the same generation profile as a solar generator. To realize the potential benefits of economically viable, utility-scale energy storage facilities it would first be necessary for the project to be configured and operated in such a manner that it could/would provide such things as ancillary grid services including reserve capacity,

surge capacity, load-balancing, or voltage support; firming of variable generation; or time-shifting of generation to match load. Secondly, it would be necessary for operational control and dispatchability of the facility to be with the utility charged with serving load. When operated as proposed by the proposed battery storage QF seeking PURPA contracts with Idaho Power, it appears to be structured in a way that passes through as many kW hours as possible in order to maximize revenue under the must-purchase provision of PURPA. This is the developer's prerogative, but it should be considered by the IPUC when determining whether such projects should be subject to a SAR avoided cost methodology or the ICIRP avoided cost methodology. Such a determination does not consider the source of generation that charges, or is stored by the energy storage QF, but considers the output that the energy storage QF is able to make available to the purchasing utility, which is properly before the IPUC when exercising its exclusive jurisdiction and authority to determine the proper avoided cost. Even assuming the Proposed Battery Storage Facilities can provide all of the referenced "benefits" and be "dispatchable"—the Proposed Battery Storage Facilities have not proposed doing so, and it is not possible to realize, recognize, or provide for these possibilities under the published avoided cost rates and standard contract. If any of these possible benefits were to be considered at all it is only by classifying the Proposed Battery Storage facilities over 100 kW as being subject to the negotiated rates determined by the incremental cost IRP methodology, which starts with consideration of the actual output profile of the proposed facilities. The potential benefits of utility-scale battery storage facilities cannot be recognized when the Proposed Battery Storage Facilities are configured in such a manner as to come under published rates, priced at the avoided cost of a natural gas combustion

turbine, and using standard PURPA contract terms and conditions. It would only be through the project-specific avoided cost determinations of the incremental cost IRP methodology and the negotiated rate and contract process required of proposed QFs that exceed the published rate eligibility cap where it may be possible to determine the value of proposed energy storage QFs in a manner that protects utility customers.

Disaggregation to Obtain Higher Rates and/or Longer Contract Terms

Energy storage QFs, particularly battery storage facilities, share the modular and easily disaggregated nature of wind and solar generation referenced by the Commission in its orders limiting those resource types to 100 kW for published rate eligibility. Order No. 32176, Case No. GNR-E-10-04; Order No. 32262, Case No. GNR-E-11-01. For instance, the four proposed Franklin Energy Storage facilities were all located immediately adjacent to each other in a contiguous manner, with the only apparent segmentation into four increments done with the intent to disaggregate into 10 aMW sizes attempting to get 20-year published rate contracts as "other QFs." Similarly, Black Mesa's most recent submissions of January 21, 2020, propose two separate 20 MW facilities that are next to each other and segmented in order to attempt to get two 10 aMW published rate, 20-year contracts. In fact, all of the proposed battery storage QF projects submitted the exact same or adjacent location coordinates as accompanying projects as shown on the table below. They are disaggregated. All Franklin projects shared the same developer, and all Black Mesa and Frederick projects shared the same developer.

Request Number	Project Name	Nameplate Capacity	Date Received	Location	Location Coordinates
1	Franklin Energy Storage One	32 MW	1/26/17	Jackpot, NV	42.206, 114.6
2	Franklin Energy Storage Two	32 MW	1/26/17	Jackpot, NV	42.206, 114.6
3	Franklin Energy Storage Three	32 MW	1/26/17	Jackpot, NV	42.206, 114.6
4	Franklin Energy Storage Four	32 MW	1/26/17	Jackpot, NV	42.206, 114.6
5	Black Mesa Energy	20 MW	2/10/17	Glenn's Ferry, ID	42.91, 115.18
6	Black Mesa Energy 1	20 MW	1/18/20	Glenn's Ferry, ID	42.91, 115.18
7	Black Mesa Energy 2	20 MW	1/18/20	Glenn's Ferry, ID	42.907, 115.207
8	Frederick Energy 1	20 MW	1/20/20	Grand View, ID	43.009, 116.018
9	Frederick Energy 2	20 MW	1/20/20	Grand View, ID	43.009, 116.018
	Total:	228 MW			

This was the practice that the Commission determined to prevent when it first implemented a temporary reduction to a 100 kW published rate eligibility cap for wind and solar projects, Order No. 32176, and then made that 100 kW published rate cap permanent for wind and solar QFs. Order No. 32262. *See* Case Nos. GNR-E-10-04, GNR-E-11-01.

> Based upon the record, the Commission finds that a convincing case has been made to temporarily reduce the eligibility cap for published avoided cost rates from 10 aMW to 100 kW <u>for wind and solar only</u> while the Commission further investigates the implications of disaggregated QF projects ...
>
> Wind and solar resources present unique characteristics that differentiate them from other PURPA QFs. Wind and solar generation, integration, capacity and ability to disaggregate provide a basis for distinguishing the eligibility cap for wind and solar from other resources ...
>
> At a minimum, FERC regulations require that standard or published rates be set for purchases from QFs with a design

> capacity of 100 kW or less. These regulations also grant the Commission the discretion to set the published rate eligibility cap at a higher level. 18 C.F.R. § 292.304(c). Whether it is a published rate or a rate for a larger QF, FERC requires that the avoided cost rates for all QF purchases be just and reasonable to utility customers and in the public interest; and not discriminate against qualifying cogeneration and small power production facilities. 18 C.F.R. § 292.304(a)(1). In establishing a published rate, the Commission may differentiate among QFs using various technologies on the basis of supply characteristics of the different technologies; the availability of capacity and energy during daily and seasonal peaks; dispatchability; reliability; and other factors. 18 C.F.R. § 292.304 (c)(3) ...
>
> This Commission established a clear and reasoned distinction between small and large QFs in 1995 when it adopted the use of the IRP methodology for larger QFs. Order Nos. 25882, 25883, 25884. The Commission explained that requiring larger QF projects "to prove their viability by market standards ensures that utilities will not be required to acquire resources priced higher than would result from a least cost planning [RFP] process. Ratepayers will not be disadvantaged and QFs will be treated fairly and consistently with the requirements and goals of PURPA." *Id.* at 6. The purpose, then and now, of distinguishing between small and large QFs with the application of the IRP methodology for large QF projects is to more precisely value the energy being delivered – not encourage or discourage QF resources.

Order No. 32176, pp. 9-10 (citations omitted, emphasis in original). In extending the 100 kW published rate eligibility cap from temporary to permanent for wind and solar QFs, the Commission stated:

> Based upon the record in this case and after careful consideration of the positions presented, the Commission finds it appropriate to maintain the 100 kW eligibility cap for published avoided costs rate for wind and solar QFs. We find that any attempt to implement criteria in an effort to prevent disaggregation would be met by attempts to circumvent such criteria. The economic incentive for the projects is obvious. QF developers are working within the current structure provided by this Commission. However, we emphasize that PURPA and our published rate structure were never intended

> to promote large scale wind and solar development to the detriment of utility customers. Avoided cost rates are to be just and reasonable to the utility's ratepayers. 18 C.F.R. § 292.304(a)(1). PURPA entitles QFs to a rate equivalent to the utility's avoided cost, a rate that holds utility customers harmless – not a rate at which a project may be viable. 18 C.F.R. § 292.304(a)(2). If we allow the current trend to continue, customers may be forced to pay for resources at an inflated rate and, potentially, before the energy is actually needed by the utility to serve its customers. This is clearly not in the public interest.
>
> PURPA and the implementing regulations require only that the 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) ... Wind and solar projects larger than 100 kW continue to be entitled to PURPA contracts at avoided cost rates calculated using the IRP Methodology. Furthermore, a 100 kW threshold for wind and solar QFs provides a certainty to the parties in negotiations that disaggregation criteria would not. While we recognize the impact that this decision will have on small wind and solar projects, it would be erroneous, and illegal pursuant to PURPA, for this Commission to allow large projects to obtain a rate that is not an accurate reflection of the utility's avoided cost for the purchase of the QF generation.

Order No. 32262, p. 8 (citations omitted).

Once again, the Commission is faced with a large amount of proposed PURPA projects - this time battery/energy storage QFs - that appear to be configuring themselves in such a manner as to circumvent the Commission's rules implementing PURPA to the direct detriment of Idaho Power customers, which is contrary to PURPA. The Proposed Battery Storage Facilities share the modular, and easily disaggregated, nature of wind and solar generation output referenced by the Commission in its orders limiting those resource types to 100 kW for published rate eligibility. The 228 MW of Proposed Battery Storage Facilities' requests for energy sales agreements also came in a large amount of proposed MWs in a very short time, again similar to the previous wind and solar

development.

In its order reducing the maximum contract term for proposed projects that exceed the published rate eligibility cap, the Commission stated:

> Based upon our record, we find that 20-year contracts exacerbate overestimations to a point that avoided cost rates over the long-term period are unreasonable and inconsistent with the public interest. We find shorter contracts reasonable and consistent with federal and state law for multiple reasons. First, shorter contracts have the potential to benefit both the QF and the ratepayer. By adjusting avoided cost rates more frequently, avoided costs become a truer reflection of the actual costs avoided by the utility and allow QFs and ratepayers to benefit from normal fluctuations in the market.
>
> Second, shorter contract lengths do not ultimately prevent a QF from selling energy to a utility over the course of 20 years – or longer. PUPRA's "must purchase" provision requires the utility to continue to purchase the QF's power ... A shorter contract length merely functions as a reset for calculation of the avoided costs in order to maintain a more accurate reflection of the actual costs avoided by the utility over the long term ...
>
> This Order shortens the length of IRP-based PURPA contract in order to maintain a more accurate avoided cost ... This Order strikes a balance between just and reasonable rates for ratepayers, the public interest and interests of QFs, as is mandated by PURPA and FERC regulations.

Order No. 33357, p. 23, 32 (emphasis in original). It is appropriate and within the exclusive authority of the Commission to act in the public interest to protect customers from this manipulation of the rules and extend the 100 kW published rate eligibility cap to battery storage projects.

Since the time the Commission issued orders that established size requirements for current avoided cost eligibility and contract terms, the Company has been approached by numerous renewable project developers seeking to sell generation from their proposed

generation facilities, including energy/battery storage, at project sizes that are larger than 10 aMW and in many cases larger than PURPAs 80 MW size limit for renewable QFs at prices that are much more economic for Idaho Power's customers, and in many cases substantially lower than any PURPA avoided cost calculation. In fact, in 2019 Idaho Power entered into a non-PURPA Power Purchase Agreement ("PPA") with one such proposed project, Jackpot Holdings, LLC, for the purchase of generation output from the 120 MW Jackpot Solar project at prices that were among the lowest in the nation and nearly half the cost of any current avoided cost methodology for fixed rates implemented in Idaho. Although the Company has not entered into other PPAs as its Integrated Resource Plan ("IRP") has not identified a specific need for additional generation resources, ample opportunities exist for Idaho Power to acquire renewable generation at prices that are far more beneficial to customers, whereas new and unneeded PURPA QFs on Idaho Power's electrical system increases costs to customers.

The prevention of disaggregation "gaming" in order to seek application of higher rates and/or a longer contract terms is necessary to prevent substantial customer harm from over-paying larger projects by applying published rates that are supposed to be applicable to smaller QFs - or by locking in long-term, fixed-rates with no ability to adjust such rates during the contract term. It is appropriate and within the exclusive authority of the Commission to act in the public interest to protect customers from manipulation of the rules and to assure that the proper avoided cost rates and contract terms and conditions are implemented for the mandatory utility purchases from QFs.

III. CONCLUSION

Because of the nature of the output of PURPA energy/battery storage QFs the Commission should exercise its authority to direct that energy/battery storage QFs are entitled to published/standard rates up to the federally required minimum of 100 kW. The ICIRP methodology based upon the QFs specific hourly generation profile is the only current way to protect customers under the Commission's implementation of PURPA by properly considering the characteristics of the output, which can vary greatly, from the energy storage QFs; and the 100 kW published rate cap is the only effective measure to mitigate the customer harm resulting from potential disaggregation of energy storage QFs into 10 aMW increments in order to seek published rates over ICIRP based rates and 20-year contracts over 2-year contracts.

Respectfully submitted this 16th day of July 2020.

Donovan E. Walker

DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 2020, I served a true and correct copy of the within and foregoing COMMENTS OF IDAHO POWER COMPANY upon the following named parties by the method indicated below, and addressed to the following:

Edward Jewell Deputy Attorney General Idaho Public Utilities Commission 11331 W. Chinden Blvd., Bldg. No. 8 Suite 201-A (83714 PO Box 83720 Boise, ID 83720-0074	____Hand Delivered ____ U.S. Mail ____Overnight Mail ____FAX __X__ Email edward.jewell@puc.idaho.gov

Christy Davenport, Legal Assistant